

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

LPA No. 1541 of 2017 (O & M)

Date of decision: 20.05.2022

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State of Haryana and another

....Appellant(s)

Versus

Jai Singh Yadav

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Ms. Palika Monga, DAG, Haryana,
for the appellants.

Mr. Vivek Sharma, Advocate,
for the respondent.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 3294-LPA of 2017

Application for condonation of delay of 143 days in filing the appeal is allowed, in view of the averments made in the application duly supported by affidavit.

LPA No. 1541 of 2017 (O & M)

The present letters patent appeal has been filed against the judgment dated 08.02.2017 passed in CWP No. 18469 of 2002, whereby the learned Single Judge has granted the service benefits of the District Statistical Officer (DSO) from 09.11.2002 to 27.01.2011 and extended all necessary service benefits due to the writ petitioner.

Counsel for the State has vehemently submitted that the said order was subject matter of challenge and during the pendency of the writ petition, a mercy appeal was filed before the Hon'ble Governor on

29.01.2010, who was pleased to allow the same on 03.01.2011 (Annexure P-27) and directed that the employee may be treated as a fresh entrant in the cadre of DSO to avoid any administrative complication. It is submitted that thereafter, the order was implemented and he was taken back in service and was posted as Planning Officer, Gurugram (Annexure P-26). It is submitted that thereafter an application for amendment of the writ petition was filed and the said order was also made subject matter of challenge, on the basis of which, the relief has been granted. It is submitted that the conduct as such of the writ petitioner is not justified and the benefits for a decade have been granted as such, which is not justified in the facts and circumstances.

We have gone through the paper book and are of the considered opinion that for another ground also as such, the writ petition was liable to be allowed solely on account of the fact that the order passed dispensing with the services on 09.11.2002 (Annexure P-19) was punitive and was during his probation period and thus the order being stigmatic on the face of it without holding any inquiry as such was liable to be quashed. The said order reads thus:-

“ORDER OF THE GOVERNOR OF HARYANA

The service of Sh. Jai Singh Yadav, District Statistical Officer, Narnaul working on probation are hereby dispensed with, with immediate effect as per the terms and conditions of his appointment letter for being not completing the probation period successfully as his work and conduct was found to be unsatisfactory.

Dated Chandigarh

CHANDER SINGH,

The 9.11.2022

*Financial Commissioner &
Principal Secy. to Govt
Haryana Planning Deptt.”*

dispensed with during the period of probation provided there is no stigma attached to it so that the said person can seek employment at another place without having been adversely effected. However, in the absence of any material and solely on recording the said fact attributing unsatisfactory work on the part of the probationer, then sufficient material is to necessarily come on record to arrive at a conclusion that his services are required to be dispensed with. Having not done so, the order itself cannot be sustained. Reference can be made to the celebrated judgment in ***Parshotam Lal Dhingra vs. Union of India, AIR 1958 SC 36***. The relevant portion reads thus:-

“28. The position may, therefore, be summed up as follows : Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. The Union of India (supra). Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in Shyam Lal v. The State of Uttar Pradesh, [1955] I S.C.R. 26. In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service

the motive, operating on the mind of the Government is, as Chagla C.J. has said in Shrinivas Ganesh v. Union of India (supra), wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing.' If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank

will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a Punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or, the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not con, elusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful

and in violation of the constitutional right of the servant.”

Thus, the impugned order by the learned Single Judge has been passed giving the relief that has been granted in the mercy petition and in addition that the employee would necessarily have to be given all the benefits as the order itself had to go. This is what precisely the learned Single Judge has done.

Another aspect which is to be noticed is that even the Hon'ble Governor as such found that the rights of the writ petitioner had been prejudiced as such to the extent that his termination order was biased and based on flimsy grounds. The record of the employee had also been noticed. The relevant portion of the reasoning given, whereby his mercy appeal was allowed, read thus:-

“I have gone through all the facts and record of the case is (sic. in) question. The appellant was also heard in person on 23.12.2010. His first ACR for the year 2001-02 was written by Deputy Economic & Statistical Advisor to Govt. on 29.5.2002 as “Very Good”. Deputy Commissioner, Mahindergarh also agreed with the reporting officer. He also recorded that he is honest and cooperative. But the Accepting Authority i.e. E.S.A. taking cognizance of a letter addressed to him by the Additional Deputy Commissioner, Rewari regarding the work and conduct of the appellant during his previous posting in the District Urban Development Authority, Rewari downgraded his report from “Very Good” to “Average” and consequently the appellant was terminated from service on the ground of not completing his probation period successfully. ADC, Rewari had alleged that the appellant had not given

charge of various items held by him in DUDA, his previous organization.

The termination orders of the appellant seem to be biased and based on flimsy grounds. The ACR of an employee is recorded on the basis of his performance during a specific period and not on the basis of his work and conduct during which he remained posted in another department and was assessed by other authorities. Secondly, the appellant had applied for the post of D.S.O. through proper channel and after his selection as such, he joined as D.S.O in the Planning Department at Narnaul, when he was duly relieved from his previous department after having obtained the No Due Certificate. Writing of letter by ADC Rewari to ESA commenting on the work and conduct of the appellant in his previous organization seems to be an intentional effort to bias the opinion of the Accepting Authority with some vested interest. The Accepting Authority not only relied on the report of ADC but spoiled the report of the appellant on that basis. The Accepting Authority even did not deem it fit to show his report to the FC Planning the Administrative Secretary for reasons best known to him. He was suppose to assess the work of the appellant as DSO. It appears that the ACR of the appellant was intentionally spoiled to sabotage his career.

In view of the facts and circumstances mentioned above, I feel that the adverse remarks have been given with bad intention to spoil the career of the appellant and need to be expunged. Consequently the appellant deserves to be taken back in service by quashing the termination order dated 9.11.2002 and I order accordingly. Since the appellant is serving in his previous organization i.e. DUDA from the date he was terminated as DSO it may not be justifiable to take him

back in service from 9.11.2002 the date on which he was terminated. He would, thus, be treated as a fresh entrant in the cadre of DSO to avoid any administrative complication.”

Thus, it is apparent that even the mercy appeal which had been accepted is on the ground that he had good performance and his report had been downgraded from 'very good' to 'average' intentionally and his annual confidential report was spoiled to sabotage his career.

In such circumstances, it is apparent that the order of dispensing with his services was patently stigmatic and therefore, could not stand. The learned Single Judge has also relied upon the judgment of the Apex Court in ***M/s. Shree Chmundi Mopeds Ltd. Vs. Church of South India Trust Association, Madras, AIR 1992 SCC 1439*** regarding the principles of quashing of an order.

In such circumstances, we are of the considered opinion that the reasoning given by the learned Single Judge that writ petitioner had to be treated as a fresh entrant was arbitrary and has been set aside is not liable to be interfered with in view of the reasons given above. Resultantly, finding no merit in the present appeal, the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

20.05.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No