

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2019

CORAM :

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.NO.19816 OF 2005 AND
W.P.M.P.NO.21540 OF 2005

S.Sharavanan

... Petitioner

Vs.

1. Salim Ali Centre for Ornithology and Natural History
rep by its Member Secretary,
Anaikatty (P.O.), Coimbatore - 641 108.

2. The Director,
Salim Ali Centre for Ornithology and Natural History
Anaikatty (P.O.),
Coimbatore - 641 108.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue writ of certiorarified mandamus to call for the records of the impugned order bearing Ref.No.2073/18.6/2005 dated 06.06.2005 of the 2nd respondent and quash the same and further issue directions to the respondents to reinstate the petitioner to Junior Administrative Manager with backwages, continuity of service and other attendant benefits in the 1st respondent's Society at Anaikatty, Coimbatore District.

For Petitioner : Mr.Haja Nazirudeen, Senior Counsel
for Mr.R.Tholgappian

For Respondents : Mr.Abishek Jenasenan
for Mr.A.Jenasenan (R2)
R1 - no appearance

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records of the impugned order dated 06.06.2005 passed by the 2nd respondent and to quash the same and to direct the respondents to reinstate the petitioner as Junior Administrative Manager with backwages, continuity of service and other attendant benefits in the 1st respondent's Society.

2. Admittedly, the petitioner was appointed as Junior Administrative Manager on 02.03.2005 and the period of probation was for two years. During the period of probation, he was terminated without assigning any reason by invoking Clause - 6 of the Offer of Appointment. Challenging the order dated 06.06.2005 terminating the petitioner, the petitioner has filed the above Writ Petition.

3. Mr. Haja Nazirudeen, the learned senior counsel appearing for the petitioner submitted that even a probationer is entitled for show cause notice prior to termination and therefore, the order passed by the 2nd respondent terminating the petitioner during the course of probation is illegal.

3.1. In support of his contention, the learned senior counsel relied upon a judgment reported in AIR 2000 Supreme Court 1080 [V.P. Ahuja Vs. State of Punjab and others] wherein the Hon'ble Supreme Court held as follows:

"....

7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

8. The affidavits filed by the parties before the High Court as also in this Court indicate the background in which the order terminating the services of the appellant came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant.

9. The entire case law with respect to a "probationer" was reviewed by this Court in a recent decision in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta, (1993) 3 SCC 60: AIR 1999 SC 983 : (1999) 1 JT (SC) 396 : (1999 AIR SCW 605 : 1999 Lab IC 1114). This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it."

4. Mr. Abishek Jenasenan, learned counsel appearing for the 2nd respondent submitted that as per Clause - 6 of the Offer of Appointment, the petitioner is not entitled for any notice during the period of probation. Further, the learned counsel submitted that the Writ Petition is not maintainable for the reason that the respondents are not State or Authority within the meaning of Article 226 of the Constitution.

4.1. In support of his contentions, the learned counsel for the 2nd respondent relied upon the following judgments:

(i) (1998) 2 Supreme Court Cases 574 [Union of India Vs. Rati Saroj and another] wherein the Hon'ble Supreme Court held as follows:

"...

8. His position appears more akin to the position of a selectee rather than a probationer because he has not joined the new service when the appointment is cancelled. He continues to belong to the Service which he had joined and to which he belonged prior to his present selection. One thing at least is clear (he cannot have higher rights than a probationer. It is well settled that a probationer's service can be terminated during the period of probation if he is found unsuitable. No enquiry is necessary for such termination of the services of a probationer. In the case of Samsher Singh v. State of Punjab & Anr. [1974 (2) SCC 831], a Bench of this Court consisting of seven Judges, inter alia, held that the services of a probationer can be terminated when the authorities are satisfied regarding his inadequacy for the job, or unsuitability for temperamental or other reasons not involving moral turpitude, or when his conduct may result in dismissal or removal but without a formal enquiry. An enquiry is necessary only when the termination is by way of a punishment, and to determine this the substance of the order and not the form is decisive. The same position has been reaffirmed in Anoop Jaiswal v. Government of India & Anr. [1984 (2) SCC 369] where the decision on Samsher Singh v. State of Punjab [1974 (2) SCC 831] has been quoted extensively. Before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. If it comes to the conclusion that the probationer is not suitable he is liable to be discharged. He cannot, in this situation, claim the benefit of Article 311(2)."

(ii) (2005) 2 Supreme Court Cases 382 [Municipal Committee, SIRSA Vs. Munshi Ram] wherein the Apex Court held as follows:

"...

10. It is clear from the above that if the order of termination indicates that it is a termination simpliciter and does not cast any stigma on the employee by the said order of termination the mere fact that there was an inquiry into his conduct earlier would not by itself render the termination

invalid. Applying the said principle, if we see that the order of termination in the present case is an order of discharge simpliciter. But in the course of the inquiry, the Labour Court noticed that on an earlier day there was some incident where the administrative officer found some lacunae in the working of the respondent but based on that no charge-sheet was served nor inquiry was conducted. However, the appellant came to the conclusion that it is not in its interest to continue respondent's services, hence, discharged him. In the background, the mere fact that there was a misconduct on the part of the respondent which was not enquired into ipso facto does not lead to the conclusion that the order of the termination is colourable and in fact is a punitive order."

5.The learned senior counsel for the petitioner submitted that in the earlier Writ Petitions in W.P.Nos.1454 of 1996, 1784 of 1996 and 1842 of 1996, which were filed as against the very same respondents herein, this Court, by order dated 23.08.2002, categorically held that the Writ Petitions are maintainable against the respondents. The learned senior counsel for the petitioner also submitted that the said order has become final.

6.In such circumstances, following the order passed by this Court in W.P.Nos.1454 of 1996, etc., I am of the view that the Writ Petition is maintainable.

7.So far as the issuance of notice to the probationer is concerned, if the termination is punitive in nature, causing stigma against the petitioner, in such case, a notice is mandatory. When the termination is not punitive and no stigma was fastened against the petitioner, there is no necessity for issuing notice for terminating a probationer.

8.On a reading of the judgment reported in AIR 2000 Supreme Court 1080 [V.P.Ahuja Vs. State of Punjab and others], the Hon'ble Supreme Court held that when the order of termination of a probationer on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the probationer. Similarly, in the order passed by this Court in W.P.Nos.1454 of 1996, etc., dated 23.08.2002, this Court held that the order passed therein are punitive in character, therefore, the employer should have given an opportunity to the probationer to put forth their views. From the above, it is clear that unless the order of termination of a probationer is punitive in nature and a stigma is fastened against him, the probationer is not entitled for any notice prior to termination. In the case on hand, the petitioner was terminated during the period of probation, by order dated

06.06.2005, without assigning any reason. Therefore, it is clear that it is not punitive and it is not stigmatic. In these circumstances, the petitioner is not entitled for any notice. That apart, in Clause - 6 of the Offer of Appointment, it has been specifically stated that during the period of probation, the Appointing Authority may terminate him from the services of SACON without notice and without payment of salary in lieu thereof. Applying Clause - 6 of the Offer of Appointment dated 04.02.2005, the 2nd respondent terminated the services of the petitioner.

9. For the reasons stated above, there is no illegality in the order passed by the 2nd respondent. I do not find any ground to interfere with the impugned order dated 06.06.2005. The Writ Petition is devoid of merits and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

va

To

1. The Member Secretary,
Salim Ali Centre for Ornithology
and Natural History
Anaikatty (P.O.), Coimbatore - 641 108.
2. The Director,
Salim Ali Centre for Ornithology
and Natural History
Anaikatty (P.O.), Coimbatore - 641 108.

+2cc to Mr.A.Jenasenan, Advocate, S.R.No.97832

+1cc to Mr.R.Tholgappian, Advocate, S.R.No.97643

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PVS(CO)
CS/19/12/2019