

Hari Singh Mann

Vs

State of Punjab and Others

Civil Appeal No. 1995 of 1970

(CJI A. N. Ray, K. K. Mathew JJ)

20.08.1974

JUDGMENT

RAY, C.J. -

1. This is an appeal by special from the judgment dated November 5, 1969 of High Court of Punjab and Haryana. The only question is whether the order of termination of the service of the appellant who was a probationer is in violation of Rule 9 of the Punjab Civil Service (Punishment and Appeal) Rules, 1952.

2. The appellant was selected by the Public Service Commission as a direct recruit on May 20, 1965. He was appointed on May 26, 1965. He joined as a probationer. The period of probation was two years.

3. Rule 8(b) of the Punjab Police Service Rules, 1959 states that the services of a member recruited by directed appointment may be dispensed with by the Government on his failing to pass the final examination at the end of his period of training, or on his being reported on, during or at the end of his period of probation, as unfit for appointment.

4. The order terminating the services of the appellant was as follows :

The President of India is pleased to dispense with the service of Shri Hari Singh Mann, Probationary Deputy Superintendent of Police, Amritsar on the expiry of his extended period of probation with effect from February 2, 1969 (A.N.) under Rule 8(b) of the Punjab Police Service Rules, 1959, having considered him unfit for appointment to the State Police Service. The period from May 20, 1968 to August 2, 1968 which has been treated as leave of the kind due has been excluded from the period of trial (Probation).

5. The two contentions which have been advanced before the High Court were repeated here. First, the order of termination was passed on January 30, 1969 when the petitioner by reason of expiry of three years stood confirmed on November 19/20, 1968. Second, the order of termination was one of punishment and the appellant should, therefore, under Rule 9 of the Punjab Civil Service (Punishment and Appeal) Rules have been given opportunity to show cause against the order of termination.

6. Under the aforesaid (Police Service) Rule 8(b) proviso, the Government could extend the period of probation by not more than one year. The appellant was appointed on May 20, 1965 on two years probation. On July 1, 1967, there was an order extending the period of probation by one year. On

May 20, 1968, there was an order terminating the services of the petitioner. On July 20, 1968 there was an order revoking the order of termination and extending and extending the period of probation for six months from May 20, 1968. The order of termination was on January 30, 1969. The appellant was on the leave from May 20, 1968 to August 2, 1968. The Government excluded the period of leave from the period of probation.

7. The object of extending the period of probation is to find out whether the appellant was a fit person. The appellant could not be confirmed till the period of probation to find out the fitness of the appellant expired. It cannot therefore be held that the appellant stood confirmed on November 19/20, 1968 before the period of probation expired in January, 1969.

8. The appellant relied on Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. Rule 9 is as follows :

Where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of the unsatisfactory record or unfavourable reports implying the unsuitability for the service, the probationer shall be apprised of the grounds of such proposal, and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the appointment.

9. If (Punishment) Rule 9 applies, the services of the appellant could not be terminated without complying with the provisions thereof.

10. The appellant contended that the order of termination stated that the appellant was considered unfit for appointment and therefore it amounts to punishment to attract Rule 9. The appellant extracted a statement from the affidavit of the Inspector General of Police in answer to the appellant's petition in the High Court that the appellant's record during the period of probation was unsatisfactory. Reliance is placed on Rule 9 where it is said that if the termination of the services of a probationer be on account of unsatisfactory record he shall be given an opportunity to show cause against it.

11. The respondent relied on Rule 11 of the Punjab Police Service Rules where it is stated that in matters relating to discipline, penalties and appeals, members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules. Therefore, it is said by the respondent that Rules 8 and 11 of the Punjab Police Service Rules show that termination of probation which is dealt with in Rule 8 is different from matters relating to penalties which are dealt with in Rule 11 of the Punjab Police Service Rules.

12. Termination on account of unsatisfactory record will attract Rule of the Punishment Rules. It is obvious that at the time of confirmation fitness is a matter to be considered. The order terminating the services is unfitness for appointment at the time of confirmation; it is not passed on the ground of any turpitude like misconduct or inefficiency. The hold that the words "unfit to be appointed" are a stigma would rob the authorities of the power to judge fitness for work or suitability to the post at the time of confirmation. Termination of services on account of inadequacy for the job or for any temperamental or other defect not involving moral turpitude is not a stigma which can be called discharge by punishment. Fitness for the job is one of the most important reasons for confirmation. The facts and circumstance do not show that there is any stigma attached to the order of termination.

13. For these reasons, the appeal fails and is dismissed. Parties will pay and bear their own costs.

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