PUNJAB AND HARYANA HIGH COURT

Deep Kaur

Vs

State (P & H)

Letters Patent Appeal No. 276 of 1964, in S.A. No. 1410 of 1960

(Mehar Singh, C.J. and D.K. Mahajan, J.)

12.02.1964. 20.07.1966

JUDGMENT

D.K. Mahajan, J.

1. This is an appeal under Clause 10 of the Letters Patent and is directed against the decision of a learned Single Judge of this Court affirming, on appeal, the decision of the lower appellate Court.

2. So far as the facts are concerned, there is no dispute. The appellant, Shrimati Deep Kaur, was appointed in the Punjab Civil Medical Service Class II (Women's Branch) on 15th January, 1949 on probation for a period of two years. But this period was extended by another year. Her services were proposed to be terminated by the Director, Health Services, Punjab, vide letter No. 227-G/S dated the 14th of February, 1952 (Copy Exhibit P. 3/A). In this letter, it was pointed out that during the period she had been in the P. C. M. S. Class II (Women's Branch), her work and conduct has not been satisfactory and various instances of that were stated. It was further stated that she was not considered to be a fit person for retention in service. She was asked to show cause why her services should not be terminated. An explanation dated the 4th March, 1952 (Copy Exhibit DW-1/5/A) was submitted by her. On 15th April, 1952, the Director, Health Services, Punjab sent a letter (Exhibit P. 4/A) to Dr. Moti Singh, Civil Surgeon, Dharamsala, under whom the appellant was then working. This letter is as follows :-

> "Subject :- Complaint against Dr. Dip Kaur, P. C. M. S., Women Assistant Surgeon-in-charge, Women Section, Civil Hospital, Dharmasala. Reference; correspondence ending with your endorsement No. 3238 dated 14-3-1952 on the subject noted above.
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> In view of the unsatisfactory reports on the work and conduct of Dr. Dip Kaur, P. C. M. S., Woman Assistant Surgeon-in-charge, Women Section, Civil Hospital, Dharamasala, Government have decided that she should not be retained in service. Her services should, therefore, be terminated immediately under advice to this office. Receipt of this letter may kindly be acknowledged.
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> The appellant's services were terminated in pursuance of this letter. She made a number of

representations to the Government with no effect. Thereafter, she filed a Writ petition (C. W. No. 377/1957) in this Court. This petition was dismissed on 17th February, 1958 on two grounds -

(1) that the petition was very much delayed; and

(2) that it was open to her to seek her remedy in a Court of law.

This led to the suit out of which the present appeal has arisen. The suit was filed on the 14th June, 1958 for a declaration that the termination of her services was illegal, ineffective and not binding on her and that she be deemed to be still in service. The suit was contested by the State Government. On the pleadings of the parties, the following issues were framed :- "(1) Is the suit within time?

(2) Whether the plaintiff was dismissed vide order dated the 22nd April, 1952? If so, whether it is ultra vires, illegal and void?"

The trial Court decided issue No. (1) in favour of the plaintiff and issue No. (2) against her; with the result that her suit was dismissed. She filed an appeal against the decision of the trial Court to the District Judge and the learned District Judge affirmed the finding of the trial Court on both the issues and rejected her appeal. Against this decision, she preferred Regular Second Appeal No. 1410 of 1960 to this Court which also failed and against which the present appeal under Clause 10 of the Letters Patent has been filed before us. The decision only on issue No. (2) has been challenged.

3. On issue No. (2), two contentions were advanced before the learned Single Judge, namely :

(1) that according to Rule 7 of the Punjab Civil Medical Service, Class II (Recruitment and Conditions of Service) Rules, 1943 (hereinafter referred to as the Medical Rules), the appellant's services could only be terminated within the period of three years, the maximum period of probation provided therein. After the expiry of the period of three years, the appellant stood automatically confirmed and her services could not be terminated without complying with the provisions of Article 311 of the Constitution of India; and

(2) that the order terminating the services of the appellant 'in view of the unsatisfactory reports on her work and conduct' attaches a stigma and, therefore, the provisions of Article 311 of the Constitution of India are attracted.

4. Both these contentions were rejected by the learned Single Judge. On the first contention, the learned Judge took the view that Rule 7 of the Medical Rules did not apply to the appellant because there was no allegation, much less proof, that the petitioner was appointed against a permanent vacancy. Even on the assumption, that the appellant was appointed against a permanent vacancy, the learned Judge took the view that there could be no automatic confirmation; and in support of this finding, the learned Judge relied upon the decision of the

Supreme Court in *Ranendra Chandra Banerjee v. Union of India*[1], Another contention advanced by the learned counsel for the appellant before the learned Single Judge, that according to Rule 2.49 of the Punjab Civil Services Rules, Volume 1, Part 1, the appellant must be treated as having been appointed against a permanent vacancy, was negatived with the following observations:

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> x x x x
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> Mr. Gujral, however, relied on Rule 2.49 of the Punjab Civil Services Rules, Volume 1, Part 1, according to which a probationer means a Government servant employed on probation in or against a substantive vacancy in the cadre of a department, and he, therefore, argued that Rule 7 would be applicable to the plaintiff's case. Note 3 to this rule, however, makes a distinction between a 'probationer' and a 'person on probation', and it states that while a probationer is one appointed in or against a post substantively vacant "with definite conditions of probation, a person on probation is one appointed to a post (not necessarily vacant substantively) for determining his fitness for eventual substantive appointment to that post. There is nothing on the record to indicate that the plaintiff was not placed 'on probation' but was a probationer and hence Mr. Gujral's argument falls to the ground.
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> x x x x
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> x x x"

5. The second contention was also negatived by the learned Single Judge on the short ground that the termination of the services of the petitioner fell strictly within the rule laid down by Supreme Court of India in *State of Orissa v. Ram Narayan Das*[2], The order terminating the services was passed strictly in accordance with the rules governing the petitioner and not by way of punishment.

6. Mr. Gujral, learned counsel for the appellant, has reiterated all the contentions that were raised by him before the learned Single Judge. He further contends that, on the facts of the present case, the conclusion was irresistible that the termination of the services of the petitioner was by way of punishment.

7. I will, in the first instance, take up the argument of Mr. Gujral that the petitioner stood automatically confirmed after the expiry of the period of three years. In suport of his contention, Mr. Gujral relies upon the Division Bench decision of this Court in *Dharam Singh v. State of Punjab*[3], This decision certainly supports his contention. We are also told that an appeal against this decision is pending in the Supreme Court. But this question would only arise if Rule 7 of the Medical Rules is applicable to the appellant. That rule would only be applicable, as its terminology indicates, to a person who has been appointed against a permanent vacancy. All the Courts below have come to a concurrent decision that there is no allegation, much less proof, that the appellant was appointed against a permanent vacancy. Therefore, Rule 7 will not apply. The explanation to Rule 7(1) also leads to the same conclusion. The explanation is in the following terms- Explanation:- Officiating service shall be reckoned as period spent on probation, but no

member of the Service, who is officiating in any appointment shall on the completion of his period of probation be entitled to be confirmed until he is appointed against a permanent vacancy. xx xx xx" If at all, it is only a person, who is appointed against a permanent vacancy, who, after the completion of the period of probation, would get automatically confirmed. As is clear finding of all the Courts below, that the appellant was not officiating against a permanent vacancy, R. 7 will not apply. So far as officiating and temporary hands are concerned, Rule 7(4) of the Medical Rules exclude their cases from the mandatory provision that, in no case, the period of probation can exceed three years. In the case of such persons, the period of probation could even be extended beyond the period of three years. Thus the argument of automatic confirmation is not available to the appellant under Rule 7. Barring a case of automatic confirmation, the rule in other cases is that till an order of confirmation is passed, the person on probation or whose appointment is temporary, does not get confirmed automatically. See in this connection the decision of the Supreme Court in AIR 1963 Supreme Court 1552.

8. So far as the question, that the order of termination attaches a stigma to the appellant, is concerned, the matter seems to be concluded by the decision of the Supreme Court in AIR 1961 Supreme Court 177. In that case, a similar rule (rule 55-B) of the Civil Services (Classification, Control and Appeal) Rules, as governs the appellant in the present case, namely, Rule 9 of the Civil Services (Punishment and Appeal) Rules, 1952 fell for consideration. Both these rules are quoted side by side for facility of reference :-

R. 55-B (Orissa)	R. 9 (Punjab)
"Where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation for any specific fault or on account of his unsuitability for the service the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it before orders are passed by the authority competent to terminate the employment." x x x	"Where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation for any specific fault or on account of the unsatisfactory record or unfavourable reports implying the unsuitability for the service the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it before orders are passed by the authority competent to terminate the appointment."

9. In Ram Narayan Das's case AIR 1961 Supreme Court 177 a notice was served on him calling upon him to show cause why he should not be discharged from service for 'gross neglect of duty and unsatisfactory work'. In the notice, ten instances of neglect of duty and two instances of misconduct-acceptance of illegal gratification and fabrication of public records-were set out. After considering Ram Narayan Das's AIR 1961 Supreme Court 177 reply, the Government terminated his services. It may be mentioned that Ram Narayan Das was a probationer. The order of termination was challenged by him under Article 226 of the Constitution of India in the Orissa High Court. His petition was granted and it was held that the order of discharge amounted to imposing punishment because the respondent had been visited with evil consequences leaving an indelible stigma on him affecting his future career'. Against this decision, an appeal was taken to the Supreme Court and their Lordships of the Supreme Court set aside this decision and held as

follows:

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> The respondent had no right to the post held by him. Under the terms of his employment, the respondent could be discharged in the manner provided by R. 55-B. Again mere termination of employment does not carry with it 'any evil consequences', such as, forfeiture of his pay or allowances, loss of his seniority, stoppage or postponement of his future chances of promotion, etc. It is then difficult to appreciate what 'indelible stigma affecting the future career' of the respondent was cast on him by the order discharging him from employment for unsatisfactory work and conduct. The use of the expression 'discharge' in the order terminating employment of a public servant is not decisive: it may, in certain cases, amount to dismissal. If a confirmed public servant holding a substantive post is discharged, the order would amount to dismissal or removal from service; but an order discharging a temporary public servant may or may not amount to dismissal. Whether it amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry."

The appellant's case is absolutely identical with Ram Narayan Das's case AIR 1961 Supreme Court 177 and in view of the decision in that case, the only view possible is that the appellant's discharge from service did not attract the provisions of Article 311(2) of the Constitution of India. Therefore, the contention of Mr. Gujral, that the order of discharge is illegal because it attaches a stigma to the appellant and permanently impairs her chances of fresh appointment, cannot be accepted. The case of the *State of Punjab v. Apparapar Singh*[4] decided by us and in which the decision has to be announced tomorrow also lends full support to what has been stated above. In this case, the entire legal position of a person officiating in a higher rank was considered and what has been said by us in that case also applies with equal force to the case of the appellant.

10. This leaves the last contention of the learned counsel that on the facts of this case, the order of termination was passed by way of punishment. This contention is totally devoid of force. No material has been placed before us on the basis of which any reasonable conclusion could be drawn that the appellant was discharged from service by way of punishment. If the contention of the learned counsel is accepted, every order of discharge per se would amount to dismissal. But this is not the true legal position. Facts have to be proved in order to show that a particular order of discharge amounts to dismissal. It goes without saying that the appointing authority has the absolute discretion to terminate the services of an officiating hand or of a temporary employee. That is inherent in the terms of appointment. It is only when a person has a right to a post and his services are terminated that the provisions of Article 311 of the Constitution will at once come into play. So far as an officiating or a temporary hand is concerned, Article 311(2) will only be attracted if the order of termination attaches a stigma or otherwise visits the person concerned with evil eonsequences, as are enumerated in *Parshotam Lal Dhingra v. Union of India*[5], Therefore, the last contention of the learned counsel must be rejected.

11. For the reasons recorded above, we see on force in this appeal and reject the same leaving the

parties to bear their own costs.

Mehar Singh, C. J.

12. I agree.

Appeal dismissed.

Cases Referred.

11AIR 1963 SC 1552
2AIR 1961 SC 177
3(1965) 67 Pun LR 312 : (AIR 1966 Pun 468)
4(L. P. A. 346 of 1965) Reported in (AIR 1967 Punjab 139)