SUPREME COURT OF INDIA

Municipal Committee, Sirsa

Vs

Munshi Ram

Appeal (Civil) 21 of 2003

(N.Santosh Hedge and S.B.Sinha)

04/02/2005

JUDGMENT

N. SANTOSH HEGDE, J.

The appellant is a municipal committee which had appointed the respondent on probation for a period of one year as 'Octroi Moharrir'. The letter of appointment dated 21.07.1979 inter alia stated that services of respondent can be terminated without assigning any cause at any time during the period of probation. By a letter dated 12.03.1980, the service of the respondent was terminated during the period of probation.

The said letter of termination read thus;

"Shri Munshi Ram, Octroi Moharrir Municipal Committee, Sirsa is hereby discharged from the duty as no longer is required by Municipal Committee, Sirsa with immediate effect. Sd/ Administrator Municipal Committee, Sirsa" *

The said termination/discharge gave rise to a labour dispute raising the following issue; "Whether the termination of services of Shri MunshiRam was justified and in order? If not, to what relief he is entitled?"

The Labour Court by its order dated 19.06.1982 made an award holding that the termination was neither justified nor in order and the workman is entitled to reinstatement with continuity of services and with full back wages.

The said award came to be challenged in the Writ Petition before a learned Single Judge of the High Court of Punjab & Haryana at Chandigarh. The learned Single Judge by his order dated 30.08.1991 allowed the writ petition and set aside the award of the Labour Court. While doing so, it observed;

"He was on probation for a period of one year and it was during the period of probation that his services were terminated. The order of termination did not assign any reason a person on probation is virtually on trial. The employer is not bound to suffer an incompetent employee for the full term of probation." *

This order of learned Single Judge came to be challenged by the respondent in Writ Appeal before the same Court. The Appellate bench of the said High Court observed that during the course of the inquiry before the Labour Court, a witness had admitted that on 11.03.1980 when the Administrtor inspected the octroi post he had found that the respondent had allowed certain vehicles carrying goods to go without charging of octroi fees and contrary to the rules he was found in possession of excess money to the extent of Rs.15.80. From the record it was found that immediately after the said instance in question the services of the respondent came to be terminated.

Therefore, concurring with the findings of the Labour Court, the Appellate bench held that the order of discharge, though termed as discharge simplicitor, was in reality a colourable exercise of termination without holding an inquiry and it agreed with the Labour Court and restored its award.

Against the said order of the Appellate bench of the High Court, the appellant is now before us in this appeal.

The question for our consideration is on the facts and circumstances of this case was the termination of the respondent was punitive or is a discharge simplicitor? On reading of the order of discharge it is clear that it is a discharge simplicitor, but the evidence as came on record shows that there was some act of negligence on the part of the respondent which was noticed by the officer of the appellant, hence, the Labour Court as well as the Appellate bench came to the conclusion that it was a termination in the guise of discharge.

In the above factual back drop, we would like to examine whether the Labour Court was justified in setting aside the order of discharge made by the appellant.

Law on this question by now is well settled. This Court in the case of Krishnadevaraya Education Trust & Anr. vs. L.A. Balakrishna { 32} while considering the similar situation held thus;

"There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, naturally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs ht risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

*If such n order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services." **

It is clear from the above that **if the order of termination indicates that it is a termination simplicitor and does not cast any stigma on the employee by the said order of termination the mere fact that there was an inquiry into his conduct earlier would not by itself render the termination invalid. Applying the said principle, if we see that the order of termination in the present case is an order of discharge simplicitor. #** But in the course of the inquiry, the Labour Court noticed that on an earlier day, there was some incident where the administrative officer found some lacunae in the working of the respondent but based on that no charge-sheet was served nor inquiry was conducted. However, the appellant came to the conclusion that it is not in its interest to continue respondent's services, hence, discharged him. In the background, **the mere fact that there was a misconduct on the part of the respondent which was not enquired into ipso facto does not lead to the conclusion that the order of the termination is colourable and in fact is a punitive order. #**

In H.F. Sangati vs. Registrar General, High Court of Karnataka & Ors. {97}, this Court while considering the discharge of a probationary Munsif held;

*"The impugned order does not cast any stigma on the appellants. All that has been said in the impugned order is that the appellants were unsuitable to hold the post of Munsif. The impugned order of discharge has been passed in strict compliance with the requirements of rule 6. It does not cast any stigma on the appellants nor is it punitive. There was, thus, no requirement to comply with the principles of natural justice, much less to hold any formal proceedings of inquiry before making the order." **

This law laid down by a three Judges bench of this Court also shows that if an employer discharges

the services of a probationer on the ground that his services are unsuitable, it does not cast any stigma on the employee nor it is punitive, in such cases even the principle of natural justices does not apply and there is no need for formal proceedings of inquiry before making such order.

In Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences & Anr. { 44} this Court again considering a similar case held;

*"One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld." **

From the above, it is seen that in the absence of the three facts as mentioned therein, namely,

(a) a full-scale formal enquiry;

(b) into allegations involving moral turpitude or misconduct which;

(c) culminated in a finding of guilt the termination cannot be held to be bad.

This Court in the said case of Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences & Anr. { 44} further held:

"It cannot be held that the enquiry held prior to the order of termination turned the otherwise innocuous order into one of the punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee.

A charge-sheet merely details the allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the appellant than an inability to meet the requirements for the post. None of the three factors catalogued above for holding that the termination was in substance punitive exists in the present case.

*An affidavit cannot be relied on to improve or supplement an order. Equally, an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order." **

From the above, it is clear assuming that there was some sort of misconduct, as noticed in the evidence of the witnesses of the management in the cross-examination, the same could not be used as evidence by the Labour court or by the Appellate court for coming to the conclusion that an order of termination which is otherwise simplicitor in nature is motivated by any consideration other than the decision of the management as to the satisfactory nature of the workman concerned.

As noticed above in the instant case, **the respondent having been appointed as a probationer and his working having been found not to the satisfaction of the employer, it was open to the management to terminate his services. Assuming that there was an incident of misconduct or incompetency prior to his discharge from service, the same cannot be ipso facto be termed as misconduct requiring an inquiry.** # It may be a ground for the employer's assessment of the workman's efficiency and efficacy to retain him in service, unless, of course, the workman is able to satisfy that the management for reasons other than efficiency wanted to remove him from services by exercising its power of discharge On the facts of this case, we are satisfied that the incident referred to in the evidence of the management's witness does not give rise to a conclusion that the discharge of the respondent was a colourable exercise, with a collateral intention of avoiding an inquiry. Nor does the order of discharge carry any stigma. Hence, the Labour Court as well as the Appellate bench of the High Court have erred in coming to a contra conclusion.

This appeal succeeds. The same is allowed. The impugned order of the Appellate bench of the High Court as well as award of the trial court is set aside upholding the order of discharge made by the appellant in regard to the respondent herein.