
(1998) 11 GAU CK 0034
In the Gauhati High Court
Case No : Civil Rule No. 5582 of 1995

Ajay Kr. Gupta

APPELLANT

Vs

Nehru Yuba Kendra Sangathan and Others

RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1998) 4 GLT 272

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : B.K. Sharma and P.K Tiwari, for the Appellant; C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

Biswas, J.—This is a case where the authorities took up departmental proceedings against the Petitioner after a few months of the termination of the service. Therefore, the question arises for determination is whether subsequent initiation of departmental proceedings by the authorities will vitiate an otherwise valid order of termination simpliciter passed during the period of probation.

2. The Petitioner was appointed as a Youth Coordinator in Nehru Yuba Kendra Sangathan vide order dated 28.9.94 and was placed on probation. During the period of his probation his services was terminated vide order dated 24.5.95. The order reads as follows:

OFFICE ORDER

Services of Shri Ajay Kumar Gupta, S/o Shri Baijnath Prasad Gupta as youth Coordinator in NYK-East Garo Hills, William Nagar (Meghalaya), are terminated forthwith.

He shall hand-over the charge to Ms. Linda B.K. Sangma. Youth Coordinator. NYK-West Garo Hills (Tura) Immediately after receipt of this order. Ms. Sangma will

hold the additional charge of the Kendra till further orders.

Sd/ S.Y. Quraishi Director General.

3. The language employed in the aforesaid office order shows that it was an order of termination simpliciter during the period of probation. The matter would have ended there. But the authorities initiated enquiry against him vide memorandum dated 25.9.95 (Annexure-5) levelling a number of charges of misconduct in the discharge of his official duties. From the order dated 20.9.95 (Annexure-4), we find that Shri I.H. Hulkoti was appointed to conduct the enquiry. The counter-affidavit submitted by the Respondents shows that the Petitioner also participated in the departmental proceedings. The enquiry was conducted on 6.10.95. The report submitted by Enquiry Officer has been aimed by the Respondents to their counter affidavit as Annexure-E. Certain except from the report relevant for consideration of the issue at hand is reproduced below:

(i) It is proved that he had drawn NYK money and got credited into his personal account which is a serious matter.

(j) He had kept 36 vouchers, which seems to be pending for payment. The genuineness of these vouchers is questionable. These are at annexure-XIII.

(k) His general behaviour as a District officer, as a Youth Worker is not up to the mark and he is most indisciplined one. He seems to be not mentally sound to hold the post of District Level Office.

(l) So, the decision taken to terminate his service on the basis of preliminary Enquiry report of Shri P.K. Ghosh is absolutely on right lines or otherwise it will surely give a wrong signal to other DYCs working in the Sangathan and the reputation of Sangathan will be affected.

(m) He was given an opportunity to defend the charges made against him by giving in writing as well as by appearing before the Enquiry Officer, purely on humanitarian grounds. But he failed to defend his case as he abruptly went away from the enquiry and also did not submit his written statement to the Enquiry Officer.

(n) As per rules of Sangathan, the persons who are on probation and whose performance is not up to the exceptions or who indulge in financial irregularities, can be terminated without giving any notice. So, the termination of Shri Ajay Kumar Gupta is correct and I do not suggest to entertain such persons into the Sangathan in the interest of Rural Youth.

4. The learned Counsel for the Petitioner referring to a number of legal authorities submits that although the enquiry was conducted after the order of termination, it will vitiate the order of termination because of the stigma and aspersion attributed to the Petitioner with reference to his conduct. According to him, the report (quoted above) also shows that a preliminary enquiry was made

by Shri P.K. Ghosh and, thereafter, the order of termination was issued. It was done without affording pre-decisional hearing. At any rate, the learned Counsel for the Petitioner argued, the two enquiry reports are aspersive on the conduct of the Petitioner and, as such, the order of termination having been issued on consideration of preliminary report and followed by a formal disciplinary proceedings confirming the same can not be sustained in law.

5. The learned Counsel for the Respondents, however, tried to justify the termination order on the ground that it had to be issued in the interest of the organisation and the formal proceeding was drawn organisations and the formal proceeding was drawn up subsequently only to find out the magnitude of the misconduct and actual loss cause to the organisation.

6. Under the circumstances detailed above, it is to be determined first whether the order of alleged termination although does not attach any stigma to the Petitioner, because of the attending circumstances, could be constructed as an order of termination simpliciter. In this connection, ratio laid down by the Supreme Court in Anoop Jaiswal Vs. Government of India and Another, and in Jarnail Singh and Others Vs. State of Punjab and Others, may be referred to. In paragraph 11 and 12 in Anoop Jaiswal (Supra) the Supreme Court held:

11. On behalf of the Union of India reliance has been placed on State of Punjab and Another Vs. Shri Sukh Raj Bahadur, . Union of India v. R.S. Dhaba The State of Bihar and Others Vs. Shiva Bhikshuk Mishra, R.S. Sial Vs. The State of U.P. and Others, The State of U.P. Vs. Ram Chandra Trivedi, and I.N. I.N. Saksena Vs. State of Madhya Pradesh, We have gone through these decisions. Except case of Ram Chandra Tribedi (Supra) all other cases referred to above were decided prior to the decision in Samsher Singh Vs. State of Punjab and Another, which is a judgment delivered by a Bench of seven Judges. As pointed out by us in all these cases including the case of Ram Ch. Trivedi (supra) the principle applied is the one enunciated by Parshotam Lal Dhingra Vs. Union of India (UOI), we have referred to earlier. It is urged relying upon the observation in Shri Sukh Raj Bahadur's case (Supra) that it is only when there is a full scale departmental enquiry envisaged by Article 311(2) of the Constitution i.e. an enquiry officer is appointed, a charge-sheet submitted, explanation called for and considered, any termination made thereafter will attract the operation of Article 311(2). It is significant that in the very same decision it is stated that the circumstances preceding of attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial. As observed by Ray, C.J. in Samsher Singh's case (Supra) the form of the order is decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the fact and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311(2)

12. It is, therefore, now well settled that where the form of the order is merely a

camouflage it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would, not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.

7. In *Jarnail Singh (Supra)*, the observation of the Supreme Court relevant for this case is quoted below:

32. The position is now well settled on a conspectus of the decisions referred to here in before that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an adhoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court in such case, will lift the veil and will see whether the order was made on the ground of misconduct, in efficiency, or not. In the instant case we have already referred to as well as quoted the relevant portions of the averments made on behalf of the State-Respondent in their several affidavits alleging serious misconduct against the Petitioners and also the adverse entries in the service records of these Petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Article 311(2) of the Constitution of India, while considering the fitness and suitability of the Appellants for the purpose of regularising their services in accordance with the government circular made in October, 1980. Thus the impugned orders terminating the services of the Appellants on the ground that "the posts are not longer required" are made by way of punishment.

8. It would appear from the ratio in the above cases that an innocuous order of termination may not in all events amount to termination simpliciter and there may be cases where such orders are based on misconduct. The background which led the Respondents to issue the impugned order of termination has been laid bare by the Respondents themselves in their counter-affidavit and the documents filed in this case. A preliminary enquiry was admittedly conducted by them as to the performance of the Petitioner without his knowledge and that report formed the basis for issue of the impugned order of termination. That apart, the Respondents further initiated proceedings against him for the alleged misconduct a few months after the date of his removal from service. Under the circumstances, there is no option left open before this Court but to hold that the

order of termination cannot be accepted as termination simpliciter.

9. The learned Counsel for the Respondents referred to the decision in *State of Gujarat Vs. Sharadchandra Manohar Neve*, . In order to justify the order of termination. The ratio laid down in that case on a different context is not in conflict with the ratio laid down in *Anoop Jaiswal and Jarnail Singh (Supra)*. In *Sharadchandra Manohar* the Supreme Court was dealing with the case of an employee whose conduct was not in question. Therefore, the ratio laid down in *Sharadchandra Manohar (Supra)* cannot be determinative of the course of this case. The factual matrix available in *Ramnarain Yadav v. State of Haryana* referred to by the learned Counsel for the Respondents is of no significance. There is the Supreme Court was dealing with a case of reversion of an employee promoted on probation. The order of reversion was not interfered with for considerations which have no semblance with the case at hand. In *M/s. Oswal Pressure Die Casting Industry, Faridabad Vs. Presiding Officer and Another*, relied upon by the Respondents the Supreme Court did not interfere with the order of termination overruling the High Courts view that the authorities are required to support its satisfaction before issuing an order of termination by producing some evidence. The ratio laid down in this case also does not appear to have any bearing in the instant case.

10. In conclusion, it can be said without least hesitation that the instant case is an example of termination preceded and followed by departmental enquiry as to the conduct of an employee and because of the aspersion attached, it cannot be held to be a case of termination simpliciter. Therefore, this Court has to interfere with the impugned order.

11. In the result, the writ petition is allowed and the order of termination dated 24.5.95 is hereby set aside. The Petitioner shall be taken back to service and paid the salaries for the period he has worked prior to his termination. The Respondents may like to initiate a regular departmental proceedings in accordance with rules and pass appropriate orders as may be necessary in the interest of administration.

Considering the circumstances, parties are to bear their respective costs.