

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 10218 of 2011
With
CAN 1 of 2013 (Old No. : CAN 399 of 2013)
Manjur Alam
Versus
Union of India & Ors.

For the petitioner	:	Mr. Malay Bhattacharyya Ms. Sudipa SenguptaAdvocates
For the respondents	:	Mr Bhudeb ChatterjeeAdvocate
Heard lastly on	:	22.08.2022
Judgment on	:	22.11.2022

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for issuance of directions upon the respondents to rescind, cancel and/or withdraw the impugned order of termination dated 09.05.2011 and reinstate the petitioner in his service.

2. Learned counsel appearing on behalf of the petitioners submitted as follows. On 01.04.2010 the petitioner received an offer of appointment for the post of constable in the Central Reserve Police Force (CRPF, for short). The alleged incident of criminal act happened on that day itself i.e., on 01.04.2010. On 02.04.2010 an FIR was registered where the name of the petitioner also appeared. On 14.04.2010 the petitioner joined the service and filled up the verification roll wherein the petitioner did not mention about the criminal case. On 25.02.2011 after coming to know about the alleged criminal case the petitioner took bail. On 30.03.2011 a notice of termination was served upon the petitioner. He was terminated from service as per the Rules on 09.05.2011. However, the petitioner was acquitted from the charges in the criminal Court on 30.11.2012. The petitioner was terminated from his service while he was in probation by invoking the provision of Rule 5 (1) of the Central Civil Services (Temporary Services) Rules, 1965. The main contention of the respondent was that the petitioner suppressed the criminal case that was pending against him at the time of filling up of verification roll. The petitioner filled up his verification roll on 14.04.2010 and it was not within his knowledge that there was a criminal case registered against him. It may be germane to mention that the petitioner was subsequently acquitted from the charges. In terminating the petitioner from service, the authority did not afford an opportunity of hearing to the petitioner. It was incumbent upon the respondents to issue a show cause notice and to hold an enquiry in accordance with the principles of natural justice before effecting termination of service. Even the order was

a substantially non-speaking one. Therefore, the termination was bad in law. Reliance was placed on the decisions in the case of V.P. Ahuja Versus State of Punjab and Ors. reported at 2001 (Volume I) S.C. Services Law Judgments 272.

3. Learned counsel appearing on behalf of the respondents submitted as follows. The writ petitioner was appointed as a probationer in the post of constable vide appointment letter dated 01.04.2010. He joined the service on 14.04.2010. As per the existing rules, the service of a probationer/temporary employee could be terminated upon one month's notice. Such notice was served upon him on 30.03.2011. The order of termination was issued by the concerned office on 09.05.2011 and the same was served upon the petitioner on 12.05.2011. From that date he was struck off from the strength of the battalion. The petitioner had sought to allege that such action was punitive in nature because of the fact that a criminal case was found against him and that it might be the cause for his termination. The decision relied upon by the petitioner was not applicable in the instant case. Here, the petitioner's termination was not punitive, but a normal one. It had been the consistent view of the Hon'ble Apex Court that it was always the prerogative of the employer to decide and see whom the employer would keep in service and for that a system of probation period was there. As the authority was not satisfied with the work of the probationer, it had ample right to terminate the services. In a Special Bench decision of the Hon'ble Supreme Court in State of Punjab & Ors. vs. Sukhwinder Singh reported at AIR 2005 SC 2960, it was held that the mere

holding of a preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination from service punitive in nature. A probationer was on test and a temporary employee had no right to the post. It was immaterial where there was a pending criminal case against him or not. Then the authority would have surely asked him as to why he did not disclose such case at the time of the filling up the form. Therefore, there is no merit in the writ application and the same was liable to be dismissed.

4. I heard the submissions of the learned counsels appearing on behalf of the parties and perused the writ petition, copies of the affidavits and the written notes filed.

5. This is indeed a very peculiar case where on the very day i.e., 01.04.2010 the petitioner received an offer of appointment for the post of a constable, the alleged incident of criminal act happened. On 02.04.2010 an FIR was registered naming the petitioner as an accused, amongst others. The only issue for the petitioner is that at the time of filling up the verification roll on 14.04.2010 he did not mention about the criminal case. The petitioner's case is that he came to know about the case much later and took steps in the same. In the mean time on 30.03.2011 a notice of termination was served upon him and he was terminated from service on 09.05.2011. It is quite ironical that the petitioner was finally acquitted from the charges in the criminal Court.

6. According to the petitioner, the non-mentioning of the criminal case registered against him at the time of filling up verification roll weighed

against him resulting in his termination from service; the termination from service was not proportionate to the act alleged, especially in view of the fact that he was subsequently acquitted from the criminal case; more importantly, the authority did not offer him an opportunity of hearing and this violated the basic tenets of natural justice.

7. On the other hand, according to the submissions made on behalf of the respondents the petitioner was appointed as a probationer/temporary employee vide an appointed letter date on 01.04.2010. He joined service on 14.04.2010. As per the Rules of 1965, the service of a temporary employee could be terminated upon a month's notice. Such notice was served on him on 30.03.2011 and the order of termination was issued on 09.05.2011. The same was served upon him on 14.05.2011. As the termination was not a punitive action taken against the petitioner, there was no question of affording him a right of hearing.

8. From a plain reading of termination letter appended to the writ petition as Annexure-P/2, it does not appear that the same was issued in relation to any misdemeanour or wrongful act on the part of the petitioner. Therefore, one can fairly infer that this was not a punitive action that was being contemplated by the CRPF. In the opposition, the respondents alleged misstatement by the petitioner and even stated that the 'whole aspects' were taken into consideration. But, they never admitted that the purported misstatement by the petitioner was the reason for termination. Thus, there is nothing on record to directly connect the issuance of termination letter to the petitioner and his final termination from service with his purported non-

disclosure of criminal case in the verification rolls. The petitioner cannot take advantage of such extraneous circumstance in challenging his termination from service as a temporary employee in the usual course.

9. Even if the petitioner had been discharged on such ground during probation after being sought of an explanation, the same might not have been termed as a punitive action. On this, reliance may be placed on Sukhwinder Singh's Case (supra).

10. The ratio laid down in V.P. Ahuja (supra) was quite different. There it was held that the impugned order was on the face of it stigmatic and thus, could not have been passed without a regular enquiry and an opportunity of hearing given to the employer. The facts of the case differed significantly from here. There it is had been held by the employer that "he failed in his duty administratively and technically."

11. As has been held by the Hon'ble Apex Court in Sukhwinder Singh (supra), a probationer is always on test and a temporary employee has no right to a post. It is always open to an employer to see and decide whom he would keep in service and the entire system of probation was conceived of for such purpose. However, it is true that the exercise of power cannot be absolutely arbitrary. That is why the employer has to act as per the terms of the appointment letter and give the required notice, which it did. Terminating the services of a temporary employee as per terms applicable is not per se violative of Articles 14 or 16 of the Constitution.

12. In Union of India & Anr. versus K. Balakrishnan Kani, 1990 Supp SCC 283, while dealing with Rule 5(1) of the 1965 Rules, the Hon'ble

Supreme Court held “....The order of termination specifically quotes the authority of the rule referred to above. It is not disputed that the rule permits such termination. There is no indication of any stigma in the order. The High Court, in our opinion definitely went wrong in passing the order saying that no reasons have been given in support of the termination. Quotation of the rule should have been taken as a sufficient reason and nothing more should have been looked for.....”

13. In view of the above discussions, I do not find any merit in this application.

14. Therefore, the writ petition is dismissed. The connected application accordingly stands disposed of. However, there shall be no order as to costs.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)