

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.22907 of 2018
Date of decision : 14.1.2020

Sumit Kumar

....Petitioner

versus

Punjab and Haryana High Court and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Satyavir Singh Yadav, Advocate, for the petitioner.

Ms. Amrita Singh, Advocate, for the respondents.

Nirmaljit Kaur, J. (Oral)

The present writ petition is filed for quashing of the impugned order dated 24.5.2016 (Annexure P-3) passed by respondent No.2, vide which, the services of the petitioner were dispensed with as well as the appellate order dated 4.5.2018 (Annexure P-5) passed by the Appellate Authority i.e. the Administrative Judge, vide which, the service appeal of the petitioner was dismissed.

While praying for setting aside the impugned orders dated 24.5.2016 and 4.5.2018 referred above, learned counsel for the petitioner raised two fold arguments. Firstly, the services of the petitioner were dispensed with on the allegations of misconduct and as such the punishment/termination order was stigmatic. Hence, the services of the petitioner could not have been dispensed with even though he was on probation without giving notice, issuing charge-sheet and holding an enquiry. Secondly, while dismissing the service appeal of the petitioner vide

order dated 4.5.2018, the Appellate Authority relied upon the judgment rendered by Hon'ble the Apex Court in the case of Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences, 2002 (1) SCC 520, which was overruled by the Hon'ble Apex Court in the case of State Bank of India and others vs. Palak Modi and another. Reliance was also placed on the judgment of passed in CWP-5697-2014 titled as Rajinder Singh vs. Punjab and Haryana High Court and another, decided on 13.2.2017.

Written statement has been filed on behalf of respondents No.1 and 2.

After hearing learned counsel for the parties and having gone through the pleadings, following facts have emerged:-

(a) The petitioner joined the service as peon at Sessions Division, Hisar on 24.3.2015.

(b) Civil Judge (Jr. Divn.), Hisar assessed the work of the petitioner as unsatisfactory. The Annual Confidential Report of the petitioner for the ending year was recorded "below average".

(c) As per Clause 8 of the appointment letter, the petitioner was placed on probation for a period of two years. As per the condition No.2, the services of the employee could be dispensed with in case the work or conduct was found to be unsatisfactory.

(d) Services of the petitioner were dispensed with on 24.5.2016 much before the expiry of the probation period.

(e) The termination order dated 24.5.2016 reads as under:-

"Services of Shri Sumit Kumar, Peon of the Court of Ms. Vandana, Civil Judge (Junior Division), Hisar, are hereby dispensed with, with immediate effect, during the period of

probation.”

A perusal of the order of termination shows that it is an order simplicitor. It is not stigmatic in any manner. Therefore, the order of termination is in accordance with the appointment letter as also Rules and Regulations. The order being a simple order of termination without any aspersion or stigma which may adversely affect the future of the petitioner and having been passed during the probation period, no enquiry was required to be held as per well settled proposition of law. Division Bench of this Court in the case of Amarjeet Singh vs. Presiding Officer, Labour Court, Patiala and others, 2012(2) RSJ 545 while relying upon the judgments of Hon'ble Apex Court in the case of Kamal Nayan Mishra vs. State of M.P., (2010) 2 SCC 169 and Rajesh Kohli vs. High Court of J & K, (2010) 12 SCC 783, held in para No.9 as under:-

“9. In so far as the legal position is concerned it is well settled principle of law that services of an employee could be dispensed with during the operation of the probation period even without show cause or holding any inquiry. The rationale behind this principle is that a probationer does not have any substantive right to hold the post and he is not entitled to protection under Article 311 of the Constitution. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court rendered in the case of **Kamal Nayan Mishra v. State of M.P.**, (2010) 2 SCC 169. It is equally well settled that even compliance of principles of natural justice is not necessary while terminating/dispensing the service of an employee during his probation period. If the competent authority after assessment of work and conduct of an employee during the period of his probation is satisfied and passes an order of termination simplicitor recording such satisfaction regarding the unsatisfactory service of the employee, the order

could not be held to be erroneous or illegal on the ground that it amounts to a stigmatic order or casts any aspersion on the employee. For the aforementioned proposition reliance may be placed on the judgment of Hon'ble the Supreme Court rendered in the case of **Rajesh Kohli v. High Court of J&K, (2010) 12 SCC 783**.

The argument of learned counsel for the petitioner that the judgment relied upon by the Appellate Authority in the case of Pavanendra Narayan Verma (supra) has been overruled is incorrect. The said judgment was never overruled by Hon'ble the Apex Court in the case of State Bank of India (supra) as stated. The said judgment was not overruled but was simply distinguished by holding that proposition of law as laid down in the said judgment must be read as confined to the facts of that case by observing in para No.33 as under:-

“33. The proposition laid down in none of the five judgments relied upon by the learned counsel for the appellants is of any assistance to their cause, which were decided on their own facts. We may also add that the abstract proposition laid down in paragraph 29 of the judgment in **Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences** (supra) is not only contrary to the Constitution Bench judgment in **Samsher Singh v. State of Punjab** (supra), but large number of other judgments – **State of Bihar v. Shiva Bhikshuk Mishra** (supra), **Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha** (supra) and **Anoop Jaiswal v. Government of India** (supra) to which reference has been made by us and to which attention of the two-Judge Bench does not appear to have been drawn. Therefore, the said proposition must be read as confined to the facts of that case and cannot be relied upon for taking the view that a simple order of termination of service can never be declared as

punitive even though it may be founded on serious allegation of misconduct or misdemeanor on the part of the employee.”

In order to establish the distinction, the facts in the case State Bank of India (supra) show that in the said case, the employees were terminated on the ground that they were suspected, of having used unfair means. Therefore, the allegation was serious and services could not have been terminated on the said ground without holding enquiry even though they were still under probation, whereas, in the case of Pavanendra Narayan Verma (supra), it was clearly held in para No.29 as under:-

“Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationers appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationers appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.”

Even in the judgment rendered in the case of State Bank of India (supra) relied upon by learned counsel for the petitioner, it was held in para No.26 as under:-

“26. In a given case, the competent authority may, while deciding the issue of suitability of probationer to be

confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanor constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct.”

Thus, the only question is as to whether the termination in the present case was stigmatic. It is evident from the termination order as well as the reply that the only reason for terminating the services of the petitioner was unsatisfactory work and conduct, which cannot be held to be either punitive or stigmatic. There was no allegation alleged against the petitioner. Learned counsel for the petitioner has also referred to the judgment in the case of Rajinder Singh (supra). A perusal of the said judgment shows that there were specific allegations against the petitioner in the said case. Hence, enquiry was necessary. Therefore, the said case also does not help the petitioner.

In view of the above, the present writ petition is dismissed being devoid of merit.

(NIRMALJIT KAUR)
JUDGE

14.1.2020
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No