Dhanjibhai Ramjibhai

Vs

State of Gujarat

Civil Appeal No. 2480 of 1977

(R. S. Pathak, E. S. Venkataramiah, V. B. Eradi JJ)

22.01.1985

JUDGMENT

R. S. PATHAK, J. -

1. This appeal by special leave arises out of a writ petition filled by the appellant in the Gujarat High Court challenging an order terminating his services.

2. The appellant was appointed to the post of Sales Tax Officer by an order dated March 22, 1972. The order recited that the appointment was on probation for a period of two years. The period of two years expired, and the appellant continued in service and no order was made confirming his appointment. On March 31, 1975 the appellant's services were terminated.

3. Aggrieved by the termination of his services, the appellant filed a writ petition in the High Court of Gujarat, but by his judgment and order dated April 21, 1976 a learned Single Judge dismissed the writ petition. An appeal was filed by the appellant, and an Appellate Bench of the High Court dismissed the appeal by its judgment and order dated March 28, 1977.

4. Three points have been raised before us in this appeal. The first contention is that the order terminating the appellant's services was passed mala fide, the second is that on the expiry of the period of probation the appellant must be deemed to have been confirmed, and inasmuch as his services have been terminated without complying with clause (2) of Article 311 the order is invalid. The last contention is that the principles of natural justice were violated inasmuch as on the facts of the present case the appellant, even as a probationer, was entitled to be heard before his services were terminated.

5. On the first contention, the learned Single Judge as well as the Appellate Bench examined the material on the record and came concurrently to the conclusion that the allegation of mala fide was without foundation. Learned Counsel for the appellant has taken us through the record and has endeavoured to show that the appellant had discharged his duties ably and with integrity, and there was no reason for terminating his services. Various particulars were set forth in the special leave petition filed in this Court in support of that assertion. Now, it appears that substantially the same allegations were set forth by the appellant in his writ petition, but in the affidavit filed in reply by the State Government those allegations were denied. On the contrary, it was asserted that the appellant's services were terminated entirely because of his unsatisfactory record and that the order was not vitiated by any illegality or unfairness. In support of the plea of mala fides, the appellant alleged that his services had been terminated because he had taken proceedings against an assessee, Messrs Shriraj and Company who, according to the appellant, enjoyed political favour and influence

with the authorities. The allegation has been denied in the counter-affidavit. During the hearing of the special leave petition this Court directed the State Government to file a specific affidavit relating to the facts alleged in the writ petition regarding a confidential enquiry initiated by the Government. The affidavit filed in reply admits that an enquiry was initiated against the appellant on the complaint of the said assessee, but it maintains that there was no mala fide on the part of the Ministers concerned and that a perusal of the record relating to that enquiry shows that the allegation of mala fides is wholly baseless. We have considered the matter carefully and we find no sufficient reason to differ from the finding of the Hind Court that the allegation of mala fides is not established. We think it desirable to observe that where a finding of fact has been rendered by a learned Single Judge of the High Court as a court of first instance and thereafter affirmed in appeal by an Appellate Bench of the High Court, this Court should be reluctant to interfere with the finding unless there is very strong reason to do so.

6. The second contention on behalf of the appellant is that the appellant must be deemed to have been confirmed inasmuch as he was allowed to continue in service even after the expiry of the period of probation of two years specified in the order of appointment. We are of opinion that when the order of appointment recited that the petitioner would be on probation for a period of two years, it conformed to Rule 5 of the Recruitment Rules which prescribes such period of probation. The Rule states further that the period of probation may be extended in accordance with the Rules. The period of two years specified in the Rule is merely the initial period for which an officer may be appointed on probation. As the terms of the same Rule indicate, the period of probation may be extended. The period of two years does not represent the maximum period of probation.

7. It is next urged that as no rules have been framed indicating the manner for extending the period of probation, there is no power to extend the period of probation. The argument suffers from a fallacy. The power to extend the period of probation must not be confused with the manner in which the extension may be effected. The one relates to power, the other to mere procedure. Merely because procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted.

8. It is then submitted that the appellant enjoyed a legitimate expectation of being confirmed on the expiry of two years of probation and on successfully completing the qualifying tests and training undergone by him. We are not impressed by that contention. It was open to the State Government to consider the entire record of service rendered by the appellant and to determine whether he was suitable for confirmation or his services should be terminated. There was no right in the appellant to be confirmed merely because he had completed the period of probation of two years and had passed the requisite tests and completed the prescribed training. The function of confirmation implies the exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service.

9. The second contention must also be rejected.

10. The last contention is that the appellant should have been heard before his services were terminated. The order of termination does not contain any stigma or refer to any charge of misconduct on the part of the appellant. It is said that the State Government terminated the appellant's services because a complaint had been made against him by Messrs. Shriraj and Company, whose case had been dealt with by him, and that the appellant should have been given a hearing to show that there was no basis for the complaint. There would have been substance in this

contention if the appellant's services had been terminated on the ground of misconduct committed in connection with the case of Messrs. Shriraj and Company. On the contrary, it appears from the record before us that the appellant's services were terminated because on an overall appreciation of his record of service he was found unsuitable for being absorbed in the service.

11. A distinction is sought to be drawn between a probationer whose services are terminated on the expiry of the period of two years and a probationer, who has completed the normal span of two years and whose services are terminated some time later after he has put in a further period of service. We are unable to see any distinction. It is perfectly possible that during the initial period of probation the confirming authority may be unable to reach a definite conclusion on whether the candidate should be confirmed or his services should be terminated. Such candidate may be allowed to continue beyond the initial period of two years in order to allow the confirming authority to arrive at a definite opinion. It seems to us difficult to hold that a candidate enjoys any greater right to confirmation if he is allowed to continue beyond the initial period of probation.

12. In our judgment, there is no force in this appeal, and it is dismissed but in the circumstances without any order as to costs.

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