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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6810 of 2011

Dharmendra Kumar
Vs.
Union of India & Ors.

Mr. Sk. Mujibar Rahman
... For the petitioner.

Mr. Arijit Majumder
... For the respondents.

Pursuant to a direction passed by this Court on 23rd August, 2022, an authenticated copy of an affidavit-in-opposition filed in Court today by Mr. Majumder learned advocate, representing the respondents be kept with the record.

The present application has been filed *inter alia* challenging an order of termination dated 11th March, 2009 passed by the Commandant, 178 BN, CRPF. The petitioner's case proceeded on the premise that the petitioner had been appointed in the post of Safai Karmachari in the CRPF on temporary basis. Drawing attention of this Court to the letter of appointment annexed at page 18 of the writ application dated 28th June, 2006, Mr. Rahman learned advocate, appearing in support of the aforesaid application submits that the petitioner had been appointed in the post of Safai Karmachari, on the terms and conditions as set forth in the aforesaid letter of appointment. It is submitted that

the petitioner's services were to be governed by the CRPF Act of 1949 (hereinafter referred to as the "said Act") and the CRPF Rules 1955 (hereinafter referred to as the said 1955 Rules). It would appear from the letter of appointment, that the initial appointment was for a period of two years and the appointing authority was well within its authority to terminate the employment by issuing one-month's notice during the aforesaid initial period of appointment. It is submitted that the petitioner having successfully completed the two years period, could not have been dismissed from services without compliance of provisions of the said Act and Rules framed thereunder. In the present case the respondents have adopted a policy of hire and fire. No enquiry had been conducted against the petitioner, prior to his termination from service. The action of the respondents smacks of mala fide, the same should be set aside and writ petitioner should be reinstated in service. By placing reliance on the judgment delivered in the case of **Barun Bandyopadhyay vs. Union of India**, reported in **2010 (1) CHN, 349** Mr. Rahaman submits that the provisions of Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as the said 1965 Rules) could not have been invoked by the respondents to terminate the petitioner from service without holding a proper enquiry. It is submitted that the petitioner also enjoys protection of Article 311(2) of the Constitution of India and as such, could not have been

terminated by the respondents by adopting a policy of hire and fire.

Per contra, Mr. Majumder learned advocate, representing the respondents submits that the writ petitioner had been appointed as Safai Karmachari and was on probation when the order of termination was served on the petitioner. Drawing attention of this Court to the order of termination dated 11th March, 2009 it is submitted that such an order has been issued by invoking the powers under sub-rule (1) of Rule 5 of the said 1965 Rules.

He then refers to Rule 108 of the said 1955 Rules and submits that it is well within the authority of the employer to extend the period of probation. It is only on successful completion of probationary period including the extension, if any, that an employee may be granted a permanent appointment. Mr. Majumder further submits that prior to confirming the appointment it is well within the authority of the employer to consider, whether the work done by the employee during the probation period is satisfactory or whether he is suitable for the post. The employer while evaluating the suitability of an employee can certainly conclude that the employee concerned is not suitable for the post and prior to confirming such person, may terminate the employment by issuing a notice under sub-rule (1) of Rule 5 of the said 1965 Rules. In the

present case it is submitted that the petitioner's services had not been confirmed. The petitioner did not possess a valid educational certificate and for such reason his services was terminated. There is no irregularity on the part of the respondents in terminating the services of the petitioner by issuing a notice of termination under sub-rule (1) of Rule 5 of the said 1965 Rules. To corroborate his stand, he places reliance on the authenticated copy of the affidavit filed in Court today. In support of the aforesaid contention Mr. Majumder, places reliance on the judgment delivered in the case of **Shamsher Singh and Ors. Vs. State of Punjab**, reported in **(1974) 2 SCC 831**. He submits that the instant application deserves to be dismissed with costs.

I have heard the submissions made by the respective advocates, representing the parties and I have considered the materials on record. I find that the writ petitioner was offered an employment, in CRPF which he accepted. The terms of his employment provided that the petitioner will be appointed as a Safai Karmachari, in CRPF, for an initial period of two years and that the employment shall be governed by the provisions of the said Act and the said 1955 Rules. The same also provided that the petitioner may be terminated at any time, on one-month's notice, during the initial two years of service. I find that the said 1955 Rules have been framed in

exercise of powers conferred under Section 18 of the said Act. Rule 108 of the said 1955 Rules in general deals with probation and confirmation. Sub-rule (1) of Rule 108 of the said 1955 Rules provides that selected candidates shall be appointed or promoted to a superior post in the Force on probation for a period of two years. sub-rule (2) of Rule 108 of the said 1955 Rules provides for confirmation upon successful completion of probation. I find that sub-rule (3) of Rule 108 of the said 1955 Rules provides that the initial period as specified in sub-rule (1) may be extended. Sub-rule (4) of Rule 108 of the said 1955 Rules provides that if on the expiration of the period of probation referred to in sub-rule (1) or of any extension thereof under sub-rule (3), as the case may be, the government are of the opinion that a candidate is not fit for permanent appointment, or if at any time during such period of probation or extension they are satisfied that he will not be fit for permanent appointment on the expiration of such period of probation or extension, they may discharge him or pass such order as they think fit. Again, sub-rule (5) of Rule 108 of the said 1955 Rules provides in case where no action is taken by the Government under sub-rule (2) or (3) or (4), the period after the prescribed period of probation shall be treated as an engagement from month to month terminable on either side on the expiration of one calendar month's notice in writing.

A perusal of the aforesaid Rule therefore presupposes, a conscious decision to be taken by the Government/respondents for the purpose of confirming a candidate or discharging a candidate, followed up by an order to be passed by the authorities. As such, there cannot be any automatic confirmation on the expiry of the initial period of probation or extension, as the case may be.

In the present case the petitioner has not been able to demonstrate that his service has been confirmed. At the same time the respondents have also not been able to demonstrate that the initial period of probation of the petitioner had been extended by a further period of one year. Ordinarily, therefore, the service condition of the petitioner would be guided by sub-rule (5) of Rule 108 of the said 1955 Rules and as such the petitioner cannot be treated as a permanent employee.

I find that the respondents have consciously taken a decision to terminate the services of the petitioner. A perusal of the aforesaid order would reveal that the same has been issued as per the provisions of sub-rule (1) of Rule 5 of the said 1965 Rules. In such cases, ordinarily, no interference is called for. In the present case, the respondents have, however, used an affidavit and in such affidavit, it has been disclosed that subsequent to the petitioner submitting his educational certificate, the same

had been scrutinized by the respondents. Upon scrutiny of such documents, it has been detected that the petitioner does not possess an educational certificate by a school/institution which is affiliated with the West Bengal Education Board. From the disclosures made in the affidavit-in-opposition it would appear that AVB Junior High School, having its address Post Durgapur, District – Bardhaman, is not affiliated with the West Bengal Board of Secondary Education and that the school had only applied for affiliation with the West Bengal Board of Secondary Education. In paragraph 4(b) and 12 of the affidavit affirmed by Diban Singh Negi, D.I.G.P (Adm.), it has been asserted, on the basis of the disclosure made by AVB Junior High School, that the respondents having scrutinized the matter and found that the writ petitioner was enlisted in services based on an invalid educational certificate and the date of birth and the enlistment of the petitioner in government service being not in order, as per instruction, the petitioner had been terminated from service with effect from the date of expiry of one month's notice dated 11th March, 2009.

In the backdrop of the disclosure as aforesaid, the question, that, falls for consideration is whether the Court can lift the veil of an innocuously worded order of termination and look into the reasons which prompted the respondents to terminate the petitioner from services and

consider whether the order of termination carries with itself a stigma or whether the same is punitive in nature. Another question also comes up for consideration is whether, not obtaining an educational certificate from a recognized institution affiliated with the West Bengal Board of Secondary Education can be considered by the respondents while evaluating suitability of the petitioner to a permanent post.

While dealing with the first question it must be noted that it is well settled that the Court can certainly lift the veil, on an innocuously worded order, to look at the real face of the order and find out whether it is as innocent as it is worded. The aforesaid proposition finds support from the judgment delivered in the case of **Chandra Prakash Shahi vs. State of U.P.**, reported in **AIR 2000 SC 1706**, which has been relied on in the judgment delivered in the case of **Barun Bandyopadhyay (supra)**.

While considering the second question in light of the disclosure made by the respondents it would be relevant to ascertain the terms of employment of the petitioner. It would appear from the letter of appointment that the same does not indicate that it would be mandatory for the petitioner to disclose an educational certificate from an institution affiliated with the West Bengal Board of Secondary Education. The letter only

requires disclosure of educational certificate, in the event the petitioner accepts the offer of employment. It is true, that it is well within the authority of the employer to assess the suitability of a candidate, prior to confirmation and an appropriate educational qualification may also be a suitable guiding factor and can certainly be considered by an employer while deciding suitability of such candidate. Ordinarily, however, a minimum qualification is provided for and only those candidates who possess such qualification are offered employment. In the present case none of the parties have come forward with any document so as to demonstrate that a Safai Karmachari mandatorily requires an educational certificate to be issued by an institution, affiliated with West Bengal Board of Secondary Education.

In my opinion, unless the respondents had made, obtaining of an educational certificate from a school/institution recognized with the West Bengal Board of Secondary Education, a condition precedent for applying for the post of Safai Karmachari, the services of the petitioner could not have been terminated, on the ground that the school is not recognized.

In the present case the respondents have gone a step further and have proceeded to terminate the service of the petitioner, by terming his educational certificate as invalid. Such a decision in my opinion cannot be taken by

the respondents without affording an opportunity of hearing to the petitioner. Although, the order of termination may not be construed in strict sense as punitive, the same, however, carries with itself, stigma of declaring the petitioner's educational qualification as invalid. In my opinion, therefor, the aforesaid order of termination prejudicially affects the petitioner and attaches a stigma. The same cannot be sustained and the same is accordingly set aside.

However, considering the fact that the services of petitioner had not been confirmed and the fact that the petitioner has also not been able to demonstrate that he was not gainfully employed elsewhere subsequent to his termination from services, I direct the respondents to forthwith reinstate the petitioner in service without any back wages. It shall be open to the respondents to take appropriate action against the petitioner if so advised, upon giving an opportunity of hearing to the petitioner.

Considering the fact that the petitioner was out of service for the last decade. I direct the respondents to decide on the suitability of the petitioner for permanent posting, based on the services already rendered by him, within a period of one month from date. I, however, make it clear that if confirmed, the petitioner shall be entitled to all consequential benefits along with notional seniority and promotion.

With the above directions, the writ application,

being WPA 6801 of 2011 is allowed.

There shall be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)