

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09..03..2020

Orders Pronounced on: 15..05..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.8784 of 2013

K.Maharajan

... Petitioner

-Versus-

1.The Director,
TATA Institute of Fundamental Research,
An Autonomous Institution of the Department
of Atomic Energy,
Government of India,
Home Bhabha Road,
Mumbai-400 005.

2.The Centre Director,
National Centre for Radio Astrophysics,
TATA Institute of Fundamental Research,
Ganeshkhind, Pune University Campus,
Pune-411 007.

3.The Dean,
National Centre for Radio Astrophysics,
TATA Institute of Fundamental Research,
Ganeshkhind, Pune University Campus,
Pune-411007.

... Respondents

Petition filed under Article 226 of The Constitution of India calling for the proceedings of the 1st respondent in its proceedings No.TFR/ADM/DO/KMA 170 dated 23.01.2013 confirming the order passed by the 3rd respondent in his proceedings No.NCRA/Estt/AOC/RAC/KMA/170/2013/294 dated 21.11.2012 and to quash both the orders and consequently reinstate the petitioner back into service as Administrative Officer-C in Radio Astronomy Centre, Ooty, with all attendant and consequential benefits.

For Petitioner

: Mr.V.Vijay Shankar

For Respondents

: Mr.P.Ranganatha Reddy for
M/s.King & Patridge for RR1
to 3

ORDER

This writ petition challenges the order dated 23.01.2013 passed by the 1st respondent confirming the order dated 21.11.2012 passed by the 3rd respondent terminating the services of the petitioner as "Administrative Officer-C" at Radio Astronomy Centre (RAC) at Ooty.

2. The petitioner was appointed as "Administrative Officer-C" at Radio Astronomy Centre (RAC) at Ooty on 27.10.2011, the appointment was on probation for a period of one year from the date of joining duty. The petitioner had joined the services of the respondent centre at Ooty on 26.12.2011. According to the petitioner, right from the date of joint duty, the Head of RAC at Ooty [hereinafter will be referred to as 'the Head (RAC)'] was not cordial towards him. He was humiliated either by the Head (RAC) himself or by the others at the instance of the head. Even though the petitioner was entitled to occupy the quarters and despite the availability of the quarters, he was not allotted on flimsy grounds. Further according to the petitioner, his every effort was criticized or found fault with by the Head (RAC). All his attempts to bring the same to the notice of the superiors were ignored. However, realizing his future and that of his family, he bore his humiliations patiently.

3. It is the further case of the petitioner that earlier, on 10.05.2012, a memo came to be issued by the 2nd respondent at the instance of the Head (RAC) on a very flimsy ground. Thereafter, a fact finding committee was constituted to look into the allegations in the complaint and the counter complaint made by the Head (RAC) against the petitioner and the petitioner against the Head (RAC) respectively. The petitioner had appeared before committee. However, nothing had transpired in the committee and nobody was examined. While so, at the verge of completion of probation, the petitioner was called to give his presentation about his performance in the review meeting held on 16.11.2012. Accordingly, he had submitted his report at Pune. Thereafter, the order dated 21.11.2012 impugned in the writ petition came to be passed by the 3rd respondent terminating the services of the petitioner on the ground that his performance remained unsatisfactory. The grievance of the petitioner is that the impugned order of termination is not a termination simpliciter rather the said order is stigmatic and punitive one. The termination of the services of the petitioner was done only at the instigation of the Head (RAC). Even though the Administrative Committee which was constituted to assess the compatibility and suitability of the petitioner had submitted a report stating that the petitioner had involved in several

irregular practices, no enquiry was conducted and a copy of the report was also not furnished to the petitioner. According to the petitioner, the earlier charge memo was issued with mala fide intention. Without proper enquiry being conducted on the allegations leveled earlier, the petitioner was found fault with by the committee which ultimately have an impact on the termination of the services of the petitioner. When an appeal was taken out by the petitioner, the 1st respondent has simply confirmed by the order of termination without being applied his mind. Hence, this writ petition challenging the order of termination passed by the 3rd respondent and as confirmed by the 1st respondent.

4. The 2nd respondent filed counter affidavit inter alia contending that that the petitioner was appointed as Administrative Officer-C at Ooty and he had joined the services on 26.12.2011 with a probationary period of one year. He was delegated with the powers to manage guest house, hostel, hospitality, canteen, security, transport, office auto machine equipment and liaising work, etc. As per the procedures, the performance of the petitioner was reviewed at the end of probation for suitability for continuing the appointment. The review committee which met on 16.11.2012 found that the petitioner's performance was below the expected level and hence, the services of the petitioner was terminated.

5. It is further stated by the 2nd respondent that the allegations made in the affidavit as against the Head (RAC) are baseless, unwarranted. They are all invented allegations with an intention to malign the respondents. It is denied by the 2nd respondent that the petitioner had to face several humiliations at the hands of the Head (RAC). According to the respondents, the committee constituted to look into the complaint had interacted with several other staff members and held internal discussions and submitted its report to the competent authority. The committee had also communicated a copy of its conclusions to the petitioner. The petitioner had also received the same. The services of the petitioner was terminated based on the standard review procedures and he was also given sufficient opportunity to improve his performance. The petitioner was also given fair hearing in the review meeting. It is further stated that there was no conspiracy behind the termination of the petitioner and the performance was evaluated by a duly appointed review committee. The review committee had sought independent opinion of an advisory committee. All these committees consistently rated the performance of the petitioner as unsatisfactory. Based on these inputs, the termination order was passed. Therefore, it is incorrect to state that termination was stigmatic and punitive in nature. The petitioner was given enough opportunities to improve his performance, but, there was no

improvement in his performance. Hence, the respondents were constrained to terminate the petitioner, who was a probationer duly in compliance of the clause 3 of the appointment letter dated 27.10.2011. Therefore, the impugned termination order is perfectly legal and in consonance with the contract of appointment. There is no illegality in the order of termination warranting indulgence at the hands of this court. The writ petition is therefore liable to be dismissed.

6. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and also perused the records carefully.

7. Mr.Ranganatha Reddy, the learned counsel for the respondents raised a preliminary objection regarding the maintainability of the writ petition. According to the respondents, the respondent Institute is a registered public trust, registered under The Bombay Public Trust Act and it is not discharging any public function. Hence, the writ petition is not maintainable. In support of his contention, the learned counsel relied upon a judgement of the Hon'ble Bombay High Court reported in 2009 SCC OnLine Bom 1461 Arun Vasantrao Betkekar v. Government of India, wherein the respondent research center was arrayed as a party. In that case, a Division Bench of the Hon'ble Bombay High Court held that the respondent Institute is a public trust and it is covered under the provisions of the Bombay Public Trusts Act, 1950 and has given liberty to the petitioner therein to approach the Charity Commissioner appointed under The Bombay Public Trusts Act, 1950.

8. The learned counsel for the respondents further relied upon a judgement of the Hon'ble Supreme Court reported in 2019 (14) SCC 189 Rajbir Surajbhan Singh v. Chairman, Institute of Banking Personnel Selection, Mumbai and in Ramakrishna Mission v. Kago Kunya, Civil Appeal No.2394 of 2019 (SLP (C) NO.30924 of 2018) dated 28.02.2019.

9. Per contra, Mr.Vijay Shankar, the learned counsel for the petitioner submitted that the respondent Institute is managed by the Public Trust and the fund for the trust is paid by the Government and the Government is having all pervasive control over the public trust and the trust is performing a public duty. Therefore, the respondent institute is amenable to writ jurisdiction. He has also produced the bye-laws of the respondent trust to show that the Government is funding for the activities of the trust and also having control over the trust.

10. The maintainability of writ petition as against a public trust has already been considered by the Hon'ble Supreme Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna

Hayanti Mahotsav Smarak Trust v. V.R.Rudani, (1989) 2 SCC 691 wherein the Hon'ble Supreme Court has held that as the trust was managing the affiliated college to which public money was paid by the Government and the public money paid as Government aid playing a major role in the control, maintenance and working of educational institutions. Hence, it is amenable to writ jurisdiction. It was further held by the Hon'ble Supreme Court that the words "any person or authority" used in Article 226 of the Constitution of India not to be confined only to statutory authorities and instrumentalities of the State and it may cover any other person or body performing public duty and the form of the body concerned is not very much relevant. The relevant portion of the judgement is as follows:-

"15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. [See The Evolving Indian Administrative Law by M.P. Jain (1983), p. 226] So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

20. The term "authority" used in Article

226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

11. In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology*, (2002) 5 SCC 111, a Constitution Bench of the Hon'ble Supreme Court has held that, if the body is financially, functionally and administratively dominated by, or under the control of the Government, and if such control is pervasive, then it is a State within the meaning of Article 12 of The Constitution of India. The relevant portion of the judgement reads as follows:-

40. The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

12. The judgement in Arun Vasantrao Betkekar v. Government of India, (2009) SCC OnLine Bom 1641 upon which reliance was placed heavily by the learned counsel for the respondent was under different context. It was a public interest litigation wherein there were allegations over the functioning of the institute were made besides questioning the action of the respondents in granting extensions and/or appointment of the Chairman of the Department of Atomic Energy. Thus, the Division Bench of a Bombay High Court though held that the respondent trust was a public trust, considering the challenge in the writ petition, had given a liberty to the petitioner to approach the Charity Commissioner and the issue of maintainability of writ petition was not decided by the Division Bench. Here the facts in the instant case is different where the order of termination of the services of the petitioner is put under challenge.

13. Keeping the above principles in mind if we go through the bye-laws of the respondent Institute, it could be seen that the respondent institute is managed by a council consisting of 8 members viz., (a) three members appointed by the Government of India, (b) one member appointed by the Government of Maharashtra, (c) two members appointed by Trustees of the Sir Dorabji Tata Trust, (d) the Director of the Institute (ex-officio member); and (e) a member to be co-opted on the basis of a recommendation to be made by the above mentioned 7 members of the Council listed under (a) to (d) above. The Bye-laws of the institute is also subject to the confirmation by the Government of India and Government of Maharashtra and both the Government have power to veto any amendments in the bye-laws. Even the appointment of the Director of the Institute shall be made by invitation by the Council with the approval of the Government of India, the Government of Maharashtra, apart from the trustees. The recurring and non-recurring grants are made by the Government of India and the Government of Maharashtra, apart from the trustees. That apart, the Budget and Accounts of the Instituted are also audited by a Chartered Accountant or Accountants appointed in consultation with the Comptroller and Auditor General of India and the report on the working of the institute should also be submitted before the Government of India and the Government of Maharashtra besides to trustees annually. Thus, from a over all perusal of the bye-laws, it could be seen that the institute is financially, functionally and administratively dominated by and under the control of the Government of India as well as the Government of Maharashtra and the control is deep and pervasive. That apart, the institute is also performing public duty. Therefore, for the reasons discussed above, this court is of the view that the respondent institute is amenable to the writ jurisdiction under Article 226 of the Constitution of India and the writ petition is maintainable against the

respondents.

14. Coming to the merits of the case, admittedly, the petitioner was appointed as "Administrative Officer-C" at Radio Astronomy Centre (RAC) at Ooty on 27.10.2011 and the appointment was on probation for a period of one year from the date of joining duty. The continuation of appointment was subject to his satisfactory performance with a condition that during probation, services could be terminated at any time by giving one month's notice or on payment of thirty days' emoluments in lieu thereof. Accordingly, the petitioner had joined the services of the respondent centre at Ooty on 26.12.2011. The relevant portion of the order of appointment reads as follows:-

"Your appointment will be on a probation for a period of one year from the date of your joining duty and you may be given a continuing appointment thereafter, subject to satisfactory performance. The probation will continue till a letter of confirmation is issued. Your service will be governed by the rules and bye-laws of the Institute as modified and applicable from time to time. During probation, your service can be terminated any time by giving one month's notice or by payment of thirty days' emoluments in lieu thereof on either side."

15. The contention of the petitioner is that the order of termination was passed with mala fide intention and it is punitive in nature. The further contention of the petitioner is that he was victimized by his superior officers and the enquiry conducted earlier against him by the committee and the findings of the committee had formed the basis for the impugned order of termination of service.

16. It is the settled law that during the period of probation, suitability of an employee has to be considered, if the services of an employee are not satisfactory and the employee is found not suitable for appointment to the post, then, the employer has right to terminate the services of the employee on that ground. However, the termination of service should not be by way of punishment. The Hon'ble Supreme Court has time and again held that a duty is cast upon the court to find out whether the termination is pure and simple or punitive in nature. If prior to the termination a full scale formal enquiry was conducted into the allegation involving moral turpitude or misconduct which culminated in the finding of guilty, then the termination could be held to be punitive irrespective of the form of the termination order. The Hon'ble Supreme Court in Pavendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences,

(2002) 1 SCC 520 has held as follows:-

"21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

17. In the event, any disciplinary enquiry conducted against an employee is found to be the foundation for termination, then then termination can be termed as punitive and stigmatic in nature. In *Nehru Yuva Kendra Sangathan v. Mehbub Alam Laskar*, (2008) 2 MLJ 1073 (SC) : (2008) 2 SCC 479, the Hon'ble Supreme Court has held as follows:-

"19. When the report submitted by a competent authority in a disciplinary proceeding forms the foundation therefor, it would be stigmatic in nature as such an order will have civil consequences."

18. In another judgement in *Jaswant Singh Pratapsingh Jadeja v. Rajkot Municipal Corporation*, (2007) 10 SCC 71, the Hon'ble Supreme Court has held as follows:-

"9. The tests governing termination of probation are no longer *res integra*. When a disciplinary enquiry is initiated on the premise that there are serious allegations of misconduct on the part of the delinquent officer; his explanation thereupon had been rejected pursuant where to a full-scale formal enquiry has been initiated culminating in a finding of guilt, the order terminating the service would be held to be stigmatic. There may also be cases where the allegations involved moral turpitude on the part of the delinquent officer. The language used in the order of termination of service may *ex facie* be stigmatic. The language used therein may also show that there was something over and above the assertion that the officer was found unsuitable for the job. The aforementioned tests, however, are not exhaustive."

19. In Chandra Prakash Shahi v State of U.P. (2000) 5 SCC 152, the Hon'ble Supreme Court has held that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question, but, if for the termination of the suitability of the probation, an enquiry is held and on the basis of such enquiry, a decision is taken to terminate his service, then, the order will not be held punitive in nature. The para 28 of the judgement reads as follows:-

"28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive"."

20. In yet another judgement Krishnadevaraya Educational Trust v. L.A. Balakrishna, (2001) 9 SCC 319, the Hon'ble Supreme Court has held that employer has a right to terminate the services of an employee, if he is not suitable for service and any committee is constituted for that purpose and the committee had come to a conclusion that the job proficiency of the employee was not up to the mark, that would also be a valid reason for terminating the services of the employee and therefore, the same cannot be held as punishment. In paragraphs it has been held by the Hon'ble Supreme Court as follows:

"6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

7. In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if we take into consideration the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not up to the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment."

21. Keeping the above principles in mind, let me now consider the facts involved in the instant case. In this case, earlier, based on certain allegations made against each other by the Head (RAC) and the petitioner, a fact finding committee was set up to carry-out a detailed investigation against the allegations. According to the respondent, the committee had filed a report and copy of the report was also furnished to the petitioner. Based on the report submitted by the committee, the 2nd respondent had issued a memo on 11.09.2012 to the petitioner advising him to take serious cognizance of the matter and make sure that such incidents do not repeat in future. Thereafter, no further action was taken against the petitioner based on the recommendation of the fact finding committee. Thereafter, at the end of completion of the probation, a committee came to be constituted to review the performance of the petitioner and the petitioner was directed to be present before the committee to submit his performance report. Pursuant to the same, the petitioner did appear before the committee and submit his performance report. Thereafter, the impugned order has been passed on the ground that even though the petitioner was informed of several shortcomings and despite the advise made to him to improve his performance, the performance of the petitioner remained unsatisfactory.

22. From a careful perusal of the entire records, it could be seen that the termination of the service of the petitioner was only based on his non performance and also based on the report submitted by the committee that was set up to assess the petitioner's performance. In that circumstances, the order of termination cannot be termed as punishment as it has nothing to do with the earlier disciplinary enquiry.

23. The learned counsel for the petitioner relying upon the judgement of the Division Bench of this Court in Salim Ali Center for Ornithology and Natural History v. Dr.C.P.Geevan, (2010) 4 MLJ 1180 would submit that the court will have to consider circumstances surrounding the termination and the court will have to lift the veil to decide as to whether an order of termination is stigmatic or punitive in nature. As already discussed above, there were serious disputes between the petitioner and the Head (RAC) of the Institute at Ooty and a fact finding enquiry was conducted into the respective allegations and a report was also submitted by the committee and in the report, the committee went against the petitioner. The contention of the petitioner is that this report formed the foundation for the termination of his service. But, this contention cannot be countenanced for the simple reason that earlier, the fact finding committee filed report against the petitioner and the 2nd respondent, after taking into consideration of the report, did not take any serious action against the petitioner and had only advised the petitioner to mend his ways and see that incidents should not repeat in future. Thereafter, at the end of his probation period, his performance was assessed by a committee at Head Quarters at Pune and the committee after assessing the performance of the petitioner filed a report. The performance assessment report filed by the committee alone formed the basis to pass the order of termination on the ground that the performance of the petitioner was unsatisfactory. At any rate, it cannot be held that the earlier proceedings initiated against the petitioner had formed foundation for the impugned order of termination. On appeal, the appellate authority had also based on the performance report of the petitioner has come to the conclusion that the petitioner was not suitable for the post as his performance was not satisfactory and dismissed appeal in which this court does not find any illegality or irregularity warranting interference at the hands of this court.

24. For the reasons discussed above, this court is of the view that the termination of the petitioner was only pure and simple on the ground of unsatisfactory performance of the petitioner and it cannot be held as punishment or punitive in nature. Thus, there is no merit in the writ petition and the same deserves only to be dismissed.

In the result, this Writ Petition is dismissed. No costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Kmk
To

- 1.The Director, TATA Institute of Fundamental Research,
An Autonomous Institution of the Department of Atomic Energy,
Government of India, Home Bhabha Road, Mumbai-400 005.
- 2.The Centre Director, National Centre for Radio Astrophysics,
TATA Institute of Fundamental Research, Ganeshkhind,
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- 3.The Dean, National Centre for Radio Astrophysics,
TATA Institute of Fundamental Research, Ganeshkhind,
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सत्यमेव जयते

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SPD(CO)
RMP(17/07/2020)

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