

(2001) 09 KAR CK 0047

In the Karnataka High Court

Case No : Civil Revision Petition No. 3136 of 2001

Catholic Board of Education, Mangalore

APPELLANT

Vs

Theresa D'Souza

RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Citation : (2002) 1 KarLJ 210

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : J.M. D'Cunha, for the Appellant; K. Govindaraj, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. The facts which are not in dispute are that the respondent was appointed as additional teacher at St. Mary's English Medium School (Primary Section), Udupi, which is an unaided school and run by religious and linguistic minority. The appointment order dated 31-5-1996 specifically provided that the respondent was on probation for a period of one year from the date of appointment and that the said term could be extended for a further period of one year. However, before the expiry of the probation period of one year, by an order dated 9-5-1997 the service of the respondent was terminated. The said order was challenged by the respondent u/s 94 of the Karnataka Education Act, 1983, before the II Additional District Judge and Educational Appellate Tribunal, Dakshina Kannada, Mangalore. The only contention of the respondent before the EAT was that the termination order was issued without assigning any reasons and without following the statutory rules and the principles of natural justice. As such the termination order is illegal.

2. The petitioner filed the statement of objections contending inter alia that the respondent was on probation and the petitioner was within its legal right to terminate the services and as such, termination could not be questioned before

the Tribunal. The Tribunal recorded a finding that the order of termination is illegal and set aside the termination order dated 9-5-1997 and directed the petitioner to continue the respondent in service. As against the order dated 13-7-2001 this petition is filed.

3. Heard the learned Counsel appearing for the respective parties.

4. Sri D'Cunha, learned Counsel at the very outset submitted that the Appellate Tribunal recorded a finding that the services of respondent was terminated without assigning any reason by misconstruing the decision of the Hon'ble Supreme Court; rendered in the case of Krishnadevaraya Education Trust and Anr. v. L.A Balakrishna. He also further submitted that the termination of the respondent is a termination simpliciter during probation period and no reason need be assigned for the termination of the services of the respondent. Termination without assigning any reason did not intend to attach any stigma to the respondent. Therefore, he submitted that the order calls for no interference.

5. Repelling this argument Sri Govindaraj, the learned Counsel for the respondent submitted that the respondent's service with the petitioner was good and there was no need to terminate her. No reason is given for discontinuing her service in the school. She was appointed on earlier occasion as a temporary teacher and thereafter, she was taken on regular basis. Therefore, the order passed by the Tribunal is just and proper which does not call for interference.

6. To appreciate the arguments and facts of the case, it is now necessary to refer to certain decisions cited at the Bar. In Krishnadevaraya Education Trust and Another Vs. L.A. Balakrishna, .Gadekar N.G. v. Karnataka State Road Transport Corporation and Anr., the Single Bench of this Court has held:

"If the wording of an order by which a probationer is discharged indicates that it is only a discharge simpliciter, ordinarily it must be accepted as correct and there is no scope for interfering with such an order.

If however the person concerned asserts that the order though innocuously worded, is really in the nature of penalty, and the Court considers that the averments are such that they cannot be rejected without verification of the records, the Court can call upon the authority who made the order to produce the original order to verify whether it is different from the one communicated.

If the order communicated and the original are similar, the Court should not dig deep into the records to unearth some misconduct.

If the contents of the order communicated is at variance with its original and the latter is found to be based on an allegation of misconduct of which the person had no opportunity to meet, the Court cannot still say that it is not based on misconduct".

7. In State of Maharashtra v. Veerappa R. Saboji and Anr., while considering the scope, ambit and power under Article 311(1), their Lordships have held that even

in the case of a temporary or officiating Government servant his services cannot be terminated by way of punishment casting a stigma. Simple termination of a probationer or temporary servant is valid. Employee, if he can show by reference to official records that the termination is by way of punishment, then the principles of natural justice should be followed. Ordinarily and generally the rule would be that you have to look to the order on the face of it and find whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government servant who challenges such an order.

8. In *V.P. Ahuja Vs. State of Punjab and Others*, , their Lordships have held that a probationer like a temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice.

9. In that case it is observed that the affidavits filed by the parties before the High Court as also in the Supreme Court indicated the background in which the order terminating the services of the appellant therein came to be passed. Such an order which on the face of it is make believe could not have been passed without holding a regular enquiry and giving an opportunity of hearing the appellant.

10. In *Krishnadevaraya Education Trust's case*, supra, it is held the employer has in terms of letter of appointment right to terminate his service could in order to avoid the allegations that order is stigmatic the employer should not state any reasons why services are terminated.

In *The Tata Oil Mills Co., Ltd. Vs. Workmen and Another*, , it is held by the Supreme Court that the Industrial Court can consider the evidence to find that discharge is not punitive or mala fide.

11. From the sum and substance of these decisions referred to above it is clear that it is settled law that during the period of probation the person acquires no right to the post. He has to prove his integrity, ability and honesty to discharge the duties of the post he was holding. He may be discharged if the appointing authority finds him unsuitable for the post or the facts to fulfil their requirement. A probationer cannot be treated as a person holding the post substantively and a person appointed on probation becomes permanent employee only after the issue of confirmation order. The description of an appointment, in the order of appointment as permanent (on probation) or substantive (on probation) cannot be construed to mean that the appointment is permanent or that the civil servant concerned has a lien on the permanent post. The word permanent or substantive must be read along with the word probation and should be understood in that line. Unless an order of confirmation is issued, the employee concerned does not acquire any lien.

12. From the reading of the impugned order, it is clear that it is not based on any charges amounting to retrenchment or stigmatic to hold an enquiry. It is clear

that if an employee is removed from service during or on completion of the prescribed period of probation without any stigma it is valid and no enquiry was called for. Further, the respondent has not offered or established that the discharge order was due to any reason calling for any enquiry. No records were called for by the respondent to prove that her removal attached any stigma for her future career.

13. The learned Counsel for the respondent vehemently argued that the petitioner has specifically stated in the termination order that the management is grateful to her for her kind services to the St. Mary's English Medium School. This clearly demonstrates according to her that she was rendering permanent service and her integrity, ability and honesty to discharge the duties of the post was well-recognized and therefore, there was no need for the petitioner to remove her from service after completion of probation. Though this argument appears to be reasonable, but from the facts it is clear that to avoid any stigma to her future to seek any appointment and as a courtesy the management has expressed their gratitude to the respondent. It cannot be construed that the petitioner has removed her notwithstanding the fact that she had discharged her duties for the satisfaction of the management. Without going deep into the matter as there is no material placed by the respondent for establishing that it was motivated with a mala fide intention to remove her only on the face of the order it has to be held that the termination is valid.

14. It is also not out of place to mention that she was initially appointed as an additional teacher from 1-6-1995 till 10-4-1996 and thereafter, she was appointed as assistant teacher by the petitioner with effect from 1-6-1996 and she was removed by letter dated 9-5-1997 from the respondent-institution intimating that her service would stand terminated w.e.f. 31-5-1997. Thereafter, the petitioner filled up this post by appointing some other person. Though she had obtained the stay order from the Appellate Tribunal, she did not report for duty in the petitioner-institution. On the other hand, she remained absent.

15. It is not the case of the respondent that she reported for duty but the petitioner declined to take her back as per the order of the Appellate Authority. Therefore, it is clear that the respondent also did not show any inclination to work in the institution from 1997 or from the date of the order passed by the Appellate Authority. Thus, the respondent herself was responsible for compelling the petitioner to appoint some other person in her place. In view of the order, if she is directed to report for duty, the assistant teacher who was subsequently appointed to this post would be deprived of his post for no fault of his and in that connection also the order passed by the Appellate Authority is liable to be set aside. For the foregoing reasons, I hold that the Appellate Authority has committed an error in setting aside the termination order issued by the petitioner.

16. Therefore, this petition is allowed. The impugned order passed by the Appellate Authority is set aside holding that the termination order passed by the petitioner is valid in law.