

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(211)

RSA No. 177 of 1994 (O&M)

Date of Decision : 24.01.2023

Om Parkash

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anurag Chopra, Advocate for the appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-6140-C-2017

Application is allowed, as prayed for.

RSA No. 177 of 1994

In the present regular second appeal, challenge is to the order dated 19.10.1993 passed by the lower appellate court, by which the judgment of the trial court dated 22.11.1991 has been satisfied and the suit filed by the appellant-plaintiff has been dismissed.

In order to appreciate the controversy, certain facts need to be mentioned. The appellant-plaintiff was selected as a Conductor by the Punjab Roadways. While the appellant-plaintiff was on probation, his services were terminated on 19.08.1983 by the General Manager, Punjab Roadways against which order, the appeal was preferred and the said appeal was also dismissed on 10.02.1987. Suit was filed by the appellant-plaintiff

challenging the order of termination dated 09.08.1983 as well as the dismissal of his appeal on 10.02.1987 on the ground that the order of termination passed is stigmatic in nature and in fact, same has been passed due to certain complaints which have been received hence, the termination order was in fact an order of punishment and not an order simpliciter terminating the services of a probationer, which is not permissible under the law.

The respondents appeared and filed the reply stating that the order passed by the authorities concerned on 19.08.1983 is an order simpliciter stating that the services of the appellant-plaintiff is not required any further and keeping in view the terms and conditions of his appointment order services are terminated hence, the assertion of the appellant-plaintiff that the order dated 19.08.1983 is stigmatic in nature or the same is punitive, is incorrect.

The trial court, after appreciating the evidence, which came on record, held that as there were complaints filed against the appellant-plaintiff, those complaints can be safely correlated to the order of termination to hold that the order terminating the service is though innocuous but has been passed as a matter of punishment qua the said complaints and decreed the suit vide judgment and decree dated 22.11.1991.

The said judgment and decree dated 22.11.1991 was assailed by the respondent-State in appeal and the said appeal was decided on 19.10.1993 by the lower appellate court holding that once the order terminating the services of the appellant-plaintiff was innocuous, drawing the inference that the same is punitive because of the pending complaint, was beyond the jurisdiction of the trial court and the order of the trial court

was set-aside by the lower appellate court and the suit filed by the appellant-plaintiff was dismissed. In the present regular second appeal, the order of the lower appellate court dated 19.10.1993 is under challenge.

Learned counsel for the appellant-plaintiff argues that though, the order of termination was passed within period of probation of the appellant-plaintiff but as the order was based upon some complaints, which had been received against the appellant-plaintiff, the same was rightly treated to be punitive in nature by the trial court and setting-aside the said order by the lower appellate court is without any valid justification or appreciating the evidence on record in correct perspective.

Learned counsel for the respondents-defendants submits that the order dated 09.08.1983 terminating the services of the appellant-plaintiff was innocuous and did not recite the factum of any complaint against him hence, even if there were complaints, the same cannot be correlated to the complaints and the order passed by the trial court was contrary to the settled principle of law, which judgment and decree of the trial court has been rightly set-aside by the lower appellate court.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In order to appreciate the contention being raised by the learned counsel for the appellant-plaintiff, the order dated 19.08.1983 terminating the services of the appellant-plaintiff needs to be reproduced for the correct appreciation.

“Sh. Om Parkash A Conductor No. P. 140 is hereby removed from service being not longer required as per terms and conditions of his appointment order.

Sd/-General Manager,

Punjab Roadways, Ferozepur.”

A bare perusal of the above would show that the order passed by the authorities is to remove the appellant-plaintiff from service not being required any longer keeping in view the terms and conditions of his appointment order. From the order, it is clear that the same is innocuous and has been passed on the ground that the services are no longer required. It is contended by the learned counsel for the appellant-plaintiff that under the terms and conditions of the appointment order, the respondents-defendants were within their right to pass the said order. Therefore, the said order is not at all stigmatic as it does not recite any punishment or complaint to be the basis of the said order as being alleged by the appellant-plaintiff in the present case.

Further, the respondents-defendants admitted that there were certain complaints pending against the appellant-plaintiff but whether, once an employee is on probation and is a temporary employee, whether the pendency of some complaints, have to be correlated with the order of termination so as to treat the said order as punitive, is to be decided on the basis of the settled principle of law. Hon'ble Supreme Court of India in Civil Appeal No. 7901 of 2002 titled as ***State of U.P. and others Vs. Ashok Kumar***, decided on 13.12.2005, has held that in respect of a temporary employee, once the order of termination is simpliciter and without any stigma, even if there were complaints and the same has been passed on the basis of the said complaints, the same cannot be treated to be violative of Articles 14 or 311 of the Constitution. The relevant paragraph 6 of the said judgment is as under :-

“6. The order of termination simpliciter as referred above does not disclose any stigma. Whether a complaint is the

motive leading to the termination simpliciter or it is the foundation of the termination order has been considered by this Court and held consistently by this Court that when there is no inquiry resulting in the termination order the complaint is the motive of the order of termination on the other hand whether the complaint leads to the inquiry resulting in the termination order it is the foundation of the order of termination. This Court in a recent decision in the case of State of Haryana and another v. Satyender Singh Rathore, 2005(4) SCT 358 (SC) : 2005(7) SCC 518, after discussing the various decisions of this Court held in paragraph 9 of the judgment as under :

"9. We find the High Court did not consider the question of stigma or the effect of any enquiry held before the order of termination was passed. The question whether the enquiry purportedly held provided the motive or the foundation was required to be considered by the High Court is detail. That has not been done. The question whether the termination of service is simpliciter or punitive has been examined in several cases e.g. Dhananjay v. Chief Executive Officer, Zilla Parishad, Jalna, 2003(1) SCT 822 (SC) : (2003)2 SCC 386 and Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd., 2003(1) SCT 1051 (SC) : (2003)3 SCC 263. An order of termination simpliciter passed during the period of probation has been generating undying debate. The recent two decisions of this Court in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, 1999(1) SCT 861 Submitted By: Hon'ble Mr. Justice Harsimran Singh Sethi PDF downloaded from the online archives of Chawla Publications(P) Ltd. (SC) : (1999)3 SCC 60 and Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences, 2002(2) SCT 358 (SC) : (2002)1 SCC 520, after survey of most of the earlier decisions touching the question observed as to

when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of Dipti Prakash Banerjee (supra) after referring to various decisions it was indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as a motive for passing such a simple order of termination. In para 21 of the said judgment a distinction is explained thus :

"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive

has ultimately to be decided having due regard to the facts and circumstances of each case. Many a time the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorise or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service."

Learned counsel for the appellant-plaintiff has not been able to differentiate the judgment in ***Ashok Kumar's case (supra)***, so as to claim that the same is not applicable in the present case.

Keeping in view the settled principle of law, it cannot be said that the passing of the order simpliciter terminating the services of the appellant-plaintiff in terms of the terms and conditions of the appointment order is bad keeping in view the facts and circumstances of the present case.

Further, learned counsel for the appellant-plaintiff has not been able to point out any perversity in the order passed by the lower appellate court dated 19.10.1993 qua the facts or the evidence on record.

Keeping in view the above, no interference is called for by this Court in the present appeal and the same is accordingly dismissed.

January 24, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No