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High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 18525 of 2005

Ramgarhia Senior Secondary School		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: Nov. 29, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 227, 311(2)
- Punjab Police Rules, 1934 - Rule 12.21

Citation: (2006) 143 PLR 606

Hon'ble Judges: S.S. Nijjar, J; Nirmal Yadav, J

Bench: Division Bench

Advocate: S.C. Nagpal, for the Appellant;

Final Decision: Dismissed

Judgement

S.S. Nijjar, J.
We have heard the learned Counsel for the petitioner at length and perused the paper-book.

2. The petitioner-school is run by the Ramgarhia Educational Council (R.E.C.), Phagwara. Respondent No. 4 had been working in the petitioner-school as a Social Study Master since 22.1.1998. He was appointed as J.B.T. teacher on the basis of an agreement dated 21.9.2002 between the Management and respondent No. 4. Under this agreement he was to remain on probation for a period of one year. During this period, it was open to the Management to dispense with his services, without giving notice or without assigning any reason. In paragraph 4 of the writ petition, the petitioner has specifically pleaded as follows:

4. That as per the agreement, the respondent No. 4 was put on probation for a period of one year w.e.f. 21st September, 2002 ending on 20th September, 2003. The respondent No. 4 started indulging in unhealthy activities which was injurious to the smooth functioning of the school as he developed illicit relations with a female teacher employed in the same school and eloped with her. Many parents staged the "DHARNA" in the school and respondent No. 4 left the school premises and absconded without leave. The matter went to the police and school was dragged in unnecessary adverse publicity. The matter was also published in "PUNJAB KESRI" edition dated 1st March, 2003 with a title "PREMI JORA FARAR".

3. Due to the aforesaid reason, services of respondent No. 4 were terminated by order dated 5.5.2003. The Management passed the following order:

Sub: Termination of services.

As reported, your objectional conduct has tarnished the image of the school as well as of Ramgarhia Educational Council. The matter has been given due consideration.

Accordingly, this is to inform that your services are hereby terminated with immediate effect and your name has been struck off the rolls.

Sd/- President, REC

3. It is also not disputed that respondent No. 4 married Hardip Kaur on 30.4.2003. Within 5 days of the marriage, the services of respondent No. 4 were terminated and his wife-Hardip Kaur was placed under suspension on the same day. It is also not disputed that respondent No. 4 belongs to Brahman caste and his wife belongs to the Ramgarhia Community. Aggrieved against the action of the petitioner, respondent No. 4 filed an appeal before the Director Public Instructions which was dismissed by order dated 26.5.2004 (Annexure P-3) . It was specifically pleaded by respondent No. 4 that his services had been illegally terminated as he had not been served with any show-cause notice nor was he given one month"s notice. He had also pleaded that his services had been terminated by the Management due to inter-caste marriage. The D.P.I., however, accepted the plea of the Management that it was competent to terminate the services of respondent No. 4 as his work and conduct was not satisfactory during the period of probation. The D.P.I. held that the services of respondent No. 4 had been terminated during the period of probation and as per the agreement executed between the parties. Against the order of the D.P.I. (Annexure P-3), respondent No. 4 filed appeal before the Presiding Officer, State Schools Tribunal, Punjab, Chandigarh. The Schools-Tribunal has allowed the appeal of the petitioner by order dated 30.8.2005 (Annexure P-4). The Management has filed this writ petition under Articles 226/227 of the Constitution of India challenging the order (Annexure P-4) passed by the Schools-Tribunal.

4. Mr. Nagpal, learned Counsel for the petitioner vehemently argues that the services of respondent No. 4 have been terminated in accordance with Section 8(3)(b) of the Punjab

Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981. Learned Counsel further argues that since respondent No. 4 was on test, during the period of probation, he had no right to continue on the post. Learned Counsel further submits that the Schools Tribunal has been unduly influenced by the fact that the petitioner has terminated the services of respondent No. 4 on account of his inter-caste marriage. In fact, his services have been terminated during the period of probation on account of the fact that he absented from duty, without obtaining the leave and he was indulging in immoral activities which are not conducive to the mental health of the students community who are of tender age. Learned Counsel has placed strong reliance on the judgment of the Supreme Court in the case of State of Punjab and Others Vs. Sukhwinder Singh, . Learned Counsel submits that this judgment was cited before the Schools Tribunal also, but the Tribunal has failed to follow the law laid down in the aforesaid judgment, without distinguishing the judgment from the facts of the present case.

5. Having considered the submissions made by the learned Counsel, we are of the opinion that the Schools Tribunal has not committed any error of law. The Tribunal has decided against the petitioner-Management after giving detailed reasons which are as under:

The ld. Counsel for the respondent stated that the appeal in this case as per the rules does not lie. He drew the attention towards Section 8(3)(b) of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981, where work and conduct both are mentioned and if not satisfactory the probation period can be extended or services can be terminated. The Ld. Counsel stated that the management has the right to terminate the services of any employee during the probation period. The learned Counsel cited State of Punjab and Others Vs. Sukhwinder Singh, in which to terminate the services during probation period was upheld by the Apex Court. It was argued that the public in general had complained against the conduct of Sh. Rajinder Kumar and places an Annexure A/5, a letter from Shri Iqbal Singh Kundi, Municipal Commissioner, Phagwara, which stated that people have been complaining about the objectionable activities of Sh. Rajinder Kumar and Ms. Hardip Kaur and it is further written that without caring for their children both these teachers indulged in activities before the children which results in bad influence on them. As such the learned Counsel pleaded that the order of D.P.I.(S) needs to be upheld and appeal deserves to be dismissed.

After having listened to the arguments put across by both the ld. Counsels and having gone through the documents on file, one is pained at the behaviour of the Managing Committee. In this 21st Century we are still judging the performance of our teachers based on the caste considerations. The only fault, which seems to be in this case with Sh. Rajinder Kumar, J.B.T. teacher is that he fell in love with a teacher from Ramgarhia community and married her on 30.4.2003. Within 5 days of his marriage, his services were terminated by terming them, "due to objectionable conduct" and his wife, Ms Hardip Kaur, was placed under suspension on the same day. Sh. Rajinder Kumar has been in

the service of the school since 22.1.98 and throughout he was employed for a year or so and was again re-employed. So much so he was issued an experience certificate appreciating his services by the Principal of the School on 5.7.2001. Even when he was re-appointed against the post of a J.B.T. teacher on 21.9.2002 till his termination he was not issued any letter informing him that his performance was unsatisfactory or he needs improvement in any of the fields in which he was imparting instructions. The Ld. Counsel for the respondent was repeatedly asked about the objectionable conduct which was objectionable as per the Managing Committee but the Ld. Counsel failed to give any reply about the type of conduct which can be termed as objectionable in the school. It seems that the sole aim of the Educational Council was to dispense with their services and to teach them a lesson for having indulged in inter caste marriage otherwise there was no need to suspend Smt. Hardip Kaur on the same day on which the services of her husband were terminated. This seems to be the Divine right of the Ramgarhia Educational Council to punish the erring teachers who have dared to disobey the society for trying tying the nuptial knot. The Constitution of India"s Article 14 which deals with the governing of probationer/enquiry/disciplinary proceedings lay down - If the termination is based on allegations of misconduct, it was incumbent for the employer to make an enquiry and afford an opportunity to the employee to meet with the allegations. Even if the services have been terminated simpliciter, the court must lift the veil and examine the background and circumstances under which the order has been passed (Punjab and Haryana High Court, C.W.P. No. 17591 of 1991. Sat Narain v. Haryana State Cooperative Apex Bank Ltd.).

6. The aforesaid observations make it abundantly clear that the Schools Tribunal has considered all the factual as well as legal submissions made on behalf of the petitioner.

7. We have reproduced the order of termination in earlier part of the judgment. A perusal thereof leaves no manner of doubt that the order is ex-facie stigmatic. The order records findings of fact to the effect-that the conduct of respondent No. 3 is objectionable and that he has tarnished the image of the School. He has also tarnished the image of Ramgarhia Educational Council. The legal position vis-a-vis an order which ex-facie visits an employee with evil consequences, has been laid down by the Supreme Court in the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, . It was observed by Ruma Pal, J. in paragraphs 13, 14 and 29 of the judgment as under:

13 Another Constitution Bench of this Court in Parshotam Lal Dhingra Vs. Union of India (UOI), explained the decision of Parshotam Lal Dhingra Vs. Union of India (UOI), . It followed the two tests mentioned In Dhingra case viz (LLJ p. 721).

(1) Whether the temporary government servant had a right to the post of the rank, or

(2) whether he has been visited with evil consequences.

14. If "punishment" were restricted to "evil consequences", the court"s task in deciding the nature of an order of termination would have been easier. Courts would only have to scan the termination order to see whether it ex facie contains the stigma or refers to a document which stigmatises the officer, in which case the termination order would have to be set aside on the ground that it is punitive. In these cases, the "evil consequences" must be assessed in relation to the blemish on the employee"s reputation so as to render him unfit for service elsewhere and not in relation to the post temporarily occupied by him. This perhaps is the underlying rationale of several of the decisions on the issue.

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 petitioner 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.

8. In our opinion, applying the aforesaid test to the order passed against respondent No. 4, it would have to be held that the character of the employee has been stigmatised.

9. The allegations made against respondent No. 4 have been repeated by the petitioner in the writ petition. In sub para iii of the grounds in the writ petition, it is stated as follows:

iii) That the impugned order is based on judgment cited in the para which have neither bearing nor applicable to the facts of the instant case. The respondent No. 2 has been reasonably influenced by the fact that the petitioner has terminated his services on account of his act of inter caste marriage which is patently erroneous. The services of respondent No. 4 have been terminated during the period of probation on account of the fact that he absented himself without obtaining the leave and further that he was indulging in immoral activities which are not conducive to the mental health of the school as the parents of the students started an agitation for the removal of respondent No. 4.

10. From the above, it becomes evident that the respondents have come to the conclusion that respondent No. 4 has indulged in immoral activities which are not conducive to the mental health of the students community who are of tender age. In such circumstances, it cannot be said that the order of termination is innocuous and does not cast any stigma on respondent No. 4. However, even if the aforesaid pleadings are ignored, the order of termination would have to be declared void on the basis of the principle laid down in the case of Pavanendra Narayan Verma (supra). The findings of fact recorded in the order of termination would have the effect of casting a stigma on

respondent No. 4. In Sukhwinder Singh''s case (supra), the Supreme Court was considering the legality of an order passed under Rule 12.21 of the Punjab Police Rules which simply stated as follows:

Constable Sukhwinder Singh No. 644/SSR of this District is discharged from service w.e.f. 16.3.1990 under the Punjab Police Rules 12.21 as he is not likely to become an efficient police officer.

This order was passed by the Sr. Superintendent of Police terminating the services of Sukhwinder Singh who had joined the police department as a Constable on 4.8.1989. He absented from duty w.e.f. 22.2.1990, without making any application for grant of leave or seeking permission for absence. In the aforesaid order, no reference was made to the immoral conduct of Sukhwinder Singh, Constable and no aspersions were made against the character of the Constable. In such circumstances, the Supreme Court held that the services of Sukhwinder Singh had been validly terminated under Rule 12.21 of the Punjab Police Rules. In the present case, very serious allegations of moral turpitude are held to be proved against respondent No. 4. Such conclusions could only be arrived at after complying with rules of natural justice and giving a full opportunity to respondent No. 4 to explain himself. Not only the character of respondent No. 4 but the character of his wife has also been adversely commented upon. The judgment in Sukhwinder Singh''s case (supra), therefore, would not be applicable in the present case. Apart from the judgment in the case of Pavandera Narayan Verma (supra), in our opinion, the matter would also be squarely covered by the judgment of the Supreme Court in the case of Samsher Singh Vs. State of Punjab and Another, . The aforesaid judgment has been delivered by seven Hon''ble Judges of a Constitution Bench of the Supreme Court. The law on the point has been summed up by Hon''ble Chief Justice A.N. Ray as follows:

63. No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

64. Before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any Rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases, the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to

make good in other walks of life without a stigma at the time of termination of probationer. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption and if his services are terminated without following the provisions of Article 311(2), he can claim protection. In The State of Bihar Vs. Gopi Kishore Prasad, , it was said that if the Government proceeded against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment. Instead of taking the easy course, the Government chose the more difficult one of starting proceedings against him and branding him as a dishonest and incompetent officer.

11. In our opinion, the aforesaid ratio of law is fully applicable to the facts and circumstances of the present case. In view of the clear enunciation of law, we are of the opinion that the order passed by the Schools Tribunal cannot be said to be either arbitrary or unreasonable.

12. Consequently, we find no merit in the writ petition and the same is dismissed.