

(2009) 02 JH CK 0007

Jharkhand High Court

Case No: Writ Petition (C) No. 4084 of 2008

Director, Central Institute
Psychiatry

APPELLANT

Kundan Singh

Vs

RESPONDENT

Date of Decision: Feb. 13, 2009

Acts Referred:

- Constitution of India, 1950 - Article 311, 311(2)

Citation: (2009) 57 BLJR 1431 : (2009) 2 JCR 258

Hon'ble Judges: M.Y. Eqbal, J; D.N. Patel, J

Bench: Division Bench

Advocate: A. Allam, Nehala Sharmin and S. Kumar, for the Appellant; M.M. Pal and M. Palit, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

In the instant writ petition the petitioner Central Institute of Psychiatry has prayed for quashing the order dated 23.6.2008 passed by the Central Administrative Tribunal, Patna Bench, Circuit bench at Ranchi in Original Application No. 201/2006, whereby the order dated 25.2.2006 and 25.8.2006 terminating the services of the respondent were set aside and further the petitioner was directed to reinstate the respondent in service.

2. The facts of the case lie in a narrow compass.

3. The respondent (writ petitioner) was appointed by the petitioner as Ward Attendant on temporary basis, vide office memorandum dated 21.8.2002. The service of the respondent was on probation for a period of two years subject to extension at the discretion of the competent authority. While working as a ward attendant, many complaints and allegations including disobedience, gross negligence of duty and unauthorized absence were made against the respondent.

After preliminary enquiry made by a committee of the petitioner in each complaint and allegation, the respondent was given opportunity of explanation. After enquiry the responded was warned or censored after examination of the matter and he was made aware of his shortcomings in his conduct and performance by series of memorandums served upon the respondent. It further appears that the probation period of the respondent was extended for a period of one year, vide office order dated 25.1.2005 as per the terms and conditions of the letter of appointment. The respondent challenged the said order of extension dated 25.1.2005 before the competent authority, who find the extension of one year justified. Dissatisfied with the said order, the petitioner moved the Central Administrative Tribunal (In short the Tribunal) being O.A. No. 148/2005. The Tribunal disposed of the application with a direction to the petitioner to furnish the reasons and shortcomings in the service of the respondent and on receipt of the explanation, the authority of the petitioner will consider the withdrawal of the order of extension of probation. The petitioner, thereafter, served memorandum informing him for the shortcomings in his conduct and performance. During the period of probation, after holding preliminary enquiry on the complaints of his unauthorized absence from the place of duty, gross negligence of duty insubordination, misconduct etc., the respondent was warned or censored and even increment was stopped for one year. Finally the competent authority examined the entire service record and performance of the respondent during the probation period and finally found him not fit to the post of ward attendant and recommended termination of his service. Accordingly, the service of the respondent was terminated vide office order dated 25.2.2006. The said order of termination was again challenged before the Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi being O.A. No. 201/2006. Subsequently, by filing application, the respondent also challenged the order dated 25.8.2006 passed by the appellate authority. The Tribunal formulated a question as to whether the order of termination is stigmatic order or not. The Tribunal held that since the termination of services of the respondent was based on some allegations and complaints without issuing show cause notice and without conducting any enquiry, the impugned order of termination is not a termination simplicitor, rather it is a stigmatic and punitive in nature. Accordingly, the order of termination was set aside and the petitioner was directed to reinstate the respondent in service. The order passed by the Tribunal is impugned in this application.

4. Mr. A. Allam, learned Counsel appealing for the petitioner-Institute assailed the impugned order of Tribunal as being illegal and wholly without jurisdiction. Learned Counsel submitted that admittedly the respondent was appointed temporarily on probation for a period of two years, which was extended for a further period of one year. During the period of probation several allegations and complaints were made which were time to time enquired and the orders of censor, warning and even withdrawal of increment were passed. Even thereafter the respondent did not reform himself and his performance remained unsatisfactory throughout. The

petitioner-employer, therefore, decided to terminate the services of the respondent. Hence the order of termination is simplicitor and not punitive. Learned Counsel put reliance on the decision in the case of State of Punjab and Ors. v. Sukhwinder Singh 2005 AIR SCW 3477 and in the case of State of Punjab v. Balbir Singh 2004 AIR SCW 5248.

5. Mrs. M.M. Pal, learned Counsel appearing for the respondent, on the other hand, submitted that the services of the respondent was terminated on the basis of alleged grievous charges made against him and having regard to the fact that the petitioner proceeded under the Central Civil Services and Appeal Rules, the order of termination is punitive inasmuch as no departmental enquiry was initiated against him. Learned Counsel submitted that allegations of charges are not the motive but foundation and, therefore, the termination is bad in law. The learned Counsel relied upon a decision of the Supreme Court in the case [V.P. Ahuja Vs. State of Punjab and Others,](#).

6. The position of the probationer was considered by the Supreme Court as far back as in the 1958 in the case of [Parshotam Lal Dhingra Vs. Union of India \(UOI\),](#) . Their Lordships held that where a person is appointed to a permanent post in Government service on probation the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment because the Government servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer. Such a termination does not operate as a forfeiture of any right to a servant to hold the post. In the case of [Samsher Singh Vs. State of Punjab and Another,](#) , a Constitution Bench of seven Judges were considering a question as to when the termination of a probationer will amount to punishment Their Lordships observed:

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 probation. 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 *Gopi Kishore Prasad v. Union of India* 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.

65. The fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment (see *State of Orissa v. Ram Narayan Das*). If there is an enquiry the facts and circumstances of the case will be looked into in order to find out whether the order is one of dismissal in substance (see *Madan Gopal v. State of Punjab*). In *R.C. Lacy v. State of Bihar* it was held that an order of reversion passed following an enquiry into the conduct of the probationer in the circumstances of that case was in the nature of preliminary inquiry to enable the Government to decide whether disciplinary action should be taken. A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2) (see *R.C. Banerjee v. Union of India*). A preliminary inquiry to satisfy that there was reason to dispense with the services of a temporary employee has been held not to attract Article 311 (see *Champaklal G. Shah v. Union of India*). On the other hand, a statement in the order of termination that the temporary servant is undesirable has been held to import an element of punishment (see *Jagdish Mitter v. Union of India*).

7. In the case of [Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others](#), petitioner was appointed on regular pay scale but he was put on probation and during the period of probation his services were terminated on the ground that the work performance was found unsatisfactory. It was argued before the Supreme Court that the finding recorded by the employer with regard to unsatisfactory performance amounts to stigma and, therefore, order of termination is violative of Article 311(2) of the Constitution. Rejecting the argument the Supreme Court held that during the period of probation authorities are entitled to assess suitability of the candidate and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties. Under these circumstances, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of

the letter of appointment without conducting any enquiry. That does not amount to any stigma.

8. In the case of [Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others](#), the Supreme Court considering a question as to when allegation against the probationer will be "foundation" or "motive" for his termination. In that case the appellant was appointed as Office Superintendent in respondent organization. Initial probation period was one year. During this period appellant was informed that his work was not satisfactory on account of certain instances which were also pointed out to him. By another letter some more deficiencies in his work and conduct were pointed out. Further letters were issued informing the appellant that his performance was far from satisfactory and probation period was being extended by six months. During this period also there were serious deficiencies in his work and conduct and a report was submitted against the appellant. On these facts, their Lordships laid down criteria for differentiating between "foundation and "motive". Their Lordships held:

21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

Their Lordships further observed:

36. It was in this context argued for the respondent that the employer in the present case had given ample opportunity to the employee by giving him warnings, asking him to improve and even extended his probation twice and this was not a case of unfairness and this Court should not interfere. It is true that where the employee had been given suitable warnings, requested to improve, or where he was given a long rope by way of extension of probation, this Court has said that the termination orders cannot be held to be punitive. [See in this connection Hindustan Paper Corporation v. Purnendu Chakrobarty; Oil & Natural Gas Commission v. Dr. Md. S. Iskender Ali; Unit Trust of India v. T. Bijaya Kumar; Principal, Institute of Postgraduate Medical Education & Research, Pondicherry v. S. Andel and a labour case Oswal Pressure Die Casting Industry v. Presiding Officer] But in all these cases, the orders were simple orders of termination which did not contain any words amounting to stigma. In case we come to the conclusion that there is stigma in the impugned order, we cannot ignore the effect it will have on the probationer's future

whatever be the earlier opportunities granted by the respondent-Organisation to the appellant to improve.

37. On this point, therefore, we hold that the words amounting to "stigma" need not be contained in the order of termination but may also be contained in an order or proceeding referred to in the order of termination or in an annexure thereto and would vitiate the order of termination. Point 3 is decided accordingly.

9. In the case of State of Punjab and Others Vs. Sukhwinder Singh, the Supreme Court reiterated its view that termination of service of a probationer will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post. The period of probation therefore, furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant in regular service or dispense with his service.

10. Coming back to the instant case, as noticed above, the respondent was temporarily appointed on probation for a period of two years w.e.f. 21.8.2002. During the period of probation, serious allegations and charges were made against him including misconduct, disobedience, gross negligence in duties and unauthorized absence. The committee in each time made enquiries and explanations were called for from him. The respondent was made aware about his shortcomings in his conduct and performance. The petitioner by way of giving opportunity to the respondent to improve his conduct and performance, his period of probation was extended for one year. He was dissatisfied with the order of extension and moved the Tribunal and as per the direction of the Tribunal, petitioner furnished to the respondent the details of the reasonings and the shortcomings in his service. During the extended period of probation, on several complaints the petitioner, after considering the show cause and explanation, passed order of withholding increment and order of censor. Respondent accepted the punishment imposed upon him, but did not reform himself. In this way, ample opportunity was given to the respondent asking him to improve and even his period of probation was extended. In spite of that respondent failed to improve himself. Petitioner then decided to terminate his services. In our considered opinion, therefore, the said order of termination cannot be held to be punitive.

11. The departmental order declaring the probationer to be not suitable for confirmation as his service was unsatisfactory and that despite repeated advice, he had not shown any improvement. In the said order making reference to earlier letters, probationer had been called a person of perverted mind and indisciplined behaviour. The Supreme Court held that the earlier misconduct on the part of the probationer indicated that the reason of termination was the absence of hope for his improvement and such order did not reflect any malice or bias. The order of termination of the probationer was simplicitor and not stigmatic. Reference may be made to a decision taken by the Supreme Court in the case of Abhujit Gupta Vs.

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

12. Mrs. M.M. Pal, learned Counsel appearing for the respondent, put reliance on the decision of the Supreme Court in the case of V.P. Ahuja Vs. State of Punjab and Others . In our view, the fact of the present case is quite different from the facts of the case before the Supreme Court. Hence, this decision will not be of any help to the respondent.

13. Besides the above, it is known to all that Central Institute of Psychiatry, Ranchi is a premier Institute for the treatment of mentally ill and mentally retarded patients and those patients who are unable to take care of their personal need. It is one of the premier institutes in the country not only for the best treatment but also for maintaining discipline. The role of Ward Attendant is very vital and they should be devoted to their duties. The Ward Attendant is required to exercise high standard, honesty, devotion and diligence to his duties. Good conduct and discipline are inseparable for the functioning of every employee of such institution. In our opinion, therefore, if the authority, on the basis of materials, finds that the performance of duty of an employee much less a probationer is not satisfactory, there is no reason why such employees are allowed to continue in service. The order passed by the authority of the petitioner-Institute terminating the services of the respondent who was on probation on the basis of dissatisfactory performance of duty needs no interference by the Courts or by the Tribunals.

14. For the reasons aforesaid, this writ application is allowed and the impugned order passed by Central Administrative Tribunal is set aside. Consequently, the order passed by the petitioner-Institute terminating the services of the respondent is restored.