

Ganganagar Zila Dugdh Utpadak & Sahkari Sangh Ltd. and Another

Vs

Priyanka Joshi & Anr.

Civil Appeal No. 3887 of 1999

(B. N. Kirpal, S. R. Babu JJ)

19.07.1999

ORDER

1. Special leave granted.
2. The respondent was employed as an Assistant Manager on 6th October, 1993. She was put on probation for one year. It appears that leave was granted to her from 16th October, 1994 to 25th October, 1994. Thereafter, she did not join duty despite notices dated 7th November, 1994 and 23rd November, 1994.
3. Impugned order dated 30th November 1994 was passed which reads as follows :

"Smt. Priyanka Joshi, Assistant Manager (Plant) is being BARKHAST (dismiss) from the service of Sangh with effect from the afternoon today dated 30.11.1994 under Gangmul Service Rules, 1992".
4. The respondent filed a writ petition contending that her services could not be terminated without following the procedure of holding an inquiry. The Single Judge dismissed the writ petition holding that the impugned order did not cast any stigma. The respondent then filed an appeal which was allowed by the High Court by holding that the perusal of the impugned order showed that it was an order of dismissal and did cast a stigma.
5. In our opinion, the Division Bench of the High Court was not correct in the conclusion which it arrived at. It is not in dispute that when the order dated 30th November, 1994 was passed, the respondent was still on probation. The reason for passing of the said order appears to be the absence of the respondent from duty. In the order of appointment, it was clearly stipulated that the respondent's services could be terminated during the probationary period if the services were unsatisfactory. When judging the performance of a person if the services are terminated during the period of probation, obviously there has to be a reason for such termination. If the services are terminated during the probationary period without any reason whatsoever, it is possible that such an order may be impugned on the ground that it has been passed arbitrarily. On the Other hand, when there is a reason for terminating the services during the probationary period and the order terminating services is worded in an innocuous manner, we do not see any force in the contention that such an order has to be regarded as by way of punishment.
6. Impugned order dated 30th November, 1994 is only of one sentence which states that the respondent's services were being BARKHAST 'dismissed' - The real word used there was 'Barkhast' and under the circumstances even the use of the word 'dismissed' cannot, in our opinion, be regarded

as by way of Punishment.

7. For the aforesaid reason, the appeal is allowed. The judgment of the Division Bench is set aside with the result that the writ petition filed by the respondent in the High Court stands dismissed.