



2023:DHC:7208



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 19th September, 2023**
+ W.P.(C) 12330/2023 & CM APPL. 48553/2023 & CM APPL.
48554/2023
PRATIBHA Petitioner
Through: Appearance not given
versus
UNION OF INDIA & ANR. Respondents
Through: Mr. Kamal Mehta, Advocate for R-2
CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(a) QUASH the impugned order dated Order No. Ref - DO 3/Sales dated 31.01.2022 of the Respondent No.2, whereby the service of the Petitioner has been terminated;

(b) REINSTATE the Petitioner to her earlier/former post as Probationary Developmental Officer.

c) HOLD the impugned order No. Ref-DO 3/Sales dated 31.01.2022 of the Respondent No.2 as being void ab initio thereby abating any subsequent actions arising thereby from this order.

(d) DIRECT the respondent No.2 to provide performance reports of all the contemporaries/probationary employees similarly placed at the relevant time with the Petitioner placed



in North Zone or Delhi Zone .

(e)DIRECT the Respondent No. 2 to release consequential benefits as applicable to Applicant while on service along with the arrears of pending allowance due since the impugned order of termination;

(f) PASS any other/ further order(s) or direction(s) as this Hon'ble Court may deem fit and proper in the interest of justice."

2. The petitioner was appointed as an Apprentice Development Officer with respondent no. 2 ('respondent Corporation' hereinafter) *vide* recruitment letter dated 26th November, 2019 on an initial probation period of 12 months, extendable up to maximum time period of 24 months in total.

3. The said recruitment letter laid down targets to be met by the probationary officers for appointment as a permanent employee in the respondent Corporation, which were duly accepted by the petitioner at the time of recruitment.

4. During the said time period of 2 years on probation, the respondent Corporation had granted subsequent quarterly extensions *vide* letters dated 14th September, 2021 and 24th November, 2021.

5. During the advent of COVID-19 pandemic, the respondent Corporation had provided relaxation to the Development officers *vide* letter dated 11th June, 2021.

6. Due to failure to achieve the said targets during the probation period, the petitioner was terminated from employment *vide* order dated 31st January, 2022. Aggrieved by the same, the petitioner has preferred the



present writ petition.

7. The learned counsel appearing for the petitioner submitted that the petitioner's work got heavily affected due to COVID-19 pandemic and therefore, she was not able to achieve one of the three targets given to her.

8. It is submitted that the respondent Corporation had provided relaxation in business targets to the other employees, however, the petitioner was not provided any such relief, thereby leading to discrimination.

9. It is submitted that the petitioner's mother was murdered in 2021, which significantly affected her mental well being leading to non-completion of targets. It is also submitted that the petitioner had given representation dated 15th February, 2022 to the concerned authority in the respondent Corporation, but no relief was provided to the petitioner.

10. It is further submitted that the agents dedicated to the petitioner were allocated to other officers by the respondent Corporation, thereby leading to affecting the overall work.

11. Hence, in view of the foregoing submissions, the petitioner seeks to grant the prayer as made in the instant petition.

12. *Per Contra*, the learned counsel appearing on behalf of the respondent Corporation submitted that there is no illegality or error in the impugned order dated 31st January, 2022 passed by the respondent No.2 as it is an admitted fact that on every occasion the petitioner being a probationary officer had failed to achieve the target given to her.

13. It is submitted that the petitioner had made a representation seeking extension of the probation period which had been duly considered by the



respondent corporation and found that there was no merit in the representation for extension of time for the probation period. The said representation was rejected as the probation period of the petitioner had already been extended as per rules applicable and therefore, further extension, if any, may be beyond the time limit as granted under the Rules.

14. Therefore, in view of the forgoing submissions, the respondent prays that the present petition, being devoid of any merits, may be dismissed.

15. Having heard the learned counsel for the parties and perusing the records, it is apparent that the petitioner had joined the respondent Corporation as a probationary Development Officer. The nature of the job mainly required the petitioner to secure a minimum business of Rs. 20.4 lakhs in the first year and to recruit 15 agents for the Corporation. However, the petitioner had failed to meet the said target, and therefore was terminated from the services.

16. The petitioner has cited various grounds *inter alia* the ground of advent of COVID-19 pandemic in the year 2020, and various personal issues which led to bad performance during the said probation period. Therefore, it is imperative to see whether the said grounds can be considered by this Court to provide relief to the petitioner or not.

17. The principles regarding the termination of employees during the probation period are well settled, where the employer has been granted liberty to remove the employee on grounds of indiscipline or unsatisfactory work during the time of probation period.

18. In *Govt. Branch Press v. D.B. Belliappa*, (1979) 1 SCC 477, the



Hon'ble Supreme Court discussed the factors to be considered if an employee has been removed during the probation and held as under:

“23. In the view we take, we are further fortified by a decision of the Constitution Bench in Champak Lal case. That was a case of a temporary government servant. Rule 5 governing a temporary government servant, which came up for consideration in that case, gave power to the Government to terminate the service of a temporary government servant by giving him one month's notice or on payment of one month's pay in lieu of notice. This rule was attacked on the ground that it was hit by Article 16. In the alternative, it was urged that even if Rule 5 is good, the order by which the appellant's services were dispensed with was bad because it was discriminatory. Reference was made to a number of persons whose services were not dispensed with, even though they were junior to the appellant and did not have as good qualifications as he had. Wanchoo, J. (as he then was), speaking for the Court, repelled the alternative argument in these terms:

“We are of opinion that there is no force in this contention. This is not a case where services of a temporary employee are being retrenched because of the abolition of a post. In such a case, a question may arise as to who should be retrenched when one out of several temporary posts is being retrenched in an office. In those circumstances, qualifications and length of service of those holding similar temporary posts may be relevant in considering whether the retrenchment of a particular employee was as a result of discrimination. The present however is a case where the appellant's services were terminated because his work was found to be unsatisfactory (In such a case) there can, in our opinion, be no question of any discrimination. It would be absurd to say that if the service of one temporary servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also be terminated along with him, irrespective of what their conduct is. Therefore



even though some of those mentioned in the plaint by the appellant were junior to him and did not have as good qualifications as he had and were retained in service, it does not follow that the action taken against the appellant terminating his services was discriminatory, for that action was taken on the basis of his unsatisfactory conduct. A question of discrimination may arise in a case of retrenchment on account of abolition of one of several temporary posts of the same kind in one office but can in our opinion never arise in the case of dispensing with the services of a particular temporary employee on account of his conduct being unsatisfactory.”

(Parenthesis and emphasis supplied)

The principle that can be deduced from the above analysis is that if the services of a temporary government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory, or for a like reason which marks him off in a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16.

24. *Conversely, if the services of a temporary government servant are terminated arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting, perhaps, in cases analogous to those covered by Article 311(2), proviso (c), the*



*authority cannot withhold such information from the Court on the lame excuse that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the Rules governing the conditions of the service. “The giving of reasons”, as Lord Denning put it in Breen v. Amalgamated Engineering Union [(1971) 1 All ER 114] , “is one of the fundamentals of good administration”, and, to recall the words of this Court in Khudiram Das v. State of W.B. [(1975) 2 SCC 81 : 1975 SCC (Cri) 435 : (1975) 2 SCR 832, 845] in a Government of laws “there is nothing like unfettered discretion immune from judicial review ability”. The executive, no less than the judiciary, is under a general duty **to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16(1).**”*

19. The question of removal from services during probation was revisited by the Hon’ble Supreme Court in **LIC v. Raghavendra Seshagiri Rao Kulkarni, (1997) 8 SCC 461**, and it was held that the employer has right to terminate the employee if his/her work or conduct during the said probation is not found satisfactory. The relevant paragraph is reproduced herein:

“6. The period of probation is a period of test during which the work and conduct of an employee is under scrutiny. If on an assessment of his work and conduct during this period it is found that he was not suitable for the post it would be open to the employer to terminate his services. His services cannot be equated with that of a permanent employee who, on account of his status, is entitled to be retained in service and his services cannot be terminated abruptly without any notice or plausible cause. This is based on the principle that a substantive appointment to a permanent post in a public service confers substantive right to the post and the person appointed on that



post becomes entitled to hold a lien on the post. He gets the right to continue on the post till he attains the age of superannuation or is dismissed or removed from service for misconduct etc. after disciplinary proceedings in accordance with the rules at which he is given a fair and reasonable opportunity of being heard. He may also come to lose the post on compulsory retirement.

7. In Moti Ram Deka v. G.M., N.E.F. Rly. [AIR 1964 SC 600 : (1964) 5 SCR 683 : (1964) 2 LLJ 467] a majority of seven Judges held that a permanent employee who substantively holds a permanent post has a right to hold the post till he reaches the age of superannuation or till he is compulsorily retired under the relevant rule. Termination of his service in any other manner would amount to invasion of his right to hold the post and would amount to penalty of removal. It was for this reason that the Court held Rule 148(3) or Rule 149(3) of the Railway Establishment Code to be violative of the right guaranteed under Article 311(2) of the Constitution. It was observed that a permanent employment assures security of tenure which is essential for the efficiency and incorruptibility of public administration.

8. Similar view was expressed in Gurdev Singh Sidhu v. State of Punjab [AIR 1964 SC 1585 : (1964) 7 SCR 587 : (1965) 1 LLJ 323] .

9. Central Inland Water Transport Corpn. Ltd. case [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] was not correctly understood either by the Single Judge or by the Division Bench of the High Court. The High Court also did not notice that apart from Central Inland Water Transport Corpn. Ltd. case [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] there were other judgments of this Court in which a similar view was expressed.

10. In W.B. SEB v. Desh Bandhu Ghosh [(1985) 3 SCC 116 : 1985 SCC (L&S) 607 : (1985) 2 SCR 1014 : AIR 1985 SC 722] a similar provision which enabled the Board to dispense with



the services of a permanent employee by a mere notice or pay in lieu thereof was held to be bad. It was held that the offending Regulation which had developed the notoriety as “Henry VIII Clause” was ultra vires Article 14 of the Constitution. In Workmen v. Hindustan Steel Ltd. [1984 Supp SCC 554 : 1985 SCC (L&S) 260 : (1985) 2 SCR 428 : AIR 1985 SC 251] as also in O.P. Bhandari v. Indian Tourism Development Corpn. Ltd. [(1986) 4 SCC 337 : 1986 SCC (L&S) 769 : (1986) 1 ATC 541] the Rule based on the doctrine of “hire and fire” was held to be bad as being impermissible under the constitutional scheme to sustain the doctrine as a permanent employee could not be removed in that fashion.

11. This question was re-examined and the entire case-law was reviewed by this Court in Delhi Transport Corpn. v. D.T.C. Mazdoor Congress [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : 1990 Supp (1) SCR 142 : AIR 1991 SC 101] and it was again reiterated by the majority of Judges that a rule which gave unbridled or arbitrary powers to the management to dispense with the services of regular and permanent employees by a mere notice or, pay in lieu thereof, would be bad. The principles laid down in the case of Central Inland Water Transport Corpn. Ltd. [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] were reiterated.

12. The requirement to hold a regular departmental enquiry before dispensing with the services of a probationer cannot be invoked in the case of a probationer especially when his services are terminated by an innocuous order which does not cast any stigma on him. But it cannot be laid down as a general rule that in no case can an enquiry be held. If the termination is punitive in nature and is brought about on the ground of misconduct, Article 311(2) would be attracted and in that situation it would be incumbent upon the employer, in the case of government service, to hold a regular departmental enquiry. In any other case also, specially those relating to statutory corporations or government instrumentalities, a termination



which is punitive in nature cannot be brought about unless an opportunity of hearing is given to the person whose services, even during the period of probation, or extended period, are sought to be terminated. (See: Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36 : 1958 SCR 828 : (1958) 1 LLJ 544] in which it was held that appointment to a permanent post on probation means that the servant is taken on trial. Such an appointment comes to an end if during or at the end of the probation, the person so appointed is found to be unsuitable and his services are terminated by notice. An appointment on probation or on an officiating basis is of a transitory character with an implied condition that such an appointment is terminable at any time. See also: Samsher Singh v. State of Punjab [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814] .)”

20. In **Rajasthan High Court v. Ved Priya, (2021) 13 SCC 151**, the Hon’ble Supreme Court reiterated the settled position regarding the said principle and held as under:

“14. The present case is one where the first respondent was a probationer and not a substantive appointee, hence not strictly covered within the umbrella of Article 311. The purpose of such probation has been noted in Kazia Mohammed Muzzammil v. State of Karnataka [Kazia Mohammed Muzzammil v. State of Karnataka, (2010) 8 SCC 155 : (2010) 2 SCC (L&S) 573] : (SCC p. 172, para 25)

“25. The purpose of any probation is to ensure that before the employee attains the status of confirmed regular employee, he should satisfactorily perform his duties and functions to enable the authorities to pass appropriate orders. In other words, the scheme of probation is to judge the ability, suitability and performance of an officer under probation.”



15. Similarly, in *Rajesh Kumar Srivastava v. State of Jharkhand* [*Rajesh Kumar Srivastava v. State of Jharkhand*, (2011) 4 SCC 447 : (2011) 1 SCC (L&S) 696] it was opined : (SCC p. 449, para 9)

“9. ... A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the probationer (appellant) are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service.”

16. It is thus clear that the entire objective of probation is to provide the employer an opportunity to evaluate the probationer's performance and test his suitability for a particular post. Such an exercise is a necessary part of the process of recruitment, and must not be treated lightly. Written tests and interviews are only attempts to predict a candidate's possibility of success at a particular job. The true test of suitability is actual performance of duties which can only be applied after the candidate joins and starts working.

17. Such an exercise undoubtedly is subjective, therefore, Respondent 1's contention that confirmation of probationers must be based only on objective material is far-fetched. Although quantitative parameters are ostensibly fair, but they by themselves are imperfect indicators of future performance. Qualitative assessment and a holistic analysis of non-quantifiable factors are indeed necessary. Merely because Respondent 1's ACRs were consistently marked “Good”, it cannot be a ground to bestow him with a right to continue in service.

18. Furthermore, there is a subtle, yet fundamental, difference between termination of a probationer and that of a confirmed



employee. Although it is undisputed that the State cannot act arbitrarily in either case, yet there has to be a difference in judicial approach between the two. Whereas in the case of a confirmed employee the scope of judicial interference would be more expansive given the protection under Article 311 of the Constitution or the Service Rules but such may not be true in the case of probationers who are denuded of such protection(s) while working on trial basis.

19. Probationers have no indefeasible right to continue in employment until confirmed, and they can be relieved by the competent authority if found unsuitable. It is only in a very limited category of cases that such probationers can seek protection under the principles of natural justice, say when they are “removed” in a manner which prejudices their future prospects in alternate fields or casts aspersions on their character or violates their constitutional rights. In such cases of “stigmatic” removal only that a reasonable opportunity of hearing is sine qua non. Way back in *Parshotam Lal Dhingra v. Union of India* [*Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36] , a Constitution Bench opined that : (AIR p. 49, para 28)

“28. ... 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.”



21. On perusal of above said judicial dicta, it is clear that a Probationary Officer has no right to continue in service, unless he is confirmed. An employee on probation can claim confirmation only upon rendition of a satisfactory service. The employer, in this behalf, has a right to extend the period of probation and till he is confirmed, except in cases where maximum probationary period has been fixed by a statute or the conditions of service, he does not become permanent in service unless he is confirmed therein.

22. In the instant case, it is an admitted fact that the petitioner was first employed for a probation period of 12 months, and the said probation was further extended from time to time, however, since the appointment letter and the rules of the respondent Corporation prescribes for 24 months as the maximum time period of probation, the same could not be extended after that.

23. In any case, the petitioner was well aware of the conditions laid down in the appointment letter where Clause 10 of the said letter specified the minimum targets to be achieved by the petitioner. The said clause is reproduced herein:

“10. MINIMUM BUSINESS:

i) During the probationary period you shall secure through the agents recruited at your instance minimum completed life business, yielding a scheduled First Year Premium Income of Rs. 20.4 Lacs required to achieve prescribed cost ratio, provided, however, that in case the pay and/or allowance admissible to you, under Clause 1 are increased during the period minimum business and the premium income which you should secure shall be increased proportionately.



- ii) The minimum business set out in (i) shall be spread over not less than 100 policies and shall be secured regularly through a network of dependable agencies.*
- iii) You will be required to recruit a minimum of 15 agents.*
- iv) If your probationary period is extended, you shall secure during the extended period such business as may be intimated to you.”*

24. On perusal of the aforesaid clause of the appointment letter, it is crystal clear that the petitioner was well aware of the targets to be met for getting permanently appointed to the position to which she was selected to serve on a probation period.

25. As per the impugned order of termination of the petitioner, the reason has been enunciated that the petitioner being a probationary employee had to complete targets in accordance with the Clause 10 of the Appointment Letter dated 31st January 2020. Since the petitioner has not fulfilled the pre-requisite therefore, her service was terminated. The impugned order is reproduced herein:

“Please refer your probationary appointment letter dated 31.01.2020 and further extension of your probation upto 31.01.2022 vide letters dated 14.09.2021 and 24.11.2021.

We have reviewed your performance for the entire probation period from 01.02.2020 to 31.01.2022 and have observed that you have not been able to complete the targets, even after being granted repeated extension in probation as per clause 10 of the appointment letter dated 31.01.2020.

The successful completion of the set targets is a pre-requisite for confirmation which you have failed to achieve despite repeated extensions of probation.

You have, therefore, failed to perform your duties and



obligations as per conditions enumerated in your appointment letter. Accordingly, your services are hereby terminated with effect from 01.02.2022 as per clause 2 of your appointment letter.”

26. As per material on record, it is also established that the petitioner was provided further extension periods, thereby revising the quarterly targets, however, the petitioner failed to achieve such targets in due time, a condition clearly mentioned in both the appointment, and the extension letters.

27. It is not disputed that the respondent Corporation had provided further extensions to the petitioner despite non-achievement of the previous targets. Even though the new targets were revised, the extension granted to the petitioner is sufficient enough to establish the *bonafide* intentions of the respondent Corporation to retain and appoint her permanently in the Corporation. Therefore, the removal of petitioner cannot be termed illegal and is justified.

28. The petitioner has also contented discrimination with her counterparts where the respondent Corporation had provided relaxation of targets to its employees during the COVID-19 pandemic. Therefore, it becomes imperative to analyze if the respondent Corporation had discriminated with the petitioner or not.

29. In order to provide the relaxation in the targets, the respondent Corporation had issued a communication *vide* circular dated 11th June, 2021. The said circular is reproduced herein:

*“This is further to the Circulars CO/ZD/Mktg/FPDO/09/2020
Dt. 21.4.2020 and Co/ZD/ Mg/FPDO/33/2020 Dt. 30.07.2020*



vide which the Competent Authority had allowed relaxation in imposing disincentives under Life Insurance Corporation of India Development Officers (Revision of Certain Terms and Conditions of Services) Rules, 2009 and Amendment Rules 2016 in view of the adverse situation of COVID 19 pandemic. Both the above Circulars provided for the one time relaxation, to all the Development officers whos appraisals ended between 31 March 2020 to 28 February 2021, in the imposition of disincentives and also in the procedure to be followed, in case, the Development officer becoming liable for termination as per the provisions of the Special Rules, 2009 and the Amended Special Rules, 2016.

Considering the current situation of pandemic, the Competent Authority has now decided to extend further the relaxations allowed earlier, vide both the above Circulars, for all the Development officers whose appraisals are ending between 31st March 2021 to 28th February 2022.

It may be noted that irrespective of the fact that whether the Development officer has availed any relaxation as per Circulars CO/ZD/Mktg/FPDO/09/2020 Dt. 21.4.2020 and CO/ZD/Mktg/FPDC/33/2020 Dt. 30.07.2020 earlier or not, these relaxations shall be applicable to all the Development Officers whose appraisals are falling between this extended period (i.e. appraisals ending between 31st March 2021 to 28th February 2022) and also the relaxation allowed should not be taken as an occasion of disincentive during the entire service period of the Development officer.”

30. On perusal of the said circular, it is clear that the said communication was issued to the officers whose appraisals were falling between the prescribed period. Therefore, the circular cannot be made applicable to the petitioner for two reasons. Firstly, the circular does not mention about



2023:DHC:7208



inclusion of the Probationary officers, secondly, the only exempted officers were the ones whose appraisal was falling between the prescribed extended period.

31. Therefore, in light of the foregoing discussion, this Court does not find any cogent reason to interfere in the impugned termination order dated 31st January, 2022 passed by the respondent No.2. The instant petition, being devoid of any merit, is accordingly dismissed.

32. Pending applications, if any, also stands dismissed.

33. Order be uploaded on website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 19, 2023
gs/av/db

Click here to check corrigendum, if any