

HIGH COURT OF CHHATTISGARH AT BILASPURWrit Petition (S) No.553 of 2013Order reserved on: 23-9-2021Order delivered on: 5-10-2021

Vikas Kujur, S/o Antonish Kujur, aged about 28 years, R/o HIG-90, Sector-2, Pt. Deendayal Upadhyay Nagar, Dangiya, P.O. & P.S. D.D. Nagar, Raipur (C.G.)

--- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Law and Legislative Affairs, Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. High Court of Chhattisgarh, Through the Registrar General, High Court Campus, Bodari, Bilaspur (C.G.)
3. Principal Judge, Family Court, Raipur (C.G.)

--- Respondents

For Petitioner: Mr. Atanu Ghosh, Advocate.

For Respondent No.1 / State: -

Mr. Siddharth Dubey, Deputy Govt. Advocate.

For Respondents No.2 and 3: -

Mr. R.S. Marhas, Advocate.

Hon'ble Shri Justice Sanjay K. AgrawalC.A.V. Order

1. The petitioner has called in question the order Annexure P-1 dated 12-10-2012 by which his services have been terminated holding that same are not required further, by payment of one month salary.
2. Case of the petitioner is that he was appointed on the vacant post of Driver vide Annexure P-4 on 3-5-2012 by the Family Court, Raipur, by a duly constituted committee subject to the conditions incorporated in the order of appointment and he was appointed for a period of two years. It is the further case of the petitioner that his services have been terminated during the period of probation with immediate effect

from the date of order i.e. 12-10-2012 vide Annexure P-1 holding that his services are no longer required which is ex facie illegal, without jurisdiction and without authority of law.

3. Return has been filed by respondents No.2 and 3 stating inter alia that the petitioner was appointed on the post of Driver as the earlier incumbent of that post namely, Shri Bhushanlal Thakur was removed from service vide order dated 23-11-2010, but the said incumbent has represented before the competent authority and the competent authority by order dated 27-9-2012, partly allowed his representation by modifying the dismissal order dated 23-11-2010 and by inflicting the penalty of withholding of two annual increments with cumulative effect. Therefore, on account of joining of the earlier incumbent Shri Bhushanlal Thakur on the post of Driver on his reinstatement in service, the post held by the petitioner was deemed to be automatically vacated and that is the reason why the petitioner's services were directed to be held not required and thus, by giving one month salary, the petitioner has been removed from service.
4. No rejoinder has been filed.
5. Mr. Atanu Ghosh, learned counsel appearing for the petitioner, would submit that once the petitioner has been appointed on the vacant post, the provisions of the Chhattisgarh Civil Services (General Conditions of Services) Rules, 1961 (for short, 'the Rules of 1961') are applicable and by virtue of Rule 8(4) of the said Rules, the services of a probationer may be terminated during the period of probation if in the opinion of the appointing authority he is not likely to shape into a suitable Government servant. This rule is mandatory in nature and unless a finding is recorded by the appointing authority that the

probationer is not likely to shape into a suitable Government servant, his services cannot be terminated or removed and as such, the order impugned is liable to be set aside. Mr. Ghosh, learned counsel, would rely upon the decision of the Supreme Court in the matter of State of Punjab and another v. Shri Sukh Raj Bahadur¹ in support of his contention.

6. Mr. R.S. Marhas, learned counsel appearing for respondents No.2 and 3, would submit that since the petitioner was appointed on probation, on account of the situation that has arisen on the date of termination i.e. reinstatement of ex-employee Shri Bhushanlal Thakur, on his reinstatement made by the order of the competent authority, the petitioner's services have been dispensed with which is no stigma and one month salary has already been paid to the petitioner, therefore, the order of removal of the petitioner is strictly in accordance with law and no interference is called for in the order of termination passed by the disciplinary authority.
7. Mr. Siddharth Dubey, learned State counsel, would support the impugned order.
8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
9. Rule 8 of the Rules of 1961 governs probation and sub-rule (4) of Rule 8 states as under: -

“(1) to (3) xxx xxx xxx

(4) The services of a probationer may be terminated during the period of probation if in the opinion of the appointing authority he is not likely to shape into a suitable Government servant.”

¹ (1968) 3 SCR 234

10. A careful perusal of the aforesaid provision would show that the services of a probationer may be terminated during the period of probation if in the opinion of the appointing authority he is not likely to shape into a suitable Government servant.

11. The services of a probationer can be lawfully brought to an end before the expiry of the period of probation by way of simpliciter termination. But the termination will be illegal if it was really brought about to punish the employee for misconduct or the termination casts a stigma on him. It has therefore been consistently held that a probationer whose services have been terminated for unsuitability for the job, cannot complain about such termination and such a termination has been judicially labelled as a simpliciter termination (see Parshotam Lal Dhingra v. Union of India² and H.F. Sangati v. R.G. High Court of Karnataka³).

12. It is also well settled that during the period of probation, the authorities are entitled to assess the suitability of the candidates and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation and, for this purpose, the performance of the probationer has to be looked into and if the finding is that the performance has been unsatisfactory then the employer would be entitled to terminate the services of the probationer without conducting any enquiry (see Kunwar Arun Kumar v. U.P. Hill Electronics Corp. Ltd.⁴, K.V. Krishnamani v. Lalit Kala Academy⁵ and Rajasthan Adult Edn. Assn. v. Kumari Ashoka Bhattacharya⁶.)

2 AIR 1958 SC 36

3 (2001) 3 SCC 117

4 (1997) 2 SCC 191

5 (1996) 5 SCC 89

6 AIR 1998 SC 336

13. In Kunwar Arun Kumar (supra), their Lordships of the Supreme Court while dealing with termination of services of a probationer held as under: -

“5. The petitioner challenged the order of termination in the High Court. The High Court without going into the question whether or not it is stigma, came to the conclusion that the respondents had totally lost confidence in the appellant and that he was totally unsuitable for the job for which he was employed and, therefore, he was found not entitled to any enquiry. Consequently, it dismissed the writ petition. Shri Sehgal, learned Senior Counsel for the petitioner, contends that the finding recorded amounts to a stigma; action taken without conducting enquiry and giving an opportunity to the petitioner, is violative of Article 311(2) of the Constitution and the rules made thereunder. Therefore, he is entitled to an opportunity of being heard and be dismissed only on the ground of misconduct and not by termination simpliciter. We do not agree with the learned counsel. The reasons mentioned in the order may be a motive and not a foundation as a ground for dismissal. During the period of probation, the authorities are entitled to assess the suitability of the candidate and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. Under these circumstance, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period, the work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of the letter of appointment without conducting any enquiry. That does not amount to any stigma. If the record does not support such a conclusion reached by the authorities, a different complexion would arise. In this case, they have recorded the finding that the petitioner was regularly absent on one ground or the other. Under these circumstances, the respondents terminated his services. We do not find any illegality in the action taken by the respondents.”

14. Similarly, in K.V. Krishnamani (supra), their Lordships of the Supreme Court while dealing with the same issue held as under: -

“4. It is contended by the appellant that since the averments made in the counter would constitute foundation

for dismissal for misconduct, an enquiry in this behalf was required to be made. On the other hand, it is contended by the respondent that during the probation the appellant did not acquire any right to the post. If on being found suitable he was regularised, only then he would have acquired the right to continue in the post. During probation, it was found that his services were not satisfactory and reasons were given in support thereof. Thus they do not constitute foundation but motive to terminate the services. We find force in the contention of the respondent. They have explained that the driving of the staff car was not satisfactory and that, therefore, they have terminated the services of the appellant during probation. The very object of the probation is to test the suitability and if the appointing authority finds that the candidate is not suitable, it certainly has power to terminate the services of the employee. Under these circumstances, it cannot but be held that the reasons mentioned constitute motive and not foundation for termination of service. Therefore, we hold that the High Court has not committed any error of law.”

15. Reverting to the facts of the present case in the light of the aforesaid proposition rendered by their Lordships in the afore-cited cases (supra), it is quite vivid that the petitioner's services while he being probationer have not been terminated on the ground that his services were not found suitable in an enquiry held and by recording such finding. It is the case of respondents No.2 and 3 / High Court that one ex-employee namely, Shri Bhushanlal Thakur, who was earlier working on the said post and who was terminated, has been reinstated in service, therefore, the impugned order has been passed terminating the services of the petitioner herein. As such, without forming an opinion that the probationer i.e. the petitioner herein is not likely to shape into a suitable Government servant, his services have been terminated which is ex facie illegal, without jurisdiction and without authority of law.

16. Therefore, the impugned order is set aside and the petitioner is directed to be reinstated in service with all consequential benefits

except back-wages. The question of back-wages will be considered by the competent authority taking into consideration all the relevant material on record within sixty days from the date of receipt of a copy of this order. The petitioner will also be allowed to make representation qua back-wages. However, this order will not bar respondent No.2 to consider his suitability as per rules after he completes the period of probation.

17. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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