

(2004) 2 CHN 411

Calcutta High Court

Case No: C.O. No. 11737 (W) of 1995

Prabhat Kumar Patra

APPELLANT

Vs

West Bengal Surface
Transport Corporation
Ltd. and Others

RESPONDENT

Date of Decision: Aug. 1, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2004) 2 CHN 411

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: Manas Kumar Ghosh, for the Appellant; Satyabrata Mazumdar, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

By this writ application, the writ petitioner, an employee of the respondents, has challenged the order dated June 7, 1995 (sic) issued by respondents No. 2 terminating the service from the respondents/Corporation.

2. The petitioner was appointed as trainee Conductor(Bus) temporarily on "no work no pay" basis on certain terms and conditions. Subsequently, the respondent/Corporation appointed the petitioner on probation in the post of Bus Conductor w.e.f January 1, 1994. One of the terms of such appointment was that during probationary period, the service of the petitioner was terminable with 48 hours notice from the side of the Corporation. It was also specified in the said appointment letter that the service of the petitioner should be governed by the Leave Rules and Service Regulations, to be adopted and modified from time to time for the general employees of the Corporation. Such appointment was initially for one year subject of extension from time to time at the discretion of Management.

3. Although the period of probation expired on 31st December, 1994, the petitioner continued in service and subsequently by a letter dated 31st January, 1995 the Corporation extended the probationary period for another one year w.e.f. 1st January, 1995. By the said letter the petitioner was advised to improve performance and efficiency.
4. Subsequently, by a letter dated 28th April, 1995 the respondent/Corporation proposed to take action against the petitioner as per rules of the Corporation on the allegation of misconduct and he was given opportunity to make representation against the charges framed.
5. The petitioner answered those charges but ultimately, the Corporation without initiating any proceeding against the petitioner, straightaway terminated the service of the petitioner by taking recourse to Clause (d) of appointment letter by giving 48 hours notice.
6. Being dissatisfied, the petitioner has come up with the instant writ application.
7. The learned Advocate, appearing on behalf of the petitioner, by drawing attention to the Regulation of the West Bengal Surface Transport Corporation Ltd., points out that according to Regulation 4(d), "probationary" means an employee employed on trial against a permanent post and permanent post means a post carrying a definite rate of pay sanctioned with any limit of time.
8. By relying upon the aforesaid definition, he submits that the petitioner being a probationary in terms of the aforesaid regulation, is entitled to the benefit of the service rule and once allegation of misconduct has been brought and the petitioner has shown cause, his service can be terminated only after giving an opportunity of hearing in accordance with the rules. According to the learned Advocate for the petitioner, after issuing chargesheet and inviting answer from the employee, the employer cannot by taking aid of termination Clause (d) in the appointment letter, dismiss the employee. In support of such contention, he relies upon the decision of the Supreme Court in the case of [Samsher Singh Vs. State of Punjab and Another](#), . He also relies upon the decision of the Supreme Court in the case of [Babu Lal Vs. The State of Haryana and others](#), .
9. The learned Advocate, appearing on behalf of the respondents, opposes this application and submits that although there was allegation of misconduct against the petitioner but the Corporation decided not to terminate his service on the aforesaid ground, but took aid of Clause (d) of his appointment letter enabling the Corporation to terminate a probationer by giving 48 hours notice. He, thus, submits that in the letter of termination there being no stigma against the petitioner, he cannot pray for giving opportunity of hearing to defend the allegation of misconduct earlier made.
10. Therefore, the only question that arises for determination in this writ application is whether an employee on probation can dispute the legality of the letter of dismissal issued by the employer by giving 48 hours notice in terms of appointment when on the

face of such termination letter, there is no allegation or stigma against the petitioner.

11. I have already pointed out that in the past, the employer made allegation of misconduct and directed the petitioner to show cause against such allegations. The petitioner has given answer denying such allegations. The employer instead of conducting enquiry in accordance with rules of service has straightaway dismissed the petitioner in terms of Clause (d) of the appointment letter.

12. It is now settled position of law that although the order may be innocuous on the face of it, still then the Court, if necessary, for the ends of fair play and justice can lift the veil and find out the real nature of the order and if it is found that the impugned order is penal in nature even though it is couched with the order of termination in accordance with the terms of conditions of the order of appointment, the order will be set aside. [See Babu Lal(supra)].

13. In the instant case, the petitioner was initially appointed for one year on probation; subsequently such period was extended for another year but during the extended period of probation, the employer having already framed charges against the petitioner and asked the petitioner to show cause against those charges and the petitioner having actually shown cause as it appears from Annexure to the writ application, it was the duty of the respondents to investigate such allegations in accordance with the rules. In this connection, it may be noted that in the affidavit-in-opposition used by the respondents they have stated that the petitioner gave an unsigned paper purported to be the explanation of the petitioner and employer did not take any cognizance of the said unsigned paper and construed that the petitioner had no representation to make against chargesheet issued to him. It is, however, stated that appropriate authority did not proceed with the aforesaid disciplinary proceeding . as the service of the petitioner was terminated by serving a due notice on him, the petitioner being an employee on probation.

14. From the aforesaid statement made in paragraph 13 of the affidavit-in-opposition, it is clear that the real reason for terminating the service of the petitioner was the alleged misconduct. Therefore, it was the duty of the respondents to conclude disciplinary proceeding in accordance with law. Without concluding such proceeding, the respondents could not invoke Clause (d) of appointment letter. I, thus, set aside the order impugned and direct the respondents to immediately reinstate him to service. The petitioner should be deemed to be all along in service and also entitled to arrears of salary. Such arrears should be paid within one month. However, this order will not stand in the way of the respondents in concluding the disciplinary proceeding in accordance with rule after giving an opportunity of hearing to the petitioner.

15. The writ application is, thus, allowed.

16. In the facts and circumstances, there will be, however, no order as to costs.