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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 08.08.2022
Pronounced on: 24.08.2022

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W.P.(C) 5901/2003

D.T.C

....Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

versus

THE PRESIDING OFFICER & ANR.

....Respondents

Through: Mr. Sachin Chauhan, Advocate.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. The present petition has been filed under Article 226 of the Constitution of India for setting aside the award in I.D. No. 185/95 titled as "*The Workman Sh. Ramesh Kumar v. The Management of M/s Delhi Transport Corpn.*" dated 10.07.2002 passed by the Presiding Officer, Labour Court- VII, Karkardooma Court, Delhi, whereby the Learned Presiding Officer passed the award in favour of Respondent No. 2/Workman, Ramesh Kumar, who was reinstated with full back wages, and was granted continuity of services (hereinafter referred to as '*Impugned Award*').
2. Briefly stating the facts of the present case as enumerated from records are that on 09.03.1984, Respondent No. 2 was appointed as a



Conductor on daily wages. He was appointed on temporary basis w.e.f. 09.09.1984 having a basic pay of Rs. 284/- in the pay scale of Rs. 284-8-340-10 plus usual allowances subject to the condition that his appointment is purely on temporary basis for a period of one year on probation.

3. On 29.05.1985, Respondent No. 2 was deputed on bus No. DEP-7093 route No. 228-D/5 (plying from Tilak Nagar to I.S.B.T.). The said bus after finishing the first trip took a halt at Tilak Nagar at about 13:18 hrs, the second trip was scheduled to commence at 13:48 hrs. It is the case of the Petitioner/Corporation that after parking the bus, Respondent No. 2 did not report to the Officer concerned for his signature on the time sheet. On being contacted, the driver of the bus, Sh. Upender Singh informed that Respondent No. 2 has gone to Hari Nagar Depot, however, when he scouted around Hari Nagar Depot, he could not find Respondent No. 2.
4. Due to uninformed absence of Respondent No. 2 from the duty, the bus of the Petitioner/Corporation missed the trip scheduled at 13:48 hrs, and 14:52 hrs. The act of dereliction of Respondent No. 2 caused inconvenience to the passengers and financial loss to the Petitioner/Corporation.
5. The concerned officials submitted their report to the Petitioner/Corporation, whereafter, the Depot Manager terminated the service of Respondent No. 2 with immediate effect from 11.06.1985 as per Clause 9(a)(i) of the D.R.T.A. (Conditions of Appointment & Service) Regulations, 1952 (hereinafter referred to as '*the D.R.T.A.*



Regulations’). Respondent No. 2 was also paid one month’s pay and retrenchment benefit in accordance with the Industrial Disputes Act, 1947 (hereinafter referred to as “***the I.D. Act***”).

6. Thereafter, Respondent No. 2 filed an appeal before the Chairman-cum-Managing Director against his termination order dated 11.06.1985 which was rejected by the petitioner/Corporation. He further initiated civil proceedings challenging his termination order by filing Civil Suit No.205/93. However, the same was dismissed on the grounds of jurisdiction.
7. Respondent No. 2 approached the Secretary (Labour), Government of NCT, Delhi. The appropriate Government vide reference No. F-24(1094)/95-LAB/20364-64 dated 18.07.1995 forwarded the following reference to the Labour Court for adjudication:

“Whether the termination of services of Sh. Ramesh Kumar is illegal and/or unjustified, and if so, to what relief, is he entitled and what directions in this regard are necessary?”

8. Thereafter, Respondent No. 2 filed the Statement of Claim alleging that the petitioner/Corporation illegally terminated his services on 11.06.1985 under Clause 9(a)(i) of the D.R.T.A. Regulations. He claimed that neither reason was assigned *qua* his termination, nor any amount was paid towards retrenchment compensation in compliance of Section 25-F (b) of the ID Act. Thus, the termination of his services amounted to retrenchment and in violation of the I.D. Act. He further alleged that the termination of his services was punitive in nature, and no enquiry was conducted by the Petitioner/Corporation.



9. The Petitioner/Corporation filed their Written Statement stating that Respondent No. 2 was terminated during his probation period as his services were not found satisfactory. The Petitioner/Corporation submitted that remaining trips of the concerned bus could not be performed due to negligence of Respondent No. 2. Keeping in view the report of the checking staff, and the gravity of the case, the services of Respondent No. 2 were terminated. The Petitioner/Corporation further asserted that Respondent No. 2 has been given retrenchment compensation as envisaged under the I.D. Act and the termination is not punitive in nature.
10. After hearing the parties, the Learned Labour Court vide Impugned Award dated 10.07.2002 arrived at the conclusion that the termination of Respondent No. 2 was illegal and directed the Petitioner/Corporation to reinstate him with full back wages and continuity in service. Being aggrieved by the Impugned Award, the Petitioner/Corporation had filed the present Writ Petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Mr. Sarfaraz Khan, learned Counsel for the Petitioner/Corporation submitted that as per Section 9(a)(i) of the D.R.T.A. Regulations, the Petitioner/Corporation is within its power to terminate the services of an employee during the probation period without assigning any reason. Hence, the Petitioner/Corporation justifiably terminated the services of the Respondent No. 2 after providing him retrenchment compensation as envisaged under the I.D. Act.



12. He further submitted that the Hon'ble Supreme Court in the case of ***Mathew P. Thomas v. Kerala State Civil Supply Corp. Ltd. & Ors.*** reported as (2003) 3 SCC 263 observed that where the termination simpliciter does not amount to any stigma, it does not require any enquiry, hence, not holding the enquiry in this case does not amount the act to be punitive. With these submissions, the Learned Counsel for the Petitioner/Corporation prays for setting aside of the Impugned Award.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.2

13. *Per Contra*, Mr. Sachin Chauhan the learned Counsel for the Respondent No. 2 argued that the services of the Respondent No. 2 were terminated during probation. The said termination order was punitive and not tenable in law. He argued that the Petitioner/Corporation ought to have conducted an enquiry before arriving at any definite conclusion. Any regulation empowering the authority to terminate any employee in exercise of unguided powers is arbitrary to public policy.

14. By placing reliance on the case of ***V.P. Ahuja v. State of Punjab & Ors.*** reported as (2000) 3 SCC 239, learned Counsel for Respondent No. 2 vouched that a probationer is also entitled for certain protection and his service cannot be terminated in a punitive manner. The learned Labour Court by using its own assumption and presumptions held that the act of termination was punitive in nature. The facade of the termination may be simpliciter but the true reason is to get rid of services of a probationer on the pretext of misconduct.



15. Hence, it is necessary to travel beyond the order of the termination to identify the genuine reason that weighed the employer to terminate the services of a probationer.

LEGAL ANALYSIS

16. Heard the arguments advanced by the learned counsel for the parties and perused the documents placed on record. At the outset, it is relevant to point out that during the pendency of the present writ petition, the Respondent No. 2/workman was taken back in the employment of the petitioner/Corporation.
17. It is an admitted fact that Respondent No. 2 was appointed as conductor w.e.f. 09.09.1984 and his services were terminated on 11.06.1985 i.e. within the probation period of 1 year. The termination order dated 11.06.1995, *inter alia*, reads as;

“The services of Shri Ramesh Kumar, S/o Shri Abhay Ram, Conductor B.No.20853, T.No.46263 of this unit is hereby terminated with immediate effect under clause 9(a)(i) of the D.R.T.A (Conditions of Appointment & Services Regulation Act, 1952). A cheque bearing number AH No.009397 Dated 11.6.85 amounting to Rs.1426.21 is attached herewith on account of one month's pay and retrenchment benefit under ID Act,1947”

18. Since the Petitioner/Corporation terminated the services of Respondent No. 2 by invoking clause 9(a)(i) of the D.R.T.A. Regulations, it is imperative for this court to examine the said clause. The said clause, reads, as under;



“9. Termination of Service:- (a) Except as otherwise specified in the appointment orders, the services of an employee of the Authority may be terminated without any notice or pay in lieu of notice:-

(i) During the period of probation and without assigning any reasons thereof.

(ii) For misconduct,

(iii) On the completion of specific period of appointment,

(iv) In the case of employees engaged on contract for a specific period, on the expiration of such period in accordance with the terms of appointment.”

19. Therefore, a plain reading of Clause 9(a)(i) of the D.R.T.A. Regulations clearly shows the said clause empowers the Petitioner/Corporation to terminate the service of an employee during the period of probation without assigning any reasons thereof, unless the appointment order specifies otherwise. Withal, the appointment letter dated 15.01.1994 also states that during the probationary period, the services are liable to termination at any time without notice. Hence, by invoking the said clause, the Petitioner/Corporation terminated the services of Respondent No. 2 without assigning any reason whatsoever. The appointment letter, *inter alia*, reads as;

“Their appointments is purely temporary, They will be on probation for a period of one year. The period of probation can be extended upto two years, if considered necessary. During the probationary period,



their services shall be liable to termination at any time without Notice or without assigning any reason therefore. They would be considered to have completed the period of probation satisfactorily only when a notification to this effect is issued from this office.”

20. It is a settled law that to ascertain if the order discharging a probationer is a mere camouflage, the courts can lift the veil and go behind the order to determine its true character. If the court ascertains that the order simpliciter discharging the probationer is in reality a cloak for an order of punishment, the court can interfere and if the facts and circumstances so demand, quash such order. As held by the Hon'ble Supreme Court in the case of ***Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Science, Calcutta & Ors.*** reported as (1999) 3 SCC 60 that as to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether allegations which are the cause of the termination is the 'motive' or 'foundation'.

21. Hence, in order to determine the true character of an order of termination, it is important to examine the true reason behind the termination order. In this context, this court takes the liberty to refer the celebrated judgment of the Hon'ble Supreme Court in ***Gujarat Steel Tubes Ltd. & Ors. v. Gujarat Steel Tubes Mazdoor Sabha & Ors.*** reported as (1980) 2 SCC 593. The Apex Court held that the court will find out from prior proceedings or documents connected with the order of termination what the true ground for the termination is. If the order has a punitive flavor, it is dismissal. If it falls short of



this test, it cannot be called a punishment. The relevant portion reads as under:-

“53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.”

54. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full



terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.”

(Emphasis Supplied)

22. The legal postulation was further clarified in ***Champaklal Chimanolal Shah v. Union of India*** reported as ***AIR 1964 SC 1854: (1964) 1 LLJ 752*** wherein it was held that the facts revealed in the preliminary enquiry would be the “motive” and not the “foundation” since there was no enquiry as to their correctness made. The order could not be quashed as being punitive. Hence, in the present case, after the report of the concerned officials, it was open to the employer not to make a regular or formal enquiry for proving the guilt of the employee. The employer stopped at that stage and passed a simple order of termination.
23. It would be germane to advance the ***Triveni Shanker Saxena v. State of U.P.*** reported as ***1992 Supp (1) SCC 524***, and ***State of U.P. v. Prem Lata Misra*** reported as ***(1994) 4 SCC 189*** at this stage. The termination orders in the aforementioned cases were upheld by the Hon’ble Supreme Court as they were as per rules, and in terms of the order of the temporary appointment of the employee. The employer by opting to pass a simple order of termination as per the terms of the appointment conferred a benefit on the employee so that the employee would not suffer from any stigma if a dismissal or punitive order was passed. Furthermore, as no evidence was taken and findings were arrived at behind the back of the employee, it is emblematic that the



employer was not inclined towards finding the truth behind the allegations, and was merely a motive.

24. Examining the facts of the present case on the touchstone of the principles enunciated by the Hon'ble Supreme Court on the subject, this court is of the considered view that the termination order in the present case is neither punitive nor stigmatic. The Petitioner/Corporation decided not to visit the correctness of these allegations, however, decided to not to continue with Respondent No.2. The termination order flows of 'motive', and is not the 'foundation' of the termination.

25. The learned Labour Court erred in treating the termination order in the present case as punitive and stigmatic. In view of the aforementioned discussion and settled position of law, the Impugned Award is hereby set aside. The termination order dated 11.06.1995 is valid, non-punitive and non-stigmatic. As a corollary, Respondent No. 2 is not entitled to any relief as granted by the learned Labour Court.

26. The Petitioner/Corporation is liable for recovery of backwages, if paid, which were paid to Respondent No. 2 in terms of the Impugned Award dated 10.07.2002. Needless to mention that if the amount deposited by the Petitioner/Corporation in terms of Impugned Award, has not been released to Respondent No. 2, the Petitioner is at liberty to take appropriate recourse for release of the same.

27. It is made clear that since the Petitioner/Corporation has themselves reinstated the services of the Respondent No. 2. The effect of this



order shall be limited to the period from the date of termination till the date of grant of suo-moto reinstatement to Respondent No. 2.

28. The present Writ Petition is allowed. No order as to cost.

GAURANG KANTH, J.

AUGUST 24, 2022

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