

(2013) 01 SC CK 0001

In the Supreme Court Of India

Case No : Civil Appeal No. 452 (Arising out of SLP (C) No. 5383 of 2012) with No"s. 460 (Arising out of SLP (C) No. 5748 of 2012) , 461 (Arising out of SLP (C) No. 5799 of 2012) , 462 (Arising out of SLP (C) No. 8328 of 2012) , 453 (Arising out of SLP (C) No. 1074

Amar Kumar

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 15-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 311(2)
Police Service (Probation) Rules, 1954 — Rule 12(b)

Citation : (2013) 4 LJLR 136 : (2013) 4 PLJR 269

Hon'ble Judges : H.L. Gokhale, J;G.S. Singhvi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted. These appeals are directed against judgment dated 26.9.2011 of the Division Bench of the Patna High Court whereby the letters patent appeals filed by the Appellants were dismissed and the order passed by the learned Single Judge refusing to quash the termination of their services was upheld.

2. The Appellants were appointed as Sub-Inspectors in June 2009 and were placed on probation for two years. Their services were terminated by one line order dated 6.10.2009 issued by Deputy Inspector General of Police (Personnel), Bihar (respondent No. 4 herein). The writ petitions filed by the Appellants questioning the termination of their services were disposed of by the learned Single Judge by giving them liberty to make representation to the concerned authority with a direction to the latter to decide the same by speaking order.

3. In compliance of the direction given by the High Court, Respondent No. 4 passed detailed order dated 27.10.2009 whereby he rejected the representations of the Appellants by observing that during the course of training, they had instigated to do commotion/agitation/protest and to raise slogans by spreading

false rumours in connection with the death of one of the trainees.

4. The second batch of writ petitions filed by the Appellants was dismissed by the learned Single Judge who opined that the termination of their services cannot be treated as punitive. The Division Bench agreed with the learned Single Judge and dismissed the appeals.

5. We have heard Learned Counsel for the parties and perused the record including order dated 16.6.2011 (Annexure-R-), which clearly show that action to terminate the services of the Appellants was taken after holding an inquiry into the allegations of serious misconduct allegedly committed by them. We have also gone through the judgment of this Court in *Anoop Jaiswal Vs. Government of India and Another*, and *State Bank of India and Others Vs. Palak Modi and Another etc.*, In *Anoop Jaiswal's case (supra)*, this Court considered the question whether termination of the Appellant's service, who was appointed to Indian Police Service and was on probation, by invoking Rule 12(b) of the Indian Police Service (Probation) Rules, 1954 was punitive in nature. The facts found by the Court were that while undergoing training at National Police Academy, Hyderabad, the Probationary Officers had delayed attending the ceremonial drill practice. The Director of the Academy called explanation from all the probationers. The Appellant was accused of having instigated others not to join ceremonial drill practice on time. He denied the allegation. Thereafter, his service was terminated by a non-stigmatic order. The Appellant challenged the termination of his service on the ground of violation of Articles 14 and 311(2) of the Constitution. The writ petition filed by him was summarily dismissed by the Delhi High Court. This Court referred to the averments contained in the pleadings of the parties, the judgments in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, *Samsher Singh Vs. State of Punjab and Another*, *State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, *Union of India, and Another Vs. R.S. Dhaba, Income Tax Officer, Hoshiarpur*, *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. Saksena Vs. State of Madhya Pradesh*, and held:

It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct 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.

In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An explanation was called for from the Appellant regarding the alleged act of indiscipline, namely, arriving late at the gymnasium and acting as one of the ringleaders on the occasion and his explanation was obtained. Similar explanations were called for from other probationers and enquiries were made

behind the back of the Appellant. Only the case of the Appellant was dealt with severely in the end. The cases of other probationers who were also considered to be ringleaders were not seriously taken note of. Even though the order of discharge may be noncommittal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read alongwith the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution.

6. In Palak Modi's case (*supra*), this Court reviewed various precedents and recorded the following conclusion:--

The ratio of the above noted judgments is that a probationer has no right to hold the post and his service-can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

7. In view of the law laid down in the aforementioned judgments, it must be held that the services of the Appellants could not have been terminated, without holding a proper enquiry and giving them an opportunity of hearing. In the result, the appeals are allowed. The impugned judgment is set aside and the termination of the services of the Appellants is declared illegal and quashed. The Respondents shall reinstate the Appellants with consequential benefits. However, it is made clear that the competent authority shall be free to hold enquiry into the allegations of misconduct against the Appellants and pass appropriate order with requisite expedition. It will also be open to the competent authority not to give posting to the Appellants till the conclusion of the enquiry.