

21.03.2024
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WPCT 68 of 2023
Union of India & Others
– *Versus* –
Arijit Das

Mr. Shiv Chandra Prasad
... for the Petitioners.

Mr. Barun Chatterjee,
Mr. Hemanta Kumar Das,
Ms. Nisha Khote
... for the Respondent.

The present writ petition has been preferred challenging an order dated 22nd September, 2022 passed by the learned Tribunal in the original application, being OA. 350/448/2020.

Mr. Prasad, learned advocate appearing for the Railways and its functionaries submits that the learned Tribunal erred in law in setting aside the order of termination dated 8th June, 2020 without taking into consideration the fact that the engagement of the applicant/respondent herein was initially on probation as substitute Telephone Attendant-Cum-Dak Khalashi (in short, TADK) under an officer, namely, Sri D. Bhattacharjee and his attainment of temporary status was subject to rendition of satisfactory performance for continuous 120 days. The respondent levelled baseless allegations against the officer under whom he was engaged without any conclusive evidence in support of

such allegations and he did not even lodge any formal complaint. Such issues, as urged, before the learned Tribunal were glossed over and no finding was returned on the same. Such infirmity warrants interference of this Court.

Drawing our attention to the documents annexed to the reply, Mr. Prasad submits that the respondent admittedly failed to discharge continuous and satisfactory service for 120 days and as such he was not entitled to temporary status automatically. The fact that the respondent did not render continuous service would be explicit from the attendance records annexed to the reply. His service was thus liable to be terminated straightaway and such decision was rightly taken with the approval of the competent authority.

Mr. Prasad strenuously argues that the learned Tribunal had erroneously observed that the termination was issued with retrospective effect though the contents of the memo dated 8th June, 2020 would reveal that he was terminated with effect from 3rd March, 2020 with the approval of the competent authority. The decision of termination was thus on 3rd March, 2020 and the memo dated 8th June, 2020 ought not to have been construed as an order of termination with retrospective effect.

Per contra, Mr. Das learned advocate appearing for the respondent submits that on the basis of frivolous

allegations the respondent had been drastically terminated and as a consequence thereof, his right to livelihood has been affected. There is no dispute that being satisfied with the service rendered by the respondent, the authorities themselves disbursed his monthly salary from the month of July 2019 to February, 2020. In support of such contention, salary slips were produced before the learned Tribunal. Records would reveal that the petitioners were very vindictive against the respondent and he was illegally terminated on the basis of a bald allegation that he had not rendered satisfactory service.

He further submits that the order impugned in the present writ petition was passed on 22nd September, 2022 and the present writ petition was filed about six months thereafter on 13th March, 2023 without any explanation towards the delay. The allegation that the respondent did not render continuous service is absolutely incorrect. The respondent was engaged in the residence of the concerned officer where no attendance register was available and he was never given any opportunity to work in any office. Such fact was intimated to the authorities through repeated representations. The sole intent of the petitioners had been to heckle and harass him and to deprive him of his sole source of livelihood.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the respondent was appointed as a substitute TADK against a permanent sanctioned post on 15th July, 2019. The conditions of engagement were that upon completion of 120 days continuous service, he would obtain temporary status. The fact that he was paid his monthly salary from the month of July, 2019 to February, 2020 has not been disputed by the petitioners. No contemporaneous letter was issued as regards dissatisfactory service. The allegations do not speak of any overt acts. On the basis of mere skirmishes and bald statements, the petitioners had sought to terminate the respondent. The respondent's discharge simpliciter on an allegation of unauthorized absence was not sustainable.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned. The same does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)