

(2004) 05 GAU CK 0002

In the Gauhati High Court

Case No : Writ Petition (C) No. 258 (AP) of 2001

Ajit Kr. Singh

APPELLANT

Vs

Donyi Polo Ashok Hotel Corporation and Others

RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2004) 2 GLT 1662 : (2005) 1 LLJ 110

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : M. Bat, for the Appellant; N. Saikia and J.M. Das, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—The respondent Corporation is a hotel at Itanagar. The Indian Tourism Development Corporation and Arunachal Pradesh Industrial Development Corporation hold 51% and 49% of the shares of the hotel respectively. The Indian Tourism Development Corporation is a State within the meaning of Article 12 of the Constitution as per the decision of the Hon'ble Supreme Court in O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, Both Indian Tourism Development Corporation and the State of Arunachal Pradesh have pervasive control over the respondent hotel, namely, Donyi Polo Ashok Hotel Corporation. The General Manager of the hotel is an officer of the State Government. Therefore, the respondent hotel is a State within the meaning of Article 12 of the Constitution.

2. The petitioner was appointed as an apprentice in the respondent hotel for a period of six months by an order passed on July 27, 1995. Thereafter, he was offered the post of Asstt. Commis-de-Rang with starting basic pay of Rs. 775/- in the scale of Rs. 775-1025/-. The petitioner accepted the appointment and was placed on probation for a period of one year. Clause (3) of the letter of offer/appointment reads as follows:

"3. You will be on probation for a period of one year. The Corporation reserved the right to extend your probation at its absolute discretion. During the probationary period including any extension thereof, your services are liable for termination at any reason what-so-ever."

3. The order of appointment was issued before the expiry of the period of six months. The appointment was obviously made after being satisfied that the petitioner deserves the service. The petitioner was, thereafter, removed from service by the impugned order dated October 15, 1996. The order of termination reads as follows:

"You were offered by the Corporation to the post of Asstt. Commis-de-Rang on probation for one year vide our letter No. HDP/PER/REC/95-96 dated October 19, 1995.

As the Management is not satisfied with your overall performance of work and capacity, in accordance with clause No. 3 of our letter of offer No. HDP/PER/REC/95-96 dated October 19, 1995, the terms and conditions of which was accepted by you, your services are hereby terminated w.e.f. October 2, 1996.

You are further advised to collect your clearance/No demand Certificate from the Hotel".

4. It would appear that the order of termination was passed a few days before expiry of the period of probation. According to the learned counsel for the petitioner, the order of termination is stigmatic since it was passed due to unsatisfactory performance of the writ petitioner. The learned counsel for the respondents, however, submitted that the order is non-stigmatic and the same may not be interfered with.

5. It would appear from the Office Memorandum dated July 30, 1996 (Annexure-G) that the petitioner was warned several times for being late in reporting for duty and for negative attitude towards his job. Further allegations were made with regard to his lack of knowledge, co-ordination and co-operation etc. The petitioner in his reply dated August 2, 1996 denied the allegations and also tendered apology. He also requested the authority not to compel him to work beyond eight hours. In his reply (Annexure-I) the petitioner stated that he was late to office by twenty minutes on September 7, 1996 as he had to attend night duty on September 6, 1996. In his reply, the petitioner also submitted that he would be punctual in future. Thereafter, in another reply filed by the petitioner (Annexure-J), he had spelt out the reasons for being late by 10 to 15 minutes and also made certain averments highlighting the hostile atmosphere prevalent in the work place. There is nothing on record to show that the authority concerned looked into the problems faced by the writ petitioner. No notice was also served on him to show cause for his alleged incompetence and misbehaviour. No direction was also given to him to improve his performance. Instead, the respondent authority terminated his service by the order dated October 15, 1996 without giving him any opportunity.

6. The gamut of the entire situation indicates that the presence of the writ petitioner was not liked by certain officers of the Corporation for which his service was terminated. The decision to terminate his service is obviously based on the above factual background which, in the considered opinion of this Court, does not merit removal of the employee from service and, that too, without giving him any opportunity of being heard. The allegations of unsatisfactory performance and his capacity to work as reflected in the order of termination will be a scar in future in getting employment elsewhere, and therefore, stigmatic.

7. In the context above, we may refer to the decision of the Hon"ble Supreme Court in V.P. Ahuja Vs. State of Punjab and Others, The observation of the Supreme Court in para 6,7,8 and 9 of the aforesaid judgment reads as follows at pp. 1100 & 1101 of LLJ:

"6. Learned counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of probation was two years, his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant cannot claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were terminated in terms of the conditions set out in the Appointment Order. This plea cannot be accepted.

7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

8. The affidavits filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant.

9. The entire case law with regard to a "probationer" was reviewed by this Court in a recent decision in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it."

8. The decision of the Hon"ble Supreme Court quoted above clearly indicates that a probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, or in a punitive manner. The documents available along with the file and the facts emanating therefrom clearly indicate that the writ petitioner has been victimised. The authority, in my considered opinion could not have passed such an order without giving opportunity to the writ petitioner of being heard.

9. In the result, the writ petition is allowed. The impugned order of termination dated October 15, 1996 is hereby set aside and the respondent Corporation is directed to take back the petitioner into service with all consequential benefits.