

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

LPA-1098-2022(O&M)

Date of decision: 24.01.2024

Kanwaljit Singh

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MS.JUSTICE RITU BAHRI, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AMAN CHAUDHARY

Present: Mr. DS Patwalia, Senior Advocate,
with Ms. Sehar Navjeet Singh Sandhu, Advocate for the appellant

Mr. Ayush Sarna, AAG Punjab

AMAN CHAUDHARY, J.

1. The present intra-court appeal, under Clause X of the Letters Patent has been filed against the judgment dated 01.06.2022, vide which the civil writ petition preferred by the appellant was dismissed.
2. Learned Senior counsel would contend that the appellant was dismissed from service by passing a stigmatic order, inasmuch it was on basis of an enquiry purportedly conducted without complying with the principles of natural justice. Factum of registration of an FIR was also mentioned, wherein he rightly came to be acquitted, as he is innocent and was embroiled due to extraneous considerations. Reliance is placed on the judgement in **Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences**, (1999) 3 SCC 60. The learned Senior counsel stated on instructions that the appellant is more keen on reinstatement and in the eventuality of acceptance of his prayer regarding it, he

will give up the arrears of pay and allowances for the period he remained out of service and is also not averse to any further enquiry, if rules so permit.

3. Contrarily, learned counsel appearing on behalf of the State stoutly made an endeavour to project the case to be not that of casting any stigma upon the appellant, for the reason that by way of a clarificatory order dated 02.03.2018 (Annexure P-11), it had been stated that services of the employee concerned were terminated under condition 9 of his appointment letter. He would contend that the involvement of the appellant in an FIR with allegations of such nature, was sufficient enough to terminate his services, especially keeping in mind that he was in a noble profession as a school teacher. He, thus, urged the impugned judgment to be sustained. However, in the alternate prayed that in case the plea of the appellant is to be accepted, the respondents be allowed to hold a proper enquiry.

4. Heard learned counsel on either side.

5. Before embarking on the legal question canvassed, notably the appellant having been appointed through proper procedure on contract basis, was granted regularisation vide letter dated 15.07.2014, Annexure P-1 and was on probation for 2 years. Lodging of the FIR against him triggered the authorities to pass an order whereby his services were terminated vide order dated 29.09.2015, basing it on a report of the Divisional Education Officer in an enquiry proving the charges levelled against him.

6. The issue involved in the case at hand is no longer *res integra* as, in **Jagdish Mitter vs. Union of India**, 1963 SCC OnLine SC 75, the Constitution Bench of Hon'ble the Supreme Court had held that even the words 'undesirable to be continued' in service, would amount to stigma by observing that, "...When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary

servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be: does the order cast aspersion or attach stigma to the officer when it purports to discharge him? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal. That being so, we are satisfied that the High Court was in error in coming to the conclusion that the appellant had not been dismissed, but had been merely discharged. It is conceded that if the impugned order is construed as one of dismissal, the appellant has been denied the protection guaranteed to temporary servants under Section 240(3) of the Government of India Act, 1935, or Article 311(2) of the Constitution, and so, the order cannot be sustained.”

7. The form of the order terminating the services of the appellant coupled with the background facts in **Jaswantsingh Pratapsingh Jadeja vs. Rajkot Municipal Corpn.**, (2007) 10 SCC 71, led Hon’ble the Supreme Court to come to the conclusion that the order impugned in the writ petition by him was punitive and thus, set aside.

8. Hon’ble the Supreme Court by taking into consideration a string of judicial pronouncements observed in **Union of India vs. Mahaveer C. Singhvi**, (2010) 8 SCC 220, that if a finding against a probationer is arrived at behind his back into the allegation made and the same formed foundation of the order of discharge, it would be bad in law and liable to be set aside.

9. In **Dipti Parkash Benerjee** (supra) while examining the order of termination of a probationer wherein even though the appellant had been apprised of the shortcomings in his work and other allegations and reply sought and filed,

yet the termination order whereby reference to three letters was made, was set aside by Hon'ble the Supreme Court, finding one of them to be objectionable whilst holding that, "The above decision is, in our view, clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its Annexures. Obviously such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular inquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma." and further, "We shall next take up the second aspect relating to stigma. We shall assume that the words used in the impugned order do not contain any stigma. We shall then refer to the three other letters to which the order makes a reference. In the first letter dated 30.4.96, we do not find anything objectionable. Coming to the next letter, we however find that para (iii) refers to the scuffle between the appellant and one P.Chakraborty regarding which the appellant made a complaint on 28.5.96. An Inquiry Committee is said to have been appointed and it gave a Report. The extract from the report of the Committee dated 15.7.1996 is found in the Counter of the respondents. The Inquiry Committee found the appellant's "behaviour reprehensible", and it confirmed that the appellant was involved in a scuffle and did misdeeds like obtaining false signatures", and said that the appellant was "guilty of inefficient performance or duty, irregular attendance without permission, rude and disorderly behaviour and wilful insubordination". Whatever may be said about the other words, the words used in connection with the finding of the Inquiry Committee about the scuffle and about the appellant obtaining false

signatures, are, in our opinion, clearly in the nature of a stigma. Further, the Inquiry Committee said he must be 'punished'. It did not say that proceedings for disciplinary action were to be initiated. Thus on the ground of 'stigma' also the impugned order is liable to be set aside.”

10. In **State Bank of India and others vs. Palak Modi and others** (2013) 3 SCC 607, a case also of termination of services of a probationer, without opportunity given to the employees, the order was set aside by Hon'ble the Supreme Court observing that if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the services of the probationer though by a non stigmatic order, the Court can examine whether in the garb of termination simpliciter, the employee has been punished for an act of misconduct, which in this case was use of unfair means in the evaluation test/ confirmation test held by the Bank. To put it differently, the foundation of the action taken by the General Manager was the accusation that while appearing in the objective test, the private respondents had resorted to copying. The conclusion was not preceded by an inquiry granting them opportunity to defend themselves against the charge. In other words condemned unheard, which was legally impermissible.

11. It has been long settled that where the form of the order is apparently a camouflage for an order of dismissal for misconduct, the Court can lift the veil, so as to ascertain its true character, it being a cloak for an order of punishment in actual or essentially a determination of employment. The form of the order would not debar the Court in giving effect to the rights conferred by law upon the employee.

12. We are unable to countenance the sum and substance of the arguments addressed on behalf of the respondent-State that the findings recorded

in the impugned order of termination stood rectified by order dated 02.03.2018 wherein condition No.9 of appointment letter was referred to as a basis of it, inasmuch as, *firstly*, the above was already mentioned in the order dated 29.09.2015, Annexure P-4 and *secondly*, it was not that the original order was withdrawn, but without assigning any reason the representation of the appellant, seeking reinstatement was rejected. Any which way, the questioned order does not get effaced.

13. Indubitably, the foundation of the very order of termination in the instant case rests upon conclusion arrived at in the enquiry that the appellant had committed a misconduct, with the categoric recording of it therein, alongwith a reference to the FIR lodged against him. The assertion that he was not associated therewith prior to being indicted, also remained incontrovertible. It was one thing to say that he was found unsuitable for a job, but yet another to have returned a finding of a proven misconduct. As a sequitur, the order impugned besides being *ex facie* stigmatic, was based on an enquiry, which in itself was conducted in derogation of the established principle of natural justice and fairness.

14. It is trite that there is no difference between termination of a temporary employee and discharge of a probationer. It is well within the domain of the employer to dispense with a probationer by a simpliciter order without there being any aspersions cast and he be not castigated by referring to the allegations or communications with such indications and recording findings of misconduct thereon, that may well have repercussions in the future prospects of his employment. Had it been a case of mere holding of a preliminary enquiry, where the explanation of the appellant was called for, followed by an innocuous order of discharge, it may well not be held to be punitive in nature.

15. We have implored ourselves with the afore-referred abounding pronouncements and on a conspectus evaluation find that the order impugned in the writ petition does not stand the judicial scrutiny. Ex-consequenti, it is declared illegal and hereby quashed.
16. On the premise aforesaid, the judgement of the learned Single Judge dismissing the writ petition is set aside.
17. The appellant be reinstated forthwith, but with a caveat to which both learned counsel are *ad idem*, in any office/ institution under the respondent-State but for, where he was working at the time of issuance of the termination order, *albeit*, without any entitlement of arrears of pay and allowances, in view of the peculiarity of the facts and circumstances as also the statement made on his behalf.
18. The respondents are, however, reserved with a liberty to proceed against the appellant, if so advised, in accordance with law.
19. The present appeal stands disposed of accordingly.
20. Pending applications, if any, shall be rendered as disposed of.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(AMAN CHAUDHARY)
JUDGE

24.01.2024
gsv

Whether speaking / reasoned: YES / NO
Whether Reportable: YES / NO