

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

L. P. A. No. 552 of 2017(O&M) in
C. W.P. No. 6350 of 2017

Date of Decision : 06.07.2018

Apeejay Saraswati P.G.College
for Girls, Charkhi Dadri Appellant

VS.

Dr. Vandana Tyagi and others		Respondents
------------------------------	------	-------------

CORAM : HON'BLE MR. JUSTICE RAJESH BINDAL.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. H. L. Tiku, Senior Advocate
with Mr. Sumeet Goel, Advocate
and Ms. Yashmeet, Advocate
for the appellant

Mr. R. K. Malik, Senior Advocate
with Mr. Kuldeep Sheoran, Advocate
for respondent no. 1.

Mr. R. D. Sharma, Deputy Advocate General, Haryana,
for respondents no. 2, 3 and 5.

Mr. Amit Rao, Advocate
for Mr. Anurag Goyal, Advocate
for respondent no. 4.

* * *

DEEPAK SIBAL, J. :

The present intra court appeal filed under Clause X of the Letters Patent is directed against judgment dated 27.03.2017 passed by the learned Single Judge disposing of the appellant's writ petition.

The facts in brief, as culled out from a perusal of the record as also from the arguments raised by learned counsel appearing for the parties, are that through letter dated 23.10.2015, respondent no. 1 was appointed as

Principal in the appellant-Institute and in pursuance thereto, she joined the said post on 26.10.2015. As per the terms of her appointment, respondent no. 1 was to be on probation for a period of two years and during such period, on 14.02.2017, she was discharged from the service. Being aggrieved by the order of discharge, respondent no.1 preferred an appeal before the Education Tribunal, Bhiwani (for short – the Tribunal), which, vide order dated 21.03.2017, set aside the order of discharge on the ground that the same had been passed in violation of Rule 8 (2) as also the second proviso to Rule 8 of the Haryana Affiliated Colleges (Security of Service) Rules, 2006 (for short – the Rules). The order of the Tribunal was challenged by the Institute before this Court through **C.W.P. No. 6350 of 2017 - Apeejay Saraswati P.G. College for Girls vs. Dr. Vandana Tyagi and others**. Vide order dated 27.03.2017, the learned Single Judge of this Court disposed of the said writ petition. The Court was of the opinion that as per the second proviso to Rule 8(2), before discharging respondent no. 1, her case was required to be routed through a Committee but since the same had admittedly not been done, order of discharge could not be sustained. The aforesaid order of the learned Single Judge is the subject matter of challenge in the present proceedings.

Mr. H.L.Tiku, learned senior counsel appearing on behalf of the appellant submitted that the learned Single Judge has erred while relying upon Rule 8(2) as also the second proviso to Rule 8 of the Rules as these provisions would apply only after completion of period of probation of an employee whereas in the case in hand, the services of

respondent no. 1 were discharged much before she would have completed her probation period. He further contended that the services of respondent no. 1 were discharged during the probation period through an innocuous and non-stigmatic order which had been passed strictly as per the terms of her appointment. According to him, this was as per the settled position of law as also in accordance with Appendix-B of the Rules.

In support of his submissions, Mr. Tiku relied upon the following judgments of Hon'ble the Supreme Court :-

1. Parshotam Lal Dhingra vs. Union of India – AIR 1958 SC 36.
2. Ajit Singh and others vs. State of Punjab and another – (1983) 2 SCC 217
3. State of Punjab and others vs. Sukhwinder Singh – (2005) 5 SCC 569
4. Municipal Committee, Sirsa vs. Mushi Ram – 2005 (1) SCALE 750
5. M/s Oswal Pressure Die Casting Industry, Faridabad vs. Persiding Officer and another – 1998 (2) SCALE 156
6. Commissioner of Income Tax, Kerala vs. Tara Agencies – JT 2007 (9) SC 65

Mr. R. K. Malik, learned senior counsel who appeared on behalf of respondent no.1 sought to counter the above submissions by submitting that the procedure prescribed under Rule 8(2) of the Rules could not be interpreted to say that the same would apply only on completion of probation of an employee because then the very purpose, for which the Rule had been inserted, would be lost and it would become open to misuse at the behest of the Management. According to Mr. Malik, as per Rule 8(2) of the Rules, every case of discharge of a probationer, was required to be

routed through a Committee, irrespective of the fact whether such employee was being discharged on completion of probation or before it as such procedure was the only safeguard that an employee had against the highhandedness of the Management. According to Mr. Malik, to hold otherwise, would give the Management whimsical and arbitrary powers to discharge an employee, say just a day before the completion of probation and in this manner, the Management would be able to by-pass the safeguards, as provided under the Rules.

Mr. Ravi Dutt Sharma, learned counsel appearing on behalf of the State of Haryana, while supporting the case of the appellant, submitted that the intention of the State/Rule-making Authority was in line with the submissions made by the appellant.

After considering the afore-submissions with the seriousness that they deserve, we are of the view that the present appeal must succeed.

The relevant terms of appointment of respondent no. 1 dated 23.10.2015 read as under :-

- “1. xx xx xx
2. *Nature of Appointment : your appointment is on probation basis for a period of two years which can be extended for such further period as the competent authority under the rules may determine.*
3. *In case of resignation or discharge on ground other than abolition of the post (except as a result of disciplinary action), one month's notice or one month's pay and allowance in lieu thereof will be required to be paid on either side.*

4.	xx	xx	xx
5.	xx	xx	xx
6.	xx	xx	xx
7.	xx	xx	xx
8.	xx	xx	xx
9.	xx	xx	xx
10.	xx	xx	xx
11.	xx	xx	xx
12.	xx	xx	xx
13.	xx	xx	xx
14.	xx	xx	xx
15.	xx	xx	xx
16.	xx	xx	xx
17.	xx	xx	xx
18.	xx	xx	xx
19.	xx	xx	xx
20.	xx	xx	xx
21.	xx	xx	xx

If the above terms and conditions are acceptable to you, you are required to join your duty immediately but not later than 26.10.2015.

In case of failure to do so, your candidature is likely to be cancelled and the post shall be offered to the next eligible candidates.”

[Emphasis supplied]

The above terms of appointment are as per Appendix-B of the Rules. The relevant portion of Appendix-B is reproduced below for ready reference :-

***“APPENDIX-B
[See rule 7(4)]***

xx	xx	xx	xx
	Monika		
	2018.07.11 15:35		
	I attest to the accuracy and		
	integrity of this document		

Terms and conditions:

1. (i) xx xx xx
(ii) He/She shall be on probation for a period of..... year which can be extended for such further period as the competent authority under the rules may determine.

2. In case of resignation or discharge on grounds other than abolition of the post (except as a result of disciplinary action), one month's notice or one month's pay and allowance in lieu thereof will be required to be paid on either side.

3.	xx	xx	xx	xx
4.	xx	xx	xx	xx
5.	xx	xx	xx	xx
6.	xx	xx	xx	xx
7.	xx	xx	xx	xx
8.	xx	xx	xx	xx

If the above terms and conditions are acceptable to him/her, he/she should join his/her duty immediately but not later than.....

In case of failure to do so his/her candidature is likely to be cancelled and the post shall be offered to the next eligible candidate.”

[Emphasis supplied]

At this stage, it would further be useful to refer to the relevant contents of order dated 14.02.2017, through which respondent no. 1 was discharged from service. The same are extracted below :-

“Dear Dr. Tyagi,

You were employed on probation, for a period of two years, and subject to other terms and conditions contained in your appointment letter Ref. No. Appointment 001, dated 23.10.2015,

Monika
2018.07.11 15:35
I attest to the accuracy and
integrity of this document

which you duly accepted and joined as Principal, Apeejay Saraswati P.G. College for Girls, Charkhi Dadri on 26th October, 2015.

Your services are hereby dispensed with immediate effect, in accordance with the terms and conditions of the said appointment letter.

Please handover college's property in your possession to Dr. Sneh Lata immediately. Your full and final settlement shall be done as per Rules.”

It is not disputed that respondent no. 1 was discharged from service during her probation period. A perusal of the afore-quoted order of discharge dated 14.02.2017 further reveals that the same is innocuous and non-stigmatic. It is also as per the afore-quoted terms of her appointment, which in turn are strictly as per Appendix-B to the Rules which, as per settled law, are a part of the Rules themselves.

Now, the only issue that needs to be considered is whether the impugned order violates the procedure prescribed under Rule 8 of the Rules.

Rule 8(2), as also the second proviso to Rule 8(2) of the Rules, read as under :-

“8. (1) *The persons appointed to any post in the Service shall remain on probation for a period of two years in the first instance, if appointed by direct recruitment and one year if appointed otherwise.*

(2) *On the completion of the period of probation of a person the appointing authority may-*

(a) if his work or conduct has, in its opinion, been satisfactory, confirm such person from the date of completion of his probation period or if a permanent post is not available, declare that he has completed his probation satisfactorily; or

(b) if the work or conduct of a person in its opinion has not been satisfactory -

(i) dispense with his services, if appointed by direct recruitment, or revert him to his former post if appointed otherwise or deal with him in such other manner as the terms and conditions of his previous appointment permit;

(ii) extend his period of probation and thereafter pass such orders as it could have passed on the expiry of the first period of probation;

Provided that the total period of probation, including extension, if any, shall not exceed three years :

Provided further that if it is proposed to take action under sub-clause (i) or (ii) then the case of the official shall be referred to a committee consisting of the following members :-

- (1) President or his nominee;*
- (2) Dean of Colleges of the University or his nominees;*

(3) Nominee of Government in the Managing Committee;

(4) Principal of the College concerned;

(5) Principal of another college not under the same Managing Committee. The Managing Committee shall take a final decision in the matter in accordance with the recommendation of this committee;

(iii) if the Managing Committee does not agree with the report of the committee constituted under rule 8(2)

(b) (ii) or the committee is unable to come to a decision by the majority then the matter will be referred to by the Principal to the Director whose decision shall be final. However, an employee against whom an order of termination of services has been passed without complying with the provision of these rules, may, within a period of thirty days of the date of communication of orders make an application to the Director whose decision shall be final in the matter.”

[Emphasis supplied]

A plain reading of the opening lines of Rule 8(2) of the Rules leaves no manner of doubt that the same is applicable only on the completion of the period of probation of an employee.

As per the second proviso to Rule 8(2), if the Management intends to take any action under Rule 8(2)(b)(i) or (ii), then the case of the concerned employee is required to be routed through a Committee comprising of the Members mentioned in the proviso itself. Rule 8(2)(b)(ii) pertains to consideration of the case of an employee for extension of period of probation. This would necessarily be only on the completion of the period of probation. This further shows the intention of the rule-making Authority that the second proviso would apply only on the completion of the period of probation. The State, which in the present case, is the rule-making Authority, has also clearly expressed that the procedure prescribed under the second proviso to Rule 8(2) is to apply only on the completion of the period of probation of the employee.

Even according to us, only if the Management has permitted an employee to complete the entire period of probation, then to extend the period of probation or to discharge him from service, as per the second proviso to Rule 8(2)(b), his case is to be routed through a Committee. Such procedure would not apply in the case of an employee, whose services are discharged during his period of probation.

There can hardly be any dispute with the proposition of law that an employee can be discharged from service during the probation period if the appointing authority comes to a conclusion that his work and conduct is not satisfactory. However, such discharge from service should be through an innocuous and non-stigmatic order as also as per the terms of his appointment and should not violate any contract or applicable rules.

In the present case, respondent no. 1 was discharged from service during her probation period through an innocuous and non-stigmatic order which was in conformity with the terms of her appointment, which in turn were as per Appendix 'B' of the Rules. In view of what has been held above, the order discharging her also did not violate any provisions of the Rules.

In view of above discussions, the present appeal is allowed. Impugned judgment dated 27.03.2017 passed by learned Single Judge is set aside. Consequently, the writ petition filed by appellant is allowed.

(RAJESH BINDAL)
JUDGE

(DEEPAK SIBAL)
JUDGE

July 06, 2018

monika

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>