

**SUPREME COURT OF INDIA**

Rajesh Kohli

Vs.

High Court of J.&K.

Writ Petition (Civil) No. 95 of 2004

(Dr. Mukundakam Sharma and Anil R. Dave JJ.)

21.09.2010

**JUDGEMENT**

**Dr. Mukundakam Sharma, J.**

1. The present Writ Petition has been filed by the petitioner under Article 32 of the Constitution of India against the impugned administrative order of the High Court of Jammu & Kashmir [Respondent No. 1] recommending the termination of service of the petitioner who was working as a probationary Judicial Officer, and also against the order issued by the State of Jammu & Kashmir [Respondent No. 2] on the basis of such recommendation, on 03.07.2003, dispensing with the services of the petitioner as a District & Sessions Judge.

2. The petitioner herein was recommended by the High Court of Jammu & Kashmir for appointment as the District and Sessions Judge on a temporary basis. This aforesaid recommendation of the High Court was accepted by the Government of Jammu & Kashmir and an order of appointment was issued to him appointing him as the District and Sessions Judge on a temporary basis. It was clearly mentioned in the said order of appointment issued by the State Government that the petitioner would remain on probation for a period of two years as provided under the Jammu & Kashmir Higher Judicial Service Rules. Consequent upon the aforesaid temporary appointment, the petitioner was appointed as 3rd Additional District Sessions Judge, Srinagar by order dated 28.08.2000. Thereafter he was transferred and posted as Additional District and Sessions Judge, Jammu by issuing an order dated 05.06.2001.

3. At this stage, it is required to be mentioned that in terms of the Jammu & Kashmir Higher Judicial Service Rules, the total period of probation for a Judicial Officer after his initial appointment could be for three years for when he is initially appointed, at the first instance his probation period is given as two years and thereafter the same could be extended by another one year. In this connection, reference could be made to Rule 15 of the Jammu & Kashmir Higher Judicial Service Rules which provides as follows: -

“15. Probation - (1) All persons shall on appointment to the service in the substantive vacancies be placed on probation. The period of probation shall, in each case, be two years;

provided that the period for which an officer has been continuously officiating immediately prior to his appointment may be taken into account, for the purpose of computing the period of probation.

(2) The Governor may in consultation with the Court, at any time extend the period of probation; provided that the total period of probation shall not ordinarily exceed three years. An order sanctioning such extension of probation shall specify whether or not such extension shall count for increment in the time-scale.

(3) If it appears to the appointing authority at any time during or at the end of the period of probation or extended period of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, his service may be dispensed with immediately.

(4) A person whose services are dispensed with shall not be entitled to any compensation.”

4. The petitioner was also given his increments in terms of the rules. However, while the petitioner was so serving as an Additional District and Sessions Judge, a complaint was received against him, filed by one Mr. Babu Ram, which was duly supported by an affidavit dated 06.08.2001, contending inter alia that the petitioner while acting as a counsel for him fraudulently withdrew an amount of Rs. 2.6 lacs deposited with the Registrar [Judicial], High Court of Jammu & Kashmir which was payable to the complainant - Babu Ram.

5. The aforesaid complaint was enquired into by the Chief Justice of the High Court through the Registrar [Vigilance] of the High Court. On conclusion of the enquiry, a report was submitted stating inter alia that Mr. Rajesh Kohli, the petitioner herein, who was engaged by Mr. Narain Dutt - the attorney holder of Babu Ram, identified someone else as Babu Ram before Registrar [Judicial], Jammu & Kashmir High Court and received an account payee cheque in the name of Babu Ram. In the said report, it was also alleged that the petitioner besides identifying the impersonator as Babu Ram, also introduced him to Vijay Bank at the time of opening of the Bank account and thereby managed to unlawfully receive an amount of Rs. 2.6 lacs, while the real beneficiary - Babu Ram neither appeared before the Registrar [Judicial] or before Vijaya bank nor did he receive the said amount. The aforesaid report of the Registrar [Vigilance] dated 24.12.2001 was placed before the Chief Justice of the Jammu & Kashmir High Court who directed that the matter be referred to the Chairman, Disciplinary Committee for necessary action. The Registrar [Judicial] of the High Court was asked to file a criminal complaint against the petitioner before the SHO of the concerned police station.

6. Further, during the period when the petitioner was posted to District - Kargil as Principal District & Sessions Judge, he did not join there, w.e.f., 24.12.2001 to 18.01.2002 and an explanation was sought from him in that regard. Even thereafter, a complaint from a judicial employee of District Kargil was received wherein it was alleged that the petitioner had been abusing the employees and had created lot of problems at the District Kargil.

“These matters are recorded in the personal records of the petitioner. After completion of the initial two years of his probationary period, his records and his case were required to be placed before Full Court for consideration of his case for confirmation or extension of period of probation or otherwise. Consequently his records were considered by the High Court in its full court meeting held on 26.04.2003 at Jammu, wherein it was resolved as under: - ".....  
resolved that services of Shri Rajesh Kohli, District and Sessions Judge are not found satisfactory and thus the probation of the officer is not extended.....

..... His services are dispensed with....."

The aforesaid resolution of the full court meeting with the recommendation was forwarded to the State Government and the State Government passed an order on 03.07.2003, whereby the services of the petitioner was dispensed with as recommended by the Hon'ble High Court. This action was taken in exercise of the powers vested on the competent authority under sub Rules 3 and 4 of Rule 15 of the Judicial Service Rules.”

7. Being aggrieved by the issuance of the aforesaid order dated 03.07.2003 dispensing with his service, the petitioner filed the present Writ Petition on which notice was issued. On service of notice, the High Court has entered appearance and also filed the counter affidavit explaining the circumstances under which the service of the petitioner came to be terminated.

8. The petitioner appeared in person before us and submitted that the aforesaid order issued by the Government of Jammu & Kashmir of 03.07.2003 is illegal and without jurisdiction as the said order was not issued by the Governor but was issued by the Government of Jammu & Kashmir. He also submitted that the recommendation of the High Court as communicated under letter dated 05.05.2003 is also illegal and liable to be set aside as the High Court terminated the service of the petitioner under the aforesaid order for which no power is vested on the High Court to dispense with the service under its own order. It was also submitted by him that he had completed his two years' probation period on 23.08.2002 and since there was no order of extension of his probation period prior to and immediately after 23.08.2002, he should be deemed to have been confirmed in the judicial service and therefore his service could not have been terminated on the ground that he was on probation.

9. The petitioner also submitted that his service was terminated on the ground of an alleged misconduct, namely, pendency of a criminal complaint and his alleged behaviour with subordinate staff and, therefore, the said order of termination of service was in the nature of a

punishment by casting a stigma on the petitioner and therefore illegal and without jurisdiction as no opportunity of hearing was given to the petitioner prior to passing of the order of his termination. He also submitted that since he was granted increments by the respondent, it is proved that the Respondents were satisfied with his service and, therefore, the order terminating his service is without jurisdiction.

10. Counsel appearing for the respondent, the High Court of Jammu & Kashmir, however, refuted the aforesaid submissions and placed before us the records of High Court connected with the service of petitioner and also the records leading to his termination from service. He submitted that the petitioner continued to be on probation even after two years as no order of his confirmation was issued or passed by the respondent and that his service was terminated within the three years period of his probation on the ground of unsatisfactory service. He denied that the impugned order is stigmatic or in any way punitive or that there was any violation of the principles of natural justice. He submitted that since the service of the petitioner was terminated on the ground of unsatisfactory service, there was no question of drawing up of any departmental proceedings against him.

11. In the light of the aforesaid submissions of the counsel appearing for the parties we have perused the records. The petitioner was recommended by the High Court of Jammu & Kashmir for appointment as a District and Sessions Judge on temporary basis. The appointment letter placed on record clearly indicates that his initial appointment was not only on temporary basis but he was also kept on probation for a period of two years. Rule 15 of the Jammu & Kashmir Higher Judicial Service Rules permits an officer to be kept on probation ordinarily for a period of at least three years.

12. The petitioner was temporarily appointed as District & Sessions Judge on 24.08.2000 and therefore completed his initial period of probation of two years on 23.08.2002. Thereafter his matter was placed on the administrative side before the full court of the High Court in its meeting held on 26.04.2003 for the purpose of confirmation of his service or otherwise or for extension of probationary period. The full court on consideration of the records of the petitioner held that his service was not found to be satisfactory and therefore, his probation period would not be extended and accordingly the full court recommended that the services of the petitioner be dispensed with. At this stage, it may also be noted that when by the order dated 03.07.2003 the service of the petitioner was terminated, the period of probation of the petitioner was extended for the period from 24.08.2000 to 05.05.2003, the date on which a follow-up order was issued by the High Court to the State Government recommending his case for termination. Finally by the order dated 03.07.2003, the service of the petitioner was terminated.

13. Since the rule permits probation to be extended for another one year and since there was no order of confirmation passed by the respondents confirming his service, the petitioner would be deemed to be continuing on probation immediately after his expiry of the initial two years of probation. In this regard, we may refer to the case of *Satya Narayan Athya v. High Court of M.P.*<sup>1</sup> in which a judicial officer was not given any confirmation letter even

after the completion of his two years' of probation period. The rules in the said case provided for the extension of initial two years of probation period for a further period of two years. This Court in that case held at Paragraphs 3 & 5 that: -

“3. ....A reading thereof would clearly indicate that every candidate appointed to the cadre shall undergo training initially for a period of six months before he is appointed on probation for a period of two years. On his completion of two years of probation, it may be open to the High Court either to confirm or extend the probation. At the end of the probation period, if he is not confirmed on being found unfit, it may be extended for a further period not exceeding two years. It is seen that though there is no order of extension, it must be deemed that he was continued on probation for an extended period of two years. On completion of two years, he must not be deemed to be confirmed automatically. There is no order of confirmation. Until the order is passed, he must be deemed to continue on probation.

5. Under these circumstances, the High Court was justified in discharging the petitioner from service during the period of his probation. It is not necessary that there should be a charge and an enquiry on his conduct since the petitioner is only on probation and during the period of probation, it would be open to the High Court to consider whether he is suitable for confirmation or should be discharged from service.”

14. During the period of probation an employee remains under watch and his service and his conduct is under scrutiny. Around the time of completion of the probationary period, an assessment is made of his work and conduct during the period of probation and on such assessment a decision is taken as to whether or not his service is satisfactory and also whether or not on the basis of his service and track record his service should be confirmed or extended for further scrutiny of his service if such extension is permissible or whether his service should be dispensed with and terminated. The services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance, but also on the probity as to how one has conducted himself.

15. The aforesaid resolution taken by the full court on its administrative side clearly indicates that the matter regarding his confirmation or otherwise or extension of his probation period for another one year was considered by the full court but since his service was not found to be satisfactory on consideration of the records, therefore, the full court decided not to confirm him in service and to dispense with his service and accordingly recommended for dispensation of his service. On the basis of the aforesaid recommendation of the High Court, an order was passed by the Government of Jammu & Kashmir dispensing with the service of the petitioner.

16. These facts clearly prove and establish that the order of termination of service of the petitioner was not issued by the Jammu & Kashmir High Court but it only recommended his termination as his service was not found to be satisfactory. The aforesaid recommendation

was accepted by the Government which finally ordered the termination of his service. The aforesaid order was an order of the competent authority and issued by the Government of Jammu & Kashmir. Since the said order was issued by the competent authority, it was a valid order and should be treated as such, although it was specifically not issued in the name of the Governor.

17. In the present case, two orders are challenged, one, which was the order of the High Court based on the basis of the resolution of the full court and the other one issued by the Government of Jammu & Kashmir on the ground that they were stigmatic orders.

18. In our considered opinion, none of the aforesaid two orders could be said to be a stigmatic order as no stigma is attached. Of course, aforesaid letters were issued in view of the resolution of the full court meeting where the full court of the High Court held that the service of the petitioner is unsatisfactory. Whether or not the probation period could be or should be extended or his service should be confirmed is required to be considered by the full court of the High Court and while doing so necessarily the service records of the petitioner are required to be considered and if from the service records it is disclosed that the service of the petitioner is not satisfactory it is open for the respondents to record such satisfaction regarding his unsatisfactory service and even mentioning the same in the order would not amount to casting any aspersion on the petitioner nor it could be said that stating in the order that his service is unsatisfactory amounts to a stigmatic order.

19. This position is no longer *res integra* and it is well-settled that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In *Pavanendra Narayan Verma v. Sanjay Gandhi PGI Of Medical Sciences*<sup>2</sup>, this Court has explained at length the tests that would apply to determine if an order terminating the services of a probationer is stigmatic. On the facts of that case it was held that the opinion expressed in the termination order that the probationer's "work and conduct has not been found satisfactory" was not *ex facie* stigmatic and in such circumstances the question of having to comply with the principles of natural justice do not arise. In this case court had the occasion to determine as to whether the impugned order therein was a letter of termination of services *simpliciter* or stigmatic termination. After considering various earlier decisions of this Court in para 21 of the aforesaid decision it was stated by this Court thus: (SCC p. 528) "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 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 anyone of the three factors is missing, the termination has been upheld."

“In para 29 of the judgment, it further held thus:

(SCC, p.529) "29. 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 mere unsuitability for the job.”

20. In the case of *Krishnadevaraya Education Trust v. L.A. Balakrishna*<sup>3</sup>, the services of respondent-Assistant Professor were terminated on the ground that his on the job proficiency was not upto the mark. This Court held that merely a mention in the order by the employer that the services of the employee are not found to be satisfactory would not tantamount to the order being a stigmatic one. This Court held in para 5 thus: - "5. 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, normally 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 the 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.”

6. If such an 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.”

21. In the case of *Chaitanya Prakash v. H. Omkarappa*<sup>4</sup>, the services of respondent were terminated by the appellant company. During the period of probation, his services were not found to be satisfactory and he was also given letters for improvement of his services and his period of service was also extended and ultimately company terminated him.

“Court after referring to a series of cases held that the impugned order of termination of respondent is not stigmatic.”

22. In the case of *State of Punjab v. Bhagwan Singh*<sup>5</sup> this Court at paragraphs 4 & 5 held as follows: -

“4. .... In our view, when a probationer is discharged during the period of probation and if for the purpose of discharge, a particular assessment of his work is to be made, and the authorities referred to such an assessment of his work, while passing the order of discharge, that cannot be held to amount to stigma.

5. The other sentence in the impugned order is, that the performance of the officer on the whole was "not satisfactory". Even that does not amount to any stigma.”

23. In the present case, the order of termination is a fall out of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such satisfaction even if recorded that his service is unsatisfactory would not make the order stigmatic or punitive as sought to be submitted by the petitioner. On the basis of the aforesaid resolution, the matter was referred to the State Government for issuing necessary orders.

24. One of the issues that were raised by the petitioner was that he was granted two increments during the period of two and a half years of his service. Therefore the stand taken by the respondents that his service was unsatisfactory is belied according to the petitioner because of the aforesaid action even on the part of the respondents impliedly accepting the position that his service was satisfactory.

25. The aforesaid submission of the petitioner is devoid of any merit in view of the fact that since the petitioner was continuing in service, therefore, the case for granting increment was required to be considered which was so granted. The mere granting of yearly increments would not in any manner indicate that after completion of the probation period the full court of the High Court was not competent to scrutinize his records and on the basis thereof take a decision as to whether or not his service should be confirmed or dispensed with or whether his probation period should be extended. The High Court has a solemn duty to consider and appreciate the service of a judicial officer before confirming him in service.

“The district judiciary is the bedrock of our judicial system and is positioned at the primary level of entry to the doors of justice. In providing the opportunity of access to justice to the people of the country, the judicial officers who are entrusted with the task of adjudication must officiate in a manner that is becoming of their position and responsibility towards society.”

26. Upright and honest judicial officers are needed not only to bolster the image of the judiciary in the eyes of litigants, but also to sustain the culture of integrity, virtue and ethics

among judges. The public's perception of the judiciary matters just as much as its role in dispute resolution. The credibility of the entire judiciary is often undermined by isolated acts of transgression by a few members of the Bench, and therefore it is imperative to maintain a high benchmark of honesty, accountability and good conduct.

27. In the light of the aforesaid discussion, the contentions raised by the petitioner are found to be without any merit and consequently they are rejected.

28. As a result, there is no merit in this Writ Petition, which is hereby dismissed, leaving parties to bear their own costs.

<sup>1</sup>(1996) 1 SCC 560

<sup>2</sup>(2002) 1 SCC 520

<sup>3</sup>(2001) 9 SCC 319

<sup>4</sup>(2010) 2 SCC 623

<sup>5</sup>(2002) 9 SCC 636