

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

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CWP-14811-2018

Date of Decision : 10.10.2023

Dr. Vijay Lakshmi Singh

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.B.S.Khehar, Advocate
for the petitioner.

Mr.Vivek Singla, Advocate
for respondents No.2 and 3.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of Constitution of India is seeking setting aside of order dated 10.05.2018 (Annexure P-4) whereby services of the petitioner have been terminated.

2. The petitioner was offered post of Assistant Professor on probation vide letter dated 31.03.2017 (Annexure P-1). The probation period was 03 years, however, as per terms and conditions of appointment letter, the respondent was supposed to yearly review performance of the petitioner. The petitioner feeling aggrieved from the act and omissions of the Professor Dheeraj Sharma, Director IIM, Rohtak filed complaint dated 25.03.2018 (Annexure P-2). The complaint was filed on 25.03.2018 and she came to be terminated vide order dated 10.05.2018.

3. Learned counsel for the petitioner submits that as per appointment letter, the respondent was supposed to yearly assess performance of the

petitioner. The petitioner joined respondent organisation on 01.09.2017 and impugned order came to be passed on 10.05.2018 i.e. within less than one year from the date of joining. It shows that respondent had passed impugned order without assessing performance of the petitioner in terms of appointment letter. The petitioner lodged complaint against Director and in the said complaint, serious allegations were made. The Director was pressurizing the petitioner to make statement against faculty colleague who came to be terminated on 03.04.2018. The Director had threatened the petitioner to spoil her carrier. The petitioner did not surrender, thus, she came to be terminated vide order dated 10.05.2018.

4. Per contra, learned counsel for the respondents submits that the petitioner was appointed on probation. The yearly assessment does not mean that assessment should be framed on completion of one year whereas assessment is made in the month of March-April of every year. A candidate is required to complete at least 03 months period for the assessment and petitioner had already completed 06 months by March-April, 2018, thus, assessment of performance of the petitioner was made. The petitioner was on probation and it is settled proposition of law that in case of probationer, an employer is not required to follow procedure prescribed by Article 311 of Constitution of India. The employer has discretion to dispense with services of an employee if during probation his/her conduct is not found satisfactory. With respect to complaint of the petitioner, he submits that as per petition, there was allegation of sexual harassment against the Director whereas there was no such averment in the complaint dated 25.03.2018. In terms of guidelines issued by Hon'ble

Supreme Court in the case of **Vishakha and others vs. State of**

Rajasthan, AIR 1997 SC 3011, a committee was constituted on the complaint of the petitioner. The petitioner joined the proceedings and committee prepared its report which was placed before the Faculty Development & Evaluation Committee. In view of recommendation of Faculty Development & Evaluation Committee, the petitioner was terminated by Director.

5. In rebuttal, learned counsel for the petitioner submits that two members of the Committee were probationers, thus, there was no possibility of justice.

6. I have heard the argument of learned counsel for the parties and perused the record.

7. From the perusal of record, it comes out that the petitioner was appointed vide letter dated 31.07.2017 on probation. There was 03 years probation period. The petitioner filed complaint against Director wherein various allegations were made. The Committee was constituted to look into the complaint of the petitioner. The petitioner joined the proceedings. Before the Committee members, she more or less did not support allegations except her allegation with respect to threatening by Director.

8. The Committee prepared its report and minutes of meeting were recorded. As per minutes of meeting dated 25.03.2018, the Committee found that allegations of the petitioner against the Director were false and she made allegations with malafide intention. Member of Board of Governors formed an opinion that appropriate action in consonance with terms of appointment be taken against the petitioner. As per minutes of meeting dated 10.05.2018 of Faculty Development & Evaluation Committee, it was found that performance of the petitioner was not upto

mark. The said Committee after discussion and deliberation unanimously decided to recommend termination with immediate effect.

9. From the perusal of record, it comes out that complaint of the petitioner was considered by a Committee consisting of different members. The report of the Committee was considered in a meeting wherein one member of the Board of Governors was also present. The Committee in its meeting dated 25.03.2018 as well as Committee of Faculty Development & Evaluation in its meeting dated 10.05.2018 formed an opinion that petitioner be terminated with immediate effect. In view of opinion of two Committees, the competent authority terminated the petitioner.

10. It is settled proposition of law that a probationer can be terminated if the employer forms an opinion that services of the employee are not as per satisfaction. There is no need to comply with procedure prescribed by Article 311 of Constitution of India. This Court cannot sit over decision of the different Committees as well as appointing authority. The Court is not supposed to re-evaluate the evidence. The Court can interfere if there is prima facie misuse of power or abuse of process of law.

11. A three-judge Bench of Hon'ble Supreme Court in **Rajasthan High Court vs. Ved Priya & Anr., 2020 (2) SCT 423** has held that an employer is not required to follow procedure prescribed under Article 311 of Constitution of India with respect to termination of a probationer. It is an employer who has to adjudge his suitability for continuation and confirmation in service. The relevant extracts of the judgment read as :

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.”

12. In the case in hand, a committee consisting of different members evaluated performance of the petitioner and thereafter formed an opinion that she needs to be terminated. The respondent has not passed any order which is stigmatic in nature. As the impugned order is not stigmatic and from the perusal of record, it comes out that respondent has followed proper procedure and thereafter^{1`} formed an opinion that petitioner needs to be terminated, this Court does not find any ground to interfere with impugned order of termination.

13. In the wake of above facts and discussion, this Court finds that the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

10.10.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>