SUPREME COURT OF INDIA

Kendriya Vidyalaya Sangathan

Vs

Arunkumar Madhavrao Sinddhaye and Another

Appeal (Civil) 5452-5453 of 2004

(G. P. Mathur and A. K. Mathur, JJ)

31.10.2006

JUDGMENT

G. P. MATHUR, J.

1. These appeals, by special leave, have been preferred against the judgment and decree dated 5.3.2002 of Bombay High Court by which the second appeal preferred by the respondent Arunkumar Madhavrao Sinddhaye was allowed and the suit filed by him was decreed setting aside the order of termination of services dated 21.3.1975 and directing his reinstatement with full back wages. The appellant preferred a review petition before the High Court which was dismissed on 3.11.2003 and the said order is also under challenge.

2. The respondent Arunkumar Madhavrao Sinddhaye was appointed on a temporary post of Physical Education Teacher in the Kendriya Vidyalaya Sangathan on 25.6.1974. His services were terminated vide order dated 21.3.1975 in accordance with conditions of appointment mentioned in the appointment order. He filed a suit for a declaration that the order of termination of his services dated 21.3.1975 was illegal, inoperative and not binding upon him. The main plea taken in the suit instituted by the respondent was that his services had been terminated by way of punishment as an enquiry had been held behind his back in which some witnesses were examined and after completion of the enquiry, in which he had not been given any opportunity to defend himself, a report was submitted against him and on the basis of the said report his services were terminated. The suit was defended by the appellant on several grounds and the principal ground being that the

services of the petitioner had not been terminated by way of punishment, but in terms of the appointment order. The learned Civil Judge (Jr. Division) Pune, dismissed the suit vide judgment and decree dated 28.2.1986 and the appeal preferred by the respondent against the said decree was also dismissed by VII Additional District Judge, Pune, by the judgment and decree dated 28.4.1987. The second appeal preferred by the respondent was, however, allowed by the High Court and the suit was decreed as mentioned earlier.

3. Before adverting to the submissions made by learned counsel for the parties, it will be convenient to set out the essential facts of the case and the findings recorded by the High Court.

4. The relevant part of the appointment order issued in favour of the respondent by Kendriya Vidyalaya Sangathan, Bombay Regional Office on 25.6.1974 reads as under:-

"No.F.6-5/74/KVS(BR)

Date : 25th June, 1974

"MEMORANDUM"..

SUBJECT: Offer of appointment to the post of Physical Education Teacher.

With reference to his/her application for the above post, the undersigned offers to Shri Arunkumar Madhavrao Siddhaye, a temporary post of Physical Education Tr. in the Kendriya Vidyalaya Sangathan on an initially pay of ....

2.....

3. The services of the appointee are terminable by one month's notice on either side without any reasons being assigned therefor. The appointing authority, however, reserves the right of terminating the services before the expiry of the stipulated period of notice by making payment to the appointee of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

4. If he/she accepts the offer on the terms and conditions stipulated, he/she may please send his/her acceptance to the undersigned within 7 days from the receipt of this letter in the form attached and report for duty to the Principal of the above mentioned Kendriya Vidyalaya . "

The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bombay Region issued an order on 21.3.1975 terminating the services of the respondent with effect from 30.4.1975 and the said order reads as under :

"Shri Arunkumar Madhavrao Siddhaye, PHT, KV, Dehu Road is hereby informed that his services are no longer required by the Sangathan with effect from 30.4.75 (A.N.). His services will therefore stand terminated with effect from the above date as per terms and conditions of appointment mentioned in the offer of appointment No. F.4-5/74/KVS (BR) dated 25.6.74 issued to Shri Siddhaye and the same duly accepted by him vide his letter dated 1.7.74. This may be treated as One Months' Notice.

Sd/-

MADAN GOPAL)

Assistant Commissioner"

5. The principal ground taken by the respondent in the suit instituted by him was that an enquiry had been conducted behind his back in which a finding had been recorded against him and on the basis of the said enquiry his services had been terminated and thus it was not a simple order of termination of services but had been passed by way of punishment, in complete violation of principles of natural justice. It is, therefore, necessary to refer to the relevant facts in this regard. One Capt. V.K. Balasubramanyam sent a letter to the Station Commander, Dehu Road on 21.2.1975 stating that his son Master V.K. Srinivasalu, who was studying in IXth Class had developed serious chest pain on 18th February, 1975 and in spite of his having informed that he was not well, the PT teacher made him to run six rounds (approx. 4 kms) around the school. As the child was not well, he was examined in the Military Hospital on 20th February and the doctor prescribed him some medicines and gave a written advice that he should not do P.T. or other exercises for a week. This was shown to the class teacher who gave a note in writing to the PT teacher exempting the child from PT and other exercises. In spite of doctor's advice and written note of the class teacher, the PT teacher forced the boy to do PT and being unable to do so, he was beaten. It was further mentioned in the letter that this was not the only occasion when corporal punishment had been meted out to the students by the respondent as earlier also this fact had been brought to the notice of the executive committee of the school by Lt. Col. G.V. Lucas and the Principal had promised to stop the mal-practice as corporal punishment was against the rules of the Central School. The Principal of the school forwarded the complaint of Capt. Balasubramanyam to the Regional office of Kendriya Vidyalaya Sangathan, Bombay on 25.2.1975. The Assistant Commissioner, Kendriya Vidyalaya Sangathan then wrote to the Principal on 1.3.1975 to send a report along with original statements regarding the complaint of beating to the students by the respondent. For the purposes of sending the report an enquiry was conducted in which statements of eight students including Master V.K. Srinivasalu were recorded. The Principal had earlier asked for an explanation from the respondent vide his letter dated 26.2.1975 which he had given. The statement of the students was recorded in the presence of the respondent wherein he was allowed to put questions to them. He was again asked to give his own statement, which he refused to give. The enquiry officer then submitted his opinion on 7.3.1975 and the same is being reproduced below:-

OPINION OF THE ENQUIRY OFFICER:

"Based on the evidence adduced above, I am of the opinion that Shri SHIDE, PT Teacher, Central School, DEHU Road has meted out corporal punishment to Master VK Srinivasalu, Student IX Std. on 18 Feb. 75. I further feel that he has been indulging in the practice of meting out corporal punishment to students from time to time with varying degrees of severity.

I recommend that disciplinary action be taken against Shri Shide.

Sd/-

Enquiry Officer"

The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bombay Region thereafter passed the impugned order on 21.3.1975 by which the respondent was informed that his services were no longer required and the same shall stand terminated with effect from 30.4.1975.

6. The findings recorded by the High Court on the basis of which the judgments and decrees passed by the two Courts below were set aside and the second appeal preferred by the respondent was allowed decreeing his suit, require to be noticed. In para 9, the High Court has held:-

"9. ..... Furthermore it has been indicated by the case itself that the order of termination of service was after initiation of the enquiry in which articles of imputation and charge were served on the appellant and some witnesses were examined. It implicitly conveys the information that the said enquiry was either not brought or completed. Had that been completed, the circumstances which were against the appellant would have been put to him for the purpose of affording him an opportunity of submitting his explanation to those circumstances, otherwise there would not have been order which would have been conveyed to the appellant that the said enquiry was dropped. None of these two things did happen and therefore, there is irresistible conclusion coming up showing that the order of termination of service of the appellant was nothing but the result of said enquiry which was neither completed legally nor dropped."

Again in para 11, the High Court held:-

"11. In the present case both the Courts below have committed gross error of law in ignoring that the said order of termination of service of the appellant followed the said enquiry neither legally completed nor dropped. Had it been the case that the said enquiry was dropped then there should have been some meaning to say that the said order of termination of service was not carrying any stigma. But in this case that is not so. Without completion of that enquiry, service of appellant has been terminated and the appellant has been put under dolour by uncertainty of future.

7. The learned counsel for the appellant Kendriya Vidyalaya Sangathan has submitted that the enquiry held against the respondent was not a disciplinary enquiry but was only in the nature of a

preliminary or fact finding enquiry. In fact the enquiry officer after holding of the fact finding enquiry had himself recommended that disciplinary action be taken against the respondent. However, instead of taking disciplinary action, the appellant thought it proper to terminate the services of the respondent in terms of the appointment order as he was a purely temporary employee and his services were terminable by one month's notice on either side without assigning any reasons. Learned counsel for the appellant has further submitted that the High Court has grossly erred in equating a preliminary or fact finding enquiry with that of a regular disciplinary enquiry and in coming to a conclusion that the services of the respondent had been terminated by way of punishment. It has also been urged that the termination order is a simple order passed in terms of the appointment order and it is non-stigmatic and does not visit the respondent with any evil consequences and in such circumstances the High Court manifestly erred in setting aside the judgments and decrees passed by the two Courts below and in decreeing the suit filed by the respondent. Learned counsel for the respondent has, on the other hand, submitted that on the basis of a complaint made by Capt. V.K. Balasubramanyam regarding beating of his son, an enquiry had been held wherein statements of students had been recorded and in these circumstances the order terminating the services of the respondent was based upon the result of the said enquiry and had been passed by way of punishment. It has been urged that as the respondent had not been afforded any opportunity to defend himself, there was complete violation of principles of natural justice and as the order had been passed by way of punishment it was wholly illegal and the High Court, therefore, rightly decreed the suit filed by the respondent.

8. We have given careful consideration to the submissions made by learned counsel for the parties and have also examined the material on record. It may be mentioned, at the outset, that the respondent was appointed as PT teacher in Kendriya Vidyalaya Sangathan and as such he does not hold a civil post within the meaning of Article 311 of the Constitution and the said provision does not apply to him. One of the terms of the appointment order (offer of appointment) dated 25.6.1974 was that his services were terminable by one month's notice on either side without assigning any reasons. The respondent accepted the appointment order and joined duty and thereby accepted the conditions of appointment, namely, that his services were terminable by one month's notice without any reasons being assigned. His services were terminated vide notice dated 21.3.1975 with effect from 30.4.1975 in terms of the appointment order. The order terminating the services of the respondent is a wholly innocuous order and does not contain any stigma against him. It may also be noted that the notice of termination of services was served upon the respondent when he had put in less than 9 months of service.

9. The question which arises for consideration is, whether the order of termination of services of the respondent had been passed by way of punishment or it had been passed in accordance with the conditions mentioned in the appointment order by which the respondent had been appointed on a temporary post of Physical Education Teacher. If it is found that the termination of services was by way of punishment, another question may arise whether a formal departmental enquiry was held prior to the passing of termination order and whether the respondent was given adequate opportunity to defend himself in the said enquiry. It will be seen that the complaint made by Capt. B.K. Balasubramanyam about forcing his son Master V.K. Srinivasalu to do six rounds (4 Kms.) around the school when he was having chest pain and was unwell and further forcing him to do PT and other exercises in spite of advice of the doctor and also giving him beating was forwarded by the Principal to the Regional Office of Kendriya Vidyalaya Sangathan, Bombay. The Assistant Commissioner of the Kendriya Vidyalaya Sangathan asked the Principal to submit a report along

with original statements of the students, who had been subjected to beating by the respondent. The Principal was not an eye witness of the incident relating to Master V.K. Srinivasalu and also of the corporal punishment which was awarded by the respondent to the other students. Therefore, in order to ascertain the complete facts it was necessary to make enquiry from the concerned students. If in the course of this enquiry the respondent was allowed to participate and some queries were made from the students, it would not mean that the enquiry so conducted assumed the shape of a formal departmental enquiry. No articles of charges were served upon the respondent nor the students were asked to depose on oath. The High Court has misread the evidence on record in observing that articles of charges were served upon the respondent. The limited purpose of the enquiry was to ascertain the relevant facts so that a correct report could be sent to the Kendriya Vidyalaya Sangathan. The enquiry held can under no circumstances be held to be a formal departmental enquiry where the non-observance of the prescribed rules of procedure or a violation of principle of natural justice could have the result of vitiating the whole enquiry. There cannot be even a slightest doubt that the Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bombay Region, terminated the services of the respondent in accordance with the terms and conditions mentioned in his appointment order which expressly conferred power upon the appointing authority to terminate the respondent's services by one month's notice without assigning any reasons. The services of the respondent were, therefore, not terminated by way of punishment.

10. A similar question was considered in considerable detail in State of Maharashtra vs. Veerappa R. Saboji , and it was observed as under:

- "Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and find whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government servant who challenges such an order."

In State of Uttar Pradesh and another vs. Kaushal Kishore Shukla 3, the employee was appointed on ad hoc basis on 18.2.1977 as an Assistant Auditor and his employment was extended on several occasions and the last extension was granted on 21.1.1980, which was to expire on 28.2.1981. His services were terminated on 23.9.1980. The termination order was challenged on the ground that certain allegations of misconduct had been made against him regarding which an ex-parte inquiry was held wherein he was not given any opportunity of hearing. The High Court accepted the plea of the employee that the order of termination of services was founded on the allegations of misconduct and the ex-parte enquiry report and accordingly quashed the termination order. This Court set aside the judgment of the High Court with the following observations:-

"The respondent being a temporary government servant had no right to hold the post, and the competent authority terminated his services by an innocuous order of termination without casting any stigma on him. The termination order does not indict the respondent for any misconduct. The inquiry which was held against the respondent was preliminary in nature to ascertain the respondent's suitability and continuance in service. There was no element of punitive proceedings as no charges had been framed, no inquiry officer was appointed, no findings were recorded, instead a preliminary inquiry was held and on the report of the preliminary inquiry the competent authority terminated the respondent's services by an innocuous order in accordance with the terms and

conditions of his service. Mere fact that prior to the issue of order of termination, an inquiry against the respondent in regard to the allegations of unauthorized audit of Boys Fund was held, does not change the nature of the order of termination into that of punishment as after the preliminary inquiry the competent authority took no steps to punish the respondent, instead it exercised its power to terminate the respondent's services in accordance with the contract of service and the Rules. The allegations made against the respondent contained in the counter-affidavit by way of defence filed on behalf of the appellants also do not change the nature and character of the order of termination."

In S.P. Vasudeva vs. State of Haryana and others , it was held that where an order of reversion of a person who had no right to the post, does not show ex facie that he was being reverted as a measure of punishment or does not cast any stigma on him, the courts will not normally go behind that order to see if there were any motivating factors behind that order.

Both these decisions have been rendered by Benches of three learned Judges.

11. In Ravindra Kumar Misra vs. U.P. State Handloom Corporation Ltd. and another 7, the appellant had been appointed on 30.10.1976 and had got two promotions while still working in temporary status and by 1982 he had been working as Deputy Production Manager. On 22.11.1982 he was placed under suspension and the suspension order recited that as a result of preliminary inquiries made by the Central Manager it had come to notice that the appellant was responsible for misconduct, dereliction of duty, mismanagement and showing fictitious production of terrycot cloth. The suspension order was revoked on 1.2.1983 and thereafter on 10.2.1983 a simple order terminating his services was passed reciting that his services were no more required and his services would be deemed to be terminated from the date of receipt of the notice. It was further mentioned therein that he would be entitled to receive one month's salary in lieu of notice period. The termination order was challenged by the appellant on the ground that the same was punitive in nature, which was also demonstrated from the fact that shortly before the order of termination a suspension order had been passed wherein a specific charge of misconduct against him was mentioned. After referring to several earlier decisions this Court repelled the challenge made by the employee by observing as under in paragraph 6 of the Report: - ".

In several authoritative pronouncements of this Court, the concept of 'motive' and 'foundation' has been brought in for finding out the effect of the order of termination. If the delinquency of the officer in temporary service is taken as the operating motive in terminating the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. This is so on account of the fact that it is necessary for every employer to assess the service of the temporary incumbent in order to find out as to whether he should be confirmed in his appointment or his services should be terminated. It may also be necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such an assessment would be necessary merely because the appropriate authority proceeds to make an assessment and leaves a record of its views the same would not be available to be utilized to make the order of termination following such assessment, punitive in character."

12. In Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences and another 44, after referring to large number of earlier decisions, the law on the point has been very clearly

elucidated in the following manner :-

"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.

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. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."

13. In State of Punjab vs. Sukhwinder Singh , a Bench of three learned Judges to which one of us was a party, after referring to several earlier decisions of this Court including those referred to above, laid down the principle as under in para 19 of the report :

"19. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not, makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong."

14. As shown above, the nature of enquiry conducted against the respondent was merely a

preliminary or fact finding enquiry and no formal full scale departmental enquiry had been conducted against the respondent. In fact, the enquiry officer had himself recommended that disciplinary action be taken against the respondent. However, the authorities chose not to hold a disciplinary enquiry against the respondent and did not serve him with any article of charges or take any further steps in that regard. Instead they chose to exercise power under the terms and conditions of the appointment order. The termination order is wholly innocuous and does not cast any stigma upon the respondent nor it visits him with any evil consequences. The High Court seems to have proceeded on a wholly wrong basis and has treated the enquiry which was only a preliminary or fact finding enquiry into a regular disciplinary enquiry, which was not the case here. In these circumstances the judgment of the High Court is wholly erroneous in law and has to be set aside.

15. Learned counsel for the respondent has relied upon Samsher Singh vs. State of Punjab & Anr. , Bishan Lal Gupta Vs. State of Haryana & Ors. Anoop Jaiswal Vs. Government of India & Anr. and Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors. in support of his submission that the impugned order of termination of services had been passed by way of punishment and as the same had been done without affording an opportunity of defending himself, the termination order was illegal. In Bishan Lal Gupta (supra) it was held where the intention behind an inquiry against a probationer was not to hold a full departmental trial to punish but a summary inquiry to determine only suitability to continue in service of the probationer and the probationer was given ample opportunity to answer in writing whatever was alleged against him in show cause notice, the innocuous order of termination following such summary inquiry could not be said to be an order of punishment which entitled him to a full-fledged inquiry contemplated by Article 311 of the Constitution. In Anoop Jaiswal (supra) and Dipti Prakash Banerjee (supra) it was found as a fact that the misconduct alleged was the foundation of the impugned order of termination of services. It was after analysis of all earlier decisions that the principle of law has been laid down in Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences, referred to above. Therefore, the authorities cited by learned counsel for the respondent do not advance his case in any manner.

16. In the result, the appeals are allowed and the judgment and decree dated 5.3.2002 passed in Second Appeal No.463 of 1988 and also the order dated 3.11.2003 passed in review petition by the High Court are set aside. The decrees passed by the two Courts below dismissing the suit filed by the respondent are affirmed. No order as to costs.