

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

WP.CT 97 of 2013
with
IA No. CAN 1 of 2023

Shyamapada Patra
-Versus-
Union of India & Ors.

For the Petitioner : *Mr. Asim Kumar Niyogi,*
Mr. Amit Banerjee,
Mr. Vaskar Pal.

For the Respondents : *Mr. Daya Shankar Mishra,*
Ms. Sabnam Laskar.

Hearing is concluded on : *23rd February, 2024.*

Judgment On : **6th March, 2024.**

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred challenging an order dated 11th January, 2011 passed in the original application being OA 863 of 2010. By the said order, the petitioner's challenge against the order of termination dated 7th July, 2009 was turned down observing *inter alia*

that the order of termination did not cast any stigma upon the petitioner and the same was an innocuous one.

2. Shorn of unnecessary details, the facts are that the petitioner was appointed on probation for a period of two years as a Mazdoor in Military Engineering Service (hereinafter referred to as MES) by a letter dated 1st August, 2008 issued by the respondent no. 2. Pursuant thereto, he submitted his educational certificates and reported for duty on 11th August, 2008. At the time of appointment, he submitted his class VIII pass certificate issued by the teacher-in-charge of Hotar Adarsha Junior High School, South Parganas wherein his date of birth was recorded as 17th November, 1984. Such declaration of age was also supported by an affidavit affirmed on 6th August, 2008 by the petitioner's mother and a certificate dated 14th August, 2008 issued by the Pradhan of Dhamua North Gram Panchayat, South 24 Parganas. The District Magistrate, South 24 Parganas issued a memo dated 9th April, 2009 to the respondent no.3 stating *inter alia* that the petitioner's date of birth is 16th March, 1974 and during enquiry it was apprehended that the petitioner got admission at Hotar Adarsha Junior High School in class-VII on the strength of a fake transfer certificate and in primary level studies at Ratna Biraj Mohini Junior Basic School his date of birth was also recorded as 16th March, 1974. Subsequent thereto, a show cause notice dated 30th May, 2009 was issued by the respondent no. 2 and communicated *vide* memo dated 17th June, 2009 to which the petitioner replied by a letter dated 4th July, 2009 and thereafter by a memo dated 7th July, 2009 the petitioner's service was terminated with effect from 31st July, 2009. In response to a representation dated 30th June, 2009, the petitioner

was communicated a memo dated 21st July, 2009 issued by the respondent no.3 reiterating the observations of the District Magistrate, South 24 Parganas contained in the earlier memo dated 9th of July, 2009. Challenging the denial of the respondents to allow him to join, the petitioner preferred an original application being OA 950 of 2009 which was disposed of by an order dated 29th July, 2009 directing the competent authority to consider and dispose of the petitioner's representation dated 30th June, 2009 within a month from the date of communication of the order. The learned Tribunal further directed that till such disposal of the representation there shall be an interim order of *status quo* as on date. Alleging inaction on the part of the respondents, the petitioner preferred the original application being OA 863 of 2010. The orders dated 20th August, 2009 and 28th August, 2009 passed in consideration of the petitioner's representations were duly brought on record and thereafter the said application was heard on contest and dismissed by the order impugned in the present writ petition.

3. Mr. Niyogi, learned advocate appearing for the petitioner argues that in the attestation form in clause 7(a) the petitioner declared his date of birth to be 17th November, 1984 and in clause 10 it was stated that he entered the Hotar Adarsha Junior High School in the year 2000 and left the same in the month of April, 2002 after passing the class VIII examination. Such fact was supported by the certificate issued by the said school. However, in course of a purported enquiry and relying upon documents issued by other schools it was apprehended that the petitioner got admission in the said school in class VII on the strength a fake certificate. The purported enquiry was conducted behind the back of the petitioner and on the basis of mere

apprehension, the termination order was issued. Suspicion, howsoever high, cannot be a substitute of actual proof. Such issue, as urged, was glossed over by the learned Tribunal and no finding was returned on the same.

4. He contends that the respondents had terminated the petitioner's service without complying with the provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as the 1965 Rules) and without issuance of one month's notice, as mandatorily required under. The termination order casts aspersion upon the character and integrity of the petitioner and the same being punitive in nature, ought to have been interfered with by the learned Tribunal. In support of such contention reliance was placed upon the judgments delivered in the cases of *Roshan Lal Tandon Vs. Union of India*, reported in (1967) SCC OnLine SC 70, *Samsher Singh & Anr Vs. State of Punjab*, reported in 1975 SCR (1) 814, *Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Science, Calcutta and Others*, reported in (1999) 3 SCC 60 and an unreported judgment delivered by the Hon'ble Supreme Court in the case of *Dr. Vijayakumaran C.P.V. Vs. Central University of Kerala & Ors.*

5. Mr. Mishra, learned advocate appearing for the respondents denies and disputes the contention of the petitioner and submits that in the appointment letter itself it was specifically stated that the petitioner's appointment is provisional and is subject to the verification of antecedents through civil authorities. It was also stated that the petitioner would be on probation for a period of two years and that such appointment may be terminated at any time on one month's notice given by other side. If any information given and declaration furnished by the petitioner is proved to be

follows or it transpires that he willfully suppressed material information, he would be liable for termination. In course of verification, it was found that the petitioner passed out class VIII from Moukhali Gopinathpur Gourabbala Vidyalaya and later took admission in class VII at Hotar Adarsha Junior High School on the basis of a fake transfer certificate. Such suppression came to light upon verification of records of Moukhali Gopinathpur Gourabbala Vidyalaya as well as that of the Biraj Mohini Junior Basic School. Thereafter the petitioner was issued a show cause notice dated 30th May, 2009 and his reply to the same dated 4th July, 2009 was duly considered and thereafter termination order was issued on 7th July, 2009 under Rule 5 of the 1965 Rules with effect from 31st July, 2009. In view thereof, the petitioner cannot allege violation of the principles of natural justice or the provisions of 1965 Rules.

6. He contends that in terms of the order passed by the learned Tribunal on 29th July, 2009, the petitioner's grievance was considered and rejected by a memo dated 22nd August, 2009. While filling up the attestation form the petitioner was aware that furnishing of false information and/or suppression of any factual information would be a disqualification and once such false information or suppression comes to the notice of the employer, the employee would be liable for termination. A similar declaration was also executed by the petitioner while filling up the application form. In the said conspectus, the learned Tribunal rightly did not interfere with the order of termination.

7. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

8. The crucial question to be determined in the present writ petition is as to whether the termination can be termed as an innocuous termination simpliciter or it is an order of punishment based on the alleged misconduct of the petitioner.

9. The law regarding the termination of service of a probationer is no more *res integra*. The Hon'ble Supreme Court in the case of *Shamsher Singh & Anr. Vs State of Punjab*, reported in 1975 (1) SCR 814, clarified that '*No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount of removal from service within the meaning of Art. 311 (2) of the Constitution*'.

10. The petitioner was appointed as Mazdoor by a letter dated 1st August, 2008 which contained a specific clause to the effect that if any information given is found to be false, he would be liable for removal from service. After filing of the verification form it was ascertained that the petitioner's actual date of birth is 16th March, 1974. He passed the VIII class examination from Moukhali Gopinathpur Gourabbala Vidyalaya and later

got admission in class VII at Hotar Adarsha Junior High School on the basis of a fake certificate. Such fact was ascertained upon verifying the school records of Biraj Mohini Junior Basic School as well as that of the Moukhali Gopinathpur Gourabbala Vidyalaya and to wriggle out of such findings the petitioner sought to contend that he was not even a student of Moukhali Gopinathpur Gourabbala Vidyalaya by placing reliance upon a certificate issued by the Headmaster of Moukhali Gopinathpur Gourabbala Vidyalaya 5issued on 9th February, 2009.

11. There is no dispute as regards the proposition of law that the termination of services of a probationer under the rules of his employment is neither *per se* dismissal nor removal. However, if the order visits the employee with evil consequences or casts aspersions against his character or integrity, it would an order by way of punishment and the Court can certainly interfere. Going by the tenor of the termination order it is incomprehensible that the same is punitive in nature. It is not a case that in the said order any aspersion or any stigmatic remark had been cast upon the petitioner. It is also not a case that the petitioner had been discharged on the ground of misconduct or inefficiency or any other similar reason. In course of verification, it was found that he had produced false certificate and accordingly, the authorities issued a show cause notice and upon considering the reply furnished, the termination order was issued. The desirability towards issuance of the termination order was not based on any allegation of misconduct.

12. In the said conspectus, the learned Tribunal did not interfere with the order of termination and we do not find any error in the same, least to say any patent error of law.

13. In view thereof, the writ petition and the connected application are dismissed.

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

15. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)