



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 16.02.2024*

+

LPA 130/2024

AJOR KUMAR

..... Appellant

Through: Mr.Yogesh Kumar & Ms.Vandana,
Advs. along with the petitioner in person.

versus

M/S FORE SCHOOL OF MANAGEMENT, NEW DELHI

..... Respondent

Through: Mr.Farman Ali, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)****CM APPL. 9572/2024**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

LPA 130/2024, CM APPL. 9573/2024 (additional documents) & CM APPL. 9574/2024 (delay of 30 days)

3. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 22.11.2023 passed by the learned Single Judge in W.P.(C) 15114/2023. Vide the impugned order, the learned Single Judge has dismissed the writ petition filed by the appellant whereunder, he had sought setting aside of the award dated 15.07.2023 passed by the learned Labour Court. It may be noted that the appellant had approached the learned labour



Court assailing the order dated 31.03.2016 passed by the respondents terminating him from service.

4. Learned counsel for the appellant submits that the impugned order is wholly perverse as the learned Single Judge has failed to appreciate that the appellant had rendered almost seven years of unblemished service from 2009 and could therefore not be terminated without holding any inquiry against him or at least serving a show cause on him. He contends that the termination order dated 31.03.2016 having been passed in blatant violation of principles of natural justice was liable to be set aside on this ground alone. He, therefore, prays that the appeal be allowed by directing the respondent to reinstate the appellant with all consequential benefits.

5. Having perused the record, we find that though the appellant was appointed as a peon with the respondent in September 2009, the said appointment was through an outsourcing agency. It is only on 25.04.2014 that he was for the first time appointed to the post of Attendant by the respondent. This appointment was subject to probation of one year. Before the expiry of this probation period, the appellant's probation was vide order dated 10.04.2015 extended by one year w.e.f. 01.04.2015. However, before he could successfully complete his probation, his services came to be terminated vide order dated 31.03.2016, which was challenged by him by way of an industrial dispute. Upon his claim being rejected vide award dated 15.07.2023, the appellant preferred a writ petition which has been dismissed vide the impugned order.

6. We find the appellant's claim has been rejected both by the learned Labour Court and the learned Single Judge, by relying on the contents of the termination order dated 31.03.2016. It would, therefore, be apposite to note



herein below the extracts thereof.

*“FOUNDATION FOR ORGANISATIONAL RESEARCH
AND EDUCATION*

FORE SCHOOL OF MANANGEMENT, NEW DELHI

*Mr. Jitendra K Das
Director*

No.FSM/ASO/2016-2017/986

Dear Mr.Ajor Kumar,

This has reference to the appointment letter dated April 25, 2014 offering you the post of Attendant in our Institute and placing you under probation for a period of one year. Your probation period was extended by one year.

It is felt that your services are not required any further. Therefore, you are being relieved from the services of FORE School of Management, New Delhi w.e.f. close of office hours of March 31, 2016.

As per clause no.4(a) of your appointment letter, your salary for one month in lieu of notice period is being released along with other dues including the earned leave through an enclosed Cheque No.002751 for Rs.37,647/- drawn on HDFC Bank Ltd.

With best wishes,

*Sd/-
Jitendra K Das.”*

7. Having noted the contents of the termination order, we find that this order is a simpliciter order terminating the services of the appellant; the same neither attributes any misconduct on the part of the appellant nor refers to any short coming in his performance. The same simply states that his services were not required any further by the respondent and therefore the



appellant was being paid one month's salary towards the notice period.

8. We may now deal with the submissions of the learned counsel for the appellant, for which we may refer to the findings of the learned Single Judge as contained in paragraphs 3 to 5 of the impugned order. The same read as under-

“3. It is, therefore, concluded by the Ld. Labour Court that the termination of the worker was not punitive but simpliciter termination in view of the fact that he was in the period of probation and was not for any misconduct. The management was also not under any obligation to make an inquiry or issue a charge-sheet for a worker on probation.

4. The learned counsel for the petitioner points out to the communication on 10th April, 2015 to state that as per the letter he ought to have been briefed about the areas needing attention for improvement, which he says was never done. This, in the opinion of the Court, is a specious argument, and cannot be a ground for challenge to the impugned award. There could be no mandate on the management to prove whether he is guilty or not since that has no nexus with the termination simpliciter of the worker during the probation period.

5. In these facts and circumstances, this Court sees no reason to interfere with award by the Ld. Labour Court and perceives no illegality or irregularity in the same”.

9. Upon a perusal of the aforesaid findings, we find that the learned Single judge has rejected the appellant's claim that his services had been terminated without following principles of natural justice. The learned Single Judge has held that since the appellant's services had been terminated during the extended period of probation by a non stigmatic order dated 31.03.2016, the management was under no obligation to hold an inquiry or



give any show cause notice. We have also perused the order dated 25.04.2014 vide which the appellant was appointed as an Attendant with the respondent as also the order dated 10.04.2015 vide which his probation was extended for an year. It is evident from these orders that he was always aware that he was still under probation and therefore his services could be terminated at the discretion of the management during the said period.

10. In this regard we may refer to the observations of the Apex Court in para 45 of its decision in ***Muir Mills Unit of NTC (UP) Ltd. vs Swayam Prakash Shrivastava 2007 (1) SCC 491***. The same read as under-

“45. This Court's decision in P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences [(2002) 1 SCC 520 : 2002 SCC (L&S) 170] can be referred to in this context, where it was held by this Court that the services of a probationer can be terminated at anytime before confirmation, provided that such termination is not stigmatic. This Court in State of M.P. v. Virendera Kumar Chourasiya [1999 SCC (L&S) 1155] also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of audi alteram partem are not applicable.”

11. In the light of the aforesaid and taking into account that it is an undisputed position before us that the appellant was still under probation when his services came to be terminated, we are in agreement with the learned Single Judge that there was no requirement for the respondents to hold any inquiry against him. Principles of natural justice would not be applicable to a non stigmatic termination of a probationer, like in the present case.

12. Before we conclude, we refer to the appellant's plea that since he had rendered almost seven years of unblemished service, he was entitled to



know why his services were being terminated. No doubt the appellant was rendering service since 2009, the fact remains that he was initially engaged through an outsourcing agency as a peon and was for the first time appointed as an attendant by the respondent on 25.04.2014. His initial probation of one year having been extended w.e.f 01.04.2015, his status continued to be that of an attendant on probation on 31.03.2016, when the termination order came to be passed.

13. For the aforesaid reasons we find no infirmity with the impugned order. The appeal being meritless is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 16, 2024

kk