

(2018) 09 RAJ CK 0004

Rajasthan High Court (Jodhpur Bench)

Case No: Civil Writ No. 6498 of 2010

Yogesh Sharma
@APPELLANT@Hash Union Of
India And Ors.

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 4, 2018

Acts Referred:

- Central Civil Services (Temporary Service) Rules, 1965 - Rule 5(1)

Hon'ble Judges: PRADEEP NANDRAJOG, CJ; DR. PUSHPENDRA SINGH BHATI, J

Bench: Division Bench

Advocate: VinayJain

Final Decision: Dismissed

Judgement

1. The writ petitioner was appointed pursuant to the letter offering appointment dated 5th July, 1995 as a Driver on temporary basis. It was indicated in the letter offering appointment that the service could be terminated without assigning any reason. It was also indicated in the letter offering appointment that for period of two years the writ petitioner would be on probation. Concededly, the department treated the writ petitioner to be appointed against a temporary post and on probation for a period of two years. Exercising power under Subrule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965 his services were terminated on 4th September, 1997, but he was reinstated in service. He was kept on probation. On 6th February, 1998 a charge sheet was issued. The writ petitioner claims that he lost his mental balance and he could not defend himself before the enquiry officer.

2. On 21st April, 1998 his services were terminated once again under Sub-rule (1) of Rule 5 of CCS (Temporary Service) Rules, 1965. The order in

question reads as under:-

“In pursuance of sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, I, H.K.Thakur, Deputy Narcotics

Commissioner (Admn.) hereby give notice to Shri Yogesh Sharma, Driver that his service shall stand terminated with effect from the date of expiry of

a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.”

3. The charge-sheet which was issued to the writ petitioner alleged that while working as a Driver in the office of the Narcotics Commissioner on

15.1.1998 at 5.30 PM he used un-parliamentary language and tried to molest two lady labourers who were engaged in the construction of Government

residential quarters. When husband of one of the lady: Ram Swaroop, intervened the petitioner hit him with a bottle. When one Vijay intervened the

petitioner threw water on him and hit him with the bucket. The second charge was that on 4.2.1998 at 6.00 PM the petitioner was found in a drunken

condition in the guard room.

4. Challenging the order terminating his service the petitioner approached the Central Administrative Tribunal which has dismissed the Original

Application filed by the writ petitioner holding that the order is non-stigmatic. The Tribunal has been influenced by the fact that while on probation the

conduct of the writ petitioner was not satisfactory.

5. The issue before the Tribunal was whether after the chargesheet was issued to the writ petitioner, could his service be terminated as a probationer

by passing a non-stigmatic order. The argument of the petitioner was that the veil had to be removed.

6. Learned counsel for the writ petitioner urges the same point while arguing the writ petition.

7. It is settled law that a non-stigmatic order terminating services of a probationer is not punitive unless the Court finds the order to be punitive by

lifting the veil. Where order terminating service is preceded by some departmental enquiry and when questioned in a Court on the plea that the veil be

lifted to see as to what was the foundation of the order, it was held that motive and foundation are two different concepts. We may quote only from

one decision reported as 1980 (2) SCC 593 Gujarat Steel Tube Vs. Gujarat Steel Tubes Majdoor Sangh. As to foundation, it was observed:-

“a termination effected because the master is satisfied of the misconduct and of the desirability of terminating the service of the delinquent

servant, it is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a

case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied

of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination

of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.”

8. As to motive, it was observed:-

“On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt

but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not

dismissal but termination simpliciter, if no injurious record of reasons or pecuniary cut-back on his full terminal benefits is found. For, in fact,

misconduct is not then the moving factor in the discharge.”

9. Suffice would it be to state that if an inquiry is conducted into an alleged misconduct behind the back of the officer and a simple order of termination

is passed, “founded” on the report of the inquiry indicting the employee, the action would be tainted but where no findings are arrived at any

inquiry or no inquiry is held but the employer chooses to discontinue the services of an employee against whom complaints are received it would be a

case of the complaints motivating the action and hence order would not be bad as observed in the decision reported as AIR 1999 SC 983 Dipti

Prakash Banerjee Vs. Satvendera Nath Bose National Centre for Basic Sciences (para 22).

10. To conclude on the issue, we note the decision of the Supreme Court reported as AIR 2002 SC 23 Pavanendra Narayan Verma Vs. Sanjay

Gandhi P.G.I. of Medical Sciences & Anr., where in para 28 thereof, how the issue has to be dealt with by Courts was stated. It was held: Therefore, whenever a probationer challenges his termination the Courts'™ first task will be to apply the test of stigma or the form test. If the order survives this examination the substance of the termination will have to be found out.

11. In the instant case, as noted above the writ petitioner did not appear before the enquiry officer after the charge-sheet was served. The petitioner claims having lost his mental balance. It is not a case where the enquiry officer submitted a report holding the petitioner guilty of misconduct. It is obviously a case where termination is not punitive. It is a case where considering the working of the petitioner as probationer his services were terminated on account of inefficient services rendered.

12. The writ petition is dismissed.