
(2011) 02 CHH CK 0049
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 3934 of 2010

Bandana Giri

APPELLANT

Vs

State of Chhattisgarh and others

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 311, 311(2)

Citation : (2011) 3 MPHT 76

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Ashish Surana, for the Appellant; N.N. Roy, Panel Lawyer for the State and Mr. P.K. Patel, Advocate for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Heard learned Counsel for the parties. By this petition, the petitioner impugns the order dated 25-3-2010 (Annexure P-1) passed by the Chief Executive Officer, Janpad Panchayat, Bhaiyathan, District Sarguja, by which the appointment of the petitioner on the post of Anganwadi Worker has been cancelled.

2. Learned Counsel appearing for the petitioner submits that pursuant to the advertisement issued by the respondent authorities the petitioner applied for the post of Anganwadi Worker. According to the petitioner on account of the fact that she lost her 8th class mark-sheet, the petitioner obtained duplicate mark-sheet. Learned Counsel further submits that the petitioner belongs to below poverty line category. After completing the due process of selection, by order dated 29-1-2009 (Annexure P-7) the petitioner was appointed on the post of Anganwadi Worker.

3. Shri Surana also submits that during the service period of the petitioner, the respondent No. 5 lodged First Information Report against the petitioner and on the basis of the said FIR the petitioner was arrested on 13-4-2010. In the

meanwhile, the impugned termination order dated 25-3-2010 was received by the family members of the petitioner on 15-4-2010. Shri Surana, further submits that the impugned order has been passed on the basis of complaint without conducting proper enquiry and without affording proper opportunity of hearing to the petitioner. The order of cancellation of appointment order is not an order of cancellation simplicitor, but is a stigmatic order, holding that there is a complaint against the petitioner. Even if the appointment of the petitioner was temporary, her services could not be dispensed with on the basis of stigma, where there is complaint against the petitioner, without affording proper opportunity of hearing.

4. Shri Roy, learned Panel Lawyer appearing for the State and Shri Patel, learned Counsel appearing for the respondent No. 5 do not controvert the factual matrix, which has been averred by the petitioner in the pleadings. Thus, nothing remains for adjudication as to whether the order passed was stigmatic or a simplicitor, as perusal of the impugned cancellation order itself indicates that the same was made on the basis of complaint, which was found true in some enquiry without affording an opportunity of hearing to the petitioner. Learned Counsel do not even dispute the fact that no opportunity of hearing was afforded to the petitioner before the impugned order was passed.

5. The identical issue came up for hearing before this Court in Dhaluram Kosaria Vs. State of Chhattisgarh and Others, wherein this Court, after having considered various decisions of the Supreme Court, observed as under:--

13. The Supreme Court in the case of Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Ltd. and another, has observed in Para 34 as under:--

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive.

14. The Supreme Court in the case of Dipti Prakash Banerjee Vs. Satyendra Nath Bose, National Centre for Basic Sciences, Calcutta and others has observed in Para 35 as under:--

35. The above decision is, in our view, a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted....

15. The Supreme Court in the case of Nar Singh Pal Vs. Union of India and others, has held as under:--

The appellant, although a casual labour, had acquired temporary status. Once an employee attains the "temporary status, he becomes entitled to certain benefits one of which is that he becomes entitled to the Constitutional protection envisaged by Article 311 (sic) the Constitution and other articles dealing with services under the Union of India. The services were terminated on account of the allegation of assault made against the appellant. The order of termination in the instant case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed on the basis of preliminary inquiry and without holding a regular Departmental Inquiry, cannot be sustained.

16. The Supreme Court in the case of Chandra Prakash Shahi Vs. State of U.P. and others, has observed in Para 12, as under:--

12. Now, it is well settled that the temporary Government servants or probationers are as much entitled to the protection of Article 311(2) of the Constitution as the permanent employees despite the fact that temporary Government servants have no right to hold the post and their services are liable to be terminated at any time by giving them a month's notice without assigning any reason either in terms of the contract of service or under the relevant statutory rules regulating the terms and conditions of such service. The Courts can, therefore, lift the veil of an innocuously worded order to look at the real face of the order and to find out whether it is an innocent as worded (See: Parshotam Lal Dhingra Vs. Union of India). It was explained in this decision that inefficiency, negligence or misconduct may have been the factors for inducing the Government to terminate the services of a temporary employee under the terms of the contract or under the statutory Service Rules regulating the terms and conditions of service which, to put it differently, may have been the motive for terminating the services but the motive by itself does not make the order punitive unless the order was "founded" on those factors or other disqualifications.

17. The Supreme Court in the case of State of Punjab and others Vs. Balbir Singh, has observed in Para 7, as under:--

7. Thus, the principle that in order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the "object of the enquiry". If an enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. This principle was laid down by Shah, J. (as He then was) as early as 1961 in the case

of State of Orissa Vs. Ram Narayan Das. It was held that one should look into the "object or purpose of the enquiry" and not merely hold the termination to the punitive merely because of an antecedent enquiry. Whether it (order of termination) amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry....

18. In the instant case, the facts of the case clearly establish that the termination of the service of the petitioner was not a termination simplicitor but on the basis of the alleged irregularities and misconduct committed by the petitioners.

6. The ratio laid down in Chandikeshwar Singh Vs. State of Chhattisgarh and Others, , as under:--

13....The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding the enquiry in accordance with the elaborate provisions as prescribed in Rule 7 of the Rules, 1999.

7. In Samsher Singh Vs. State of Punjab, AIR 1974 SC 423, the Supreme Court has clarified the distinction between the term "motive" and "foundation" holding that innocuously worded order can be passed on foundation of grave charges.

8. In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, relied on by learned Counsel appearing for the respondent Nos. 2, 3 and 6, a Constitution bench of the Supreme Court, laid down the law, as under:--

202.... It is now well settled, that the "audi alteram partem" rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally. Considering from all aspects Regulation 9(b) is illegal and void as it is arbitrary, discriminatory and without any guidelines for exercise of the power. Rule of law posits that the power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination.

9. Having regard to the above stated facts and circumstances of the instant cases and applying the well settled principles of law to the cases on hand, the impugned order is not a cancellation of the appointment of the petitioner simplicitor, but is a stigmatic order which has been passed without affording proper opportunity of hearing to the petitioner in a proper enquiry. Thus, the impugned order is unsustainable. In view of the above, the impugned order dated 25-3-2010 (Annexure P-1) is quashed. The petition is allowed. No order as

to costs.