SUPREME COURT OF INDIA

Abhujit Gupta

Vs

S.N. B. National Centre, Basic Sciences and Others

Appeal (Civil) 5551 of 2004

(B. N. Srikrishna and L. S. Panta, JJ)

18.04.2006

JUDGMENT

B. N. SRIKRISHNA J

The core issue in this appeal is whether the discontinuation of the probationer-appellant was for unsatisfactory services or for a misconduct.

The respondent is an institution carrying on research in basic sciences. It is common ground that the respondent is funded by the Central Government and, therefore, it is "State" within the meaning of Article 12 amenable to the writ jurisdiction under Article 226 of the Constitution of India.

The appellant was selected for the post of administrative officer and joined service under the first respondent on 10th February 1995. The letter of appointment issued to the petitioner on 7th October 1994 made it clear that the petitioner was being appointed on probation for a period of one year.

On 20th November 1995 the appellant was served with a letter informing him that his performance

during the probationary period was "far from satisfactory" and that it had been observed that he lacked drive, imagination and initiative 'in the performance of his duties'. He was informed that, despite being told time and again to improve performance in the said areas, but with no effect. He was advised to improve "in order to enable us to consider your case for confirmation favourably". He was issued several such letters drawing his attention to the fact that his services left much to be desired. His probationary service came to be extended from time to time, the last such extension being granted till 9th April 1998. Finally, by the letter dated 7.4.1998 the petitioner was informed that his service was "unsatisfactory in the areas of drive, initiative, promptness and leadership" and that despite advised verbally and through letter, what were deficiencies in his work he had shown no improvement. His attendance, office work and attention to the academic work and the affairs of the guest house were also unsatisfactory. The first respondent, therefore, said *"your performance, ability and capability during the period of probation has been examined and your service during the period of probation is found to be unsatisfactory and hence you are considered unsuitable for the post you have to. The governing body is of the view that your performance was unsatisfactory and you are not suitable for confirmation".* For these reasons the appellant's probationary period was not extended on the expiration of his probation period on 9th April 1999 without further extension.

The appellant challenged the order of termination of his service on the ground that it was a stigmatic termination by way of punishment for alleged misconducts. The learned single Judge of the High Court allowed the writ petition and quashed the order of termination and directed re-instatement of the appellant with full back- wages. The Division Bench of the High Court, however, allowed the letters patent appeal and held that the letter dated 7th April 1998 was not stigmatic and that it was a legitimate exercise of assessment of probationer's service by the employer, and, therefore, there was no scope for judicial interference therewith. In this view of the matter, the Division Bench allowed the appeal, set aside the judgment of the learned single Judge and dismissed the writ petition. Hence, this appeal.

The learned counsel for the appellant has reiterated the contention that the letter of 7.4.1998 does not amount to termination simpliciter but amounts to a stigmatic dismissal from service as serious misconduct under the bye-laws have been alleged against the appellant for which neither inquiry was held, nor any procedure contemplated under the bye-laws was adopted. The learned counsel drew our attention to the copy of the bye-laws of the respondent under which bye-law no. 12.3 defines Acts of Misconduct or breach of discipline punishable under the Rules. He particularly drew our attention to Bye- law 12.3 (b) (d) and (h) which read as under:

"12.3 Acts of Misconduct : Any act of misconduct or breach of discipline shall be punishable to the extent provided under these regulations. A few such acts of misconduct or breach of discipline as listed below are illustrative in nature. The list is not exhaustive :

a) .....

b) Neglect of allotted work and careless or inefficient performance of duty ;

c) .....

d) habitual unpunctuality and irregular attendance or absence without permission;

e) .....

f) .....

g) .....

h) conduct detrimental to the interest of the Centre;"

The learned counsel contended that the letter 7.4.1998 unmistakably alleges misconducts against the appellant, which would fall within the parameters of these misconducts as defined under above Bye-laws and, therefore, the prescribed procedure had to be followed

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Heavy reliance was placed on Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and ors. , where this Court held that the termination of service of the employee in similar circumstances amounted to misconduct. We may mention here that it is common ground that while the matter was pending before the learned single Judge, sometime in the year 2005, the appellant attained the age of superannuation. The learned counsel for the appellant contended that in the letter dated 7.4.1998 there is reference to certain earlier letters in which the appellant had been called a person of "perverted mind" and "dishonest, duffer having no capacity to learn". A reading of all the letters referred to in the letter of 7.4.1998 would clearly make out a case of allegations of misconduct against the appellant, in the submission of the learned counsel.

In Dr. Mrs. Sumati P. Shere vs. Union of India and others this Court pointed out that an employee on probation should be subjected to assessment of work and should be made aware of the defects in his work and deficiencies in his performance. The Court observed , *"Defects or deficiencies, indifference or indiscretion may be with the employee by the inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, it would be arbitrary to give a movement order to the employee on the ground of unsuitability".* It is the duty of the employer to inform the employee about his deficiencies from time to time so that the employee may improve himself.

In Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences and another 44 this Court considered what should be the best to determine whether a letter of termination of service was termination simpliciter or stigmatic termination. After referring to a number of authorities including the judgment in Parshotam Lal Dhingra vs. Union of India, and Dipti Prakash Banerjee (supra) the

Court observed (vide para 19):

"..Courts continue to struggle with semantically indistinguishable concepts like motive" and "foundation"; and terminations founded on a probationer's misconduct have been held to be illegal while terminations motivated by the probationer's misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents."

Having observed thus, the Court formulated the judicial test to determine as to on which side of the fence the case lay, in the following words (vide para 21):

"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 (c) 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."

It referred to Dipti Prakash Banerjee (supra) and pointed out that in Dipti Prakash Banerjee (supra) the termination letter expressly made reference to an earlier letter which had explicitly referred to all the misconducts of the employee and a report of an inquiry committee which had found that the employee was guilty of misconduct and so the termination was held to be stigmatic and set aside. Finally, this Court said that whenever a probationer challenges his termination the court's first task will be to apply the test of stigma or the 'form' test. If the order survives this examination the "substance" of the termination will have to be found out. What this Court further observed in para 29 is crucial and of great relevance:

"Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above meter unsuitability for the job."

In the case of the appellant before us, the record in uncertain terms makes it clear that every time the appellants attention was drawn to his deficiencies and he was repeatedly advised to improve his behaviour, conduct and discharge of work. True, that in some of the letters there was intemperate language used (the appellant was also equally guilty of doing that). Notwithstanding the intemperate language, we are unable to accept the contention of the appellant's counsel that the letter dated 7.4.1998 indicates that the appellant was being charged with the misconduct and, therefore, being removed from service. Read as a whole, the letter gives the impression that the removal of the

appellant from service was only because the respondents, after giving a long rope to the appellant, had come to the conclusion that the appellant's service was unsatisfactory and there was no hope of his improvement.

The real test to be applied in a situation where an employee is removed by an innocuous order of termination is: Is he discharged as unsuitable or is he punished for his misconduct? In Allahabad Bank Officers' Association and another vs. Allahabad Bank and others 7, this Court was considering a challenge to a compulsory retirement and formulated a practical test to answer the question posed above. This Court (vide para 17) observed that if the order of compulsory removal form the service casts a stigma in the sense that it contains a statement casting aspersion on his conduct or his character, then it can be treated as an order of punishment but not if it merely amounts to highlighting the unsuitability of the employee. As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service.

The learned counsel for the appellant, however, strongly contends that the "stigma" cast on the employee may not be confined to his personal character but may also affect his capacity to work. The test, learned counsel for the appellant submitted, is that, if what is stated in the order of termination is read by a future employer, it prejudices the future employment of the employee. In the face of the law laid down in the judgment just referred, we are unable to accept this as the correct test.

In Ravindra Kumar Misra vs. U.P. State Handloom Corporation Ltd. and another 7 this Court pointed out that in a large corporation administration is bound to be impersonal and in regard to public officers assessment of service has got to be in writing for purposes of record, though it cannot be assumed that such an assessment recorded and the order of termination made with reference to that record would automatically take a punitive character.

The High Court has carefully considered all the circumstances placed before it and arrived at the conclusion that the respondent's work was under observation during the probationary period and that he was given repeated opportunities to improve his performance for which purpose his probation was extended from time to time. The fact that the authority did not find him fit for confirmation was also brought to his notice several times and yet he was given opportunities of improving by extending his probationary service. The High Court has correctly found that the letter dated 7.4.1998 was not punitive in nature and stated, albeit in prolix fashion, that the service of the appellant were unsatisfactory. The High Court points out, and we agree, that detailed reference to all other correspondence was not necessary, but it did not reflect any malice or bias. Finally, as this Court pointed out in P.N. Verma's case (supra) "a termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, does not ipso facto become stigmatic".

For the aforesaid reasons we are of the view that there is no substance in this appeal. The impugned judgment of the High Court requires no interference. The appeal is hereby dismissed without any

order as to costs.