



2024:DHC:7614-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 13615/2024 & CM APPL. 56996/2024, CM APPL.
56997/2024, CM APPL. 56998/2024

AJAY PAL

.....Petitioner

Through: Mr. M.K. Bhardwaj and Mr.
M.D. Jangra, Advs.

versus

DEPUTY DIRECTOR OF EDUCATION AND ORS.

.....Respondents

Through: Ms. Latika Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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27.09.2024

C. HARI SHANKAR, J.

1. The petitioner was issued the following notice under Rule 5(1) of the Central Civil Services (Temporary Service) Rules 1965 on 29 August 2024, stating that his services would stand terminated w.e.f. expiry of one month from the date of service of the notice on him:

“No.DE.48.13/DWA/2023/1418

Dated 29 August 2024

**Notice of Termination of Service issued under Rule 5 (1) of the
Central Civil Services (Temporary Service) Rules, 1965**

Whereas, Shri Ajay Pal has joined as PET in Govt. Co-ed. SSS, H-

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Signing Date: 03.10.2024
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Block, Karampura-1516104 on 03.09.2022 against appointment order no. DE.4(36)/DRC/E-IV/PET (87/20)/2022/4538-48 dated 30.08.2022.

And Whereas, HOS Govt. Co-ed. SSS, H-Block, Karampura has forwarded an Attestation form for verification of his character and antecedents. The Attestation form was filled in by Shri Ajay Pal on 20.10.2022 and he has answered all questions of Point No. 12 stating himself.

And whereas, the said Attestation form was sent to Superintendent of Police, Kanpur Nagar by DDE West-A vide letter dated 11.11.2022 for verification of his character and antecedents.

And whereas, the Commissioner of Police, Kanpur reported that "case no. 1301/18 under sections 452/323/325/504/506 IPC was registered against him and another case no. 828/18 under sections 383/376-D/504 and 506 IPC was also found to have been registered against Mr. Ajay Kumar at PS Kalyan Pur, Commissionerate Kanpur Nagar, UP".

And whereas, Shri Ajay Pal, PET had not disclosed correct facts at the time of submitting verification of Character & Antecedents form and concealed his conviction and imposition of penalty in a criminal case lodged/pending against him. Reply in this regard submitted by him does not appear to be satisfactory.

And whereas, the services of Shri Ajay Pal, PET have not been confirmed yet and he is deemed to be on probation as per para 27 of OM No 28020/3/2018-Est(C) dated 11.03.2019 issued by Ministry of Personnel, PG & Pensions, DoPT, Govt. of India.

Now, therefore, after considering the facts & circumstance of the case, and in pursuance of sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the Competent Authority i.e. Director (Education) has approved to issue a notice to Shri Ajay Pal, PET presently posted at Govt. Coed. SSS, H-Block, Karampura, School ID:1516104 that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which his notice is served on or, as the case may be, tendered to him.

Sd/-
ADDL. DIRECTOR OF EDUCATION (ADMIN)"

2. The petitioner has assailed the said notice before the Central

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Administrative Tribunal¹ by way of OA 3725/2024, in which the following order has been passed by the Tribunal on 24 September 2024:

“Mr. M.D. Jangra, learned counsel for the applicant submits that the impugned notice of termination dated 29.08.2024 (Annexure A-1) is in violation of law laid down by the Hon'ble Apex Court in *Dipti Prakash Banerjee vs. Satvendra Nath Bose National Centre for Basic SC., Calcutta*².

2. Issue notice to the respondents. Mr. Amit Anand, learned counsel, who appears for the respondents on advance service, accepts notice.

3. Mr. M.D. Jangra, learned counsel for the applicant presses for grant of interim relief in the form of stay of the impugned notice of termination dated 29.08.2024. On the other hand, Mr. Amit Anand, learned counsel appearing for the respondents has vehemently opposed the same by submitting that even if the applicant has a prima facie case, having balance of convenience in his favour, there is nothing to show that if the interim protection is not granted, this Tribunal will not be in a position to compensate the applicant adequately and/or any irreversible loss is likely to be caused to the applicant. He further submits that the respondents may be accorded some time to file reply/short reply. He has placed reliance upon judgment of the Hon'ble Apex Court in *State of Haryana vs. Suman Dutta*³.

4. We have considered the submissions made by learned counsel for the parties.

5. In the facts and circumstances, as an interim measure, it is ordered that the operation of the impugned notice of termination dated 29.08.2024 shall be subject to outcome of the present OA.

6. Learned counsel for the respondents seeks and is allowed four weeks' time to file reply. The applicant may file rejoinder, if any, within two weeks thereafter.

7. List on 15.10.2024.”

¹ “The Tribunal”, hereinafter

² AIR 1999 SC 983

³ (2000)10 SCC 311



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3. Aggrieved by the fact that the Tribunal did not grant a stay of the operation of the order of termination dated 29 August 2024, the petitioner has filed the present petition before this Court under Article 226 of the Constitution of India.

4. The jurisdiction exercised by this Court under Article 226, while dealing with orders passed by the Tribunal, is not appellate in character. The Court, therefore, has to be extremely circumspect when dealing with orders which are discretionary in nature. In ***Wander Ltd v Antox India P Ltd***⁴, the Supreme Court held thus, on the scope of interference, *in appeal*, with the discretionary order of the hierarchically lower Court:

“14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”

The exercise of jurisdiction by a writ Court, under Article 226 of the Constitution of India, *vis-à-vis* a discretionary order of the “court below” must, therefore, be even more circumspect.

⁴ 1990 Supp SCC 727



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5. The Tribunal has not outrightly rejected the petitioner's stay application but has made the implementation of the order of termination dated 29 August 2024 subject to the outcome of the OA. This order has been passed after hearing both sides recording their submissions and on a *prima facie* view.

6. We are of the considered opinion that such an order cannot merit interference by this Court in exercise of the jurisdiction vested in it by Article 226 of the Constitution of India.

7. Mr. Bhardwaj, learned Counsel for the petitioner, submitted that a closure report had been filed by the police in the FIR relating to the incident which forms subject matter of order of termination and that the report was also accepted by the concerned criminal court. He has also drawn our attention to an order passed by a Division Bench of this Court in *Anish Ahmed v UOI*⁵, in which it has been held that a mere registration of an FIR does not result in condemnation of an accused as guilty and that the registration of an FIR is merely an initiation of an investigation.

8. These facts are not germane to examining whether the impugned order calls for interference. The order is discretionary in nature and has been passed after considering submissions of both sides. If the learned Tribunal was of the view that the merits of the case did not call for outright stay but that the interests of justice would

⁵ Order dated 14.11.2018 in WP (C) 12165/2018



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be best served by making implementation of the order of termination subject to the outcome of the OA, that is a decision taken in exercise of discretion vested in the Tribunal to which, in the absence of any perversity in the decision, this Court must defer.

9. We, therefore, do not find that any case is made out for interference with the impugned order of the learned Tribunal.

10. The petition is, therefore, dismissed in *limine*.

11. However, as the matter relates to termination, the learned Tribunal is requested to examine whether the hearing and disposal of the OA could be expedited. Needless to say, this would be subject to the Tribunal prioritising the case given the other matters which are listed before it and the workload before the Bench.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

SEPTEMBER 27, 2024

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[Click here to check corrigendum, if any](#)