
(2015) 09 JH CK 0006
In the Jharkhand High Court
Case No : L.P.A. No. 172 of 2015

Damodar Valley Corporation

APPELLANT

Vs

Shraban Kumar Keshri

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 389
Penal Code, 1860 (IPC) — Section 201, 304-B

Citation : (2015) 09 JH CK 0006

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : R.N. Sahay, Sr. Advocate and T. Kabiraj, Advocate, for the Appellant;
S. Bakshi and Nipun Bakshi, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred against the judgment and order delivered by the learned Single Judge in W. P. (S) No. 5415 of 2006 dated 27th February, 2015, whereby, prayer of the respondent for getting salary for the period running from 2004 to 2010 has been appreciated and the matter has been remitted to the appellant for passing a fresh order. It has also been observed in the judgment and order delivered by the learned Single Judge that the respondent (original petitioner) is entitled for consideration for reinstatement into the services. Against this order, the original respondent has preferred this Letters Patent Appeal.

2. Learned counsel appearing for the appellant submitted that the respondent (original petitioner) was appointed on 21st August, 2011 as Medical Officer on probation for one year, which was subject to the confirmation and, thereafter, he was not confirmed and continued as such. Regular evaluation of his performance was going on and it was not found satisfactory and, hence, his services have been terminated vide order dated 17th August, 2004. The said order is annexed

at Annexure-3 to the memo of this Letters Patent Appeal. The reasons stated in the order is that the performance and conduct of this respondent was not at all satisfactory. There was also no positive Police Verification Report and, hence, after careful consideration of all the relevant aspects, the appellant has decided that the services of the respondent (original petitioner) are no longer required and, therefore, his services were terminated with immediate effect under Regulation 12 of the Damodar Valley Corporation Service Regulations. It is further submitted by the learned counsel for the appellant that the order of termination is termination simplicitor, whereas, the learned Single Judge has appreciated the same as punitive termination. Moreover, there is erroneous affidavit filed by the appellant in the writ petition and the order of termination which was termination simplicitor was made termination punitive by the counter affidavit. In fact, the reasons given in the counter affidavit are of no help when the order of termination is clearly narrating the reasons for termination. These aspects of the matter have not been properly appreciated by the learned Single Judge and, hence, the judgment and order delivered by the learned Single Judge deserves to be quashed and set aside.

3. Learned counsel for the respondent submitted that the order of termination which is at Annexure-3 appears to be a termination simplicitor, but, looking to the counter affidavit filed by the respondent in the writ petition, the correct reasons for termination of services of the respondent (original petitioner) have been brought on record and if we see the reasons, the termination of services is punitive termination and that too without giving any show cause notice, without holding any inquiry and without giving any opportunity of being heard to the respondent. These aspects of the matter have been properly appreciated by the learned Single Judge and, hence, this Letters Patent Appeal may not be entertained by this Court.

Reasons:

4. Having heard learned counsels for both the sides and looking to the facts and circumstances of the case, we hereby quash and set aside the judgment and order delivered by the learned Single Judge in W.P.(S) No. 5415 of 2006 dated 27th February, 2015 mainly for the following facts, reasons and judicial pronouncement:

"(i) The respondent (original petitioner) was appointed on the post of Medical Officer on 21st August, 2001. He was appointed as probationer and his appointment was subject to confirmation.

(ii) It appears that the probation period was extended because his performance was not up to the mark of satisfaction.

(iii) It further appears that vide order dated 17th August, 2004, the services of the respondent were terminated with immediate effect under Regulation 12 of the Damodar Valley Corporation Service Regulations.

Regulation 12 reads as under:

"Regulation 12:-- Unless otherwise provided in any individual contract all appointments except officiating appointments shall be on probation for such period as may be determined by the Corporation, during which time, the services of any employee can be terminated without notice."

(emphasis supplied)

(iv) It further appears from the facts of the case that on 17th August, 2004, following order of termination was passed by the appellant:

"ORDER

Dr. Shraban Kumar Keshri had joined Damodar Valley Corporation as Medical Officer on 5.9.2001 on the basis of Appointment Offer No. PL-33/1013-3598 dated 21.8.2001.

On his joining the Corporation there has been regular assessment of his performance in the post of Medical Officer, DVC Panchet Hill Hospital and it was found that his performance and conduct is not at all satisfactory. Further there has been no improvement in his conduct and performance though he was asked to improve his performance by his superior Officers. Corporation has also not received any positive Police Verification Report in respect of Dr. Keshri. Now, therefore, on careful consideration of all relevant aspects, it is decided that the services of Dr. Shraban Kumar Keshri are no longer required and hence his services at the Corporation are terminated with immediate effect under Regulation-12 of DVC Service Regulations.

(A.K. Basu) Secretary"

(emphasis supplied)

(v) It further appears from the facts of the case that the order of termination dated 17th August, 2004, as stated hereinabove, is a termination simplicitor. This order cannot be labelled as punitive termination. Regular assessment of the probationer was continued and his performance was not found satisfactory. This is the only reason for termination of his services. It ought to be kept in mind by the probationer that if his performance is not up to the mark of satisfaction, his services can be brought to an end by the appellant under Regulation 12 of the Damodar Valley Corporation Service Regulations.

(vi) It further appears from the facts of the case that in the termination order, the appellant has also used the word "conduct". The conduct of the probationer was also not found satisfactory merely because, conduct is not found satisfactory that does not mean that the order of termination is punitive in nature. In fact, performance of the probationer includes the conduct of probationer.

(vii) It further appears that the order dated 17th August, 2004-termination order which is a termination simplicitor cannot be made punitive in nature by the

counter affidavit. Unnecessarily in the counter affidavit, detailed conduct, behaviour and criminal mind of the respondent has been revealed. The respondent was found absconding after filing of the First Information Report against him. The respondent was absent for six months, which was unauthorized absenteeism. The respondent was in search of anticipatory bail because of an offence registered against him under Section 304-B of the Indian Penal Code to be read with Section 201 thereof. Thereafter, he was convicted by the trial court and the respondent remained in jail for approximately more than two dozen months and, thereafter, criminal appeal was preferred by the respondent under Section 389 of the Code of Criminal Procedure, 1973 and there is order of suspension of sentence in favour of the respondent. These facts have been stated in the counter affidavit, unnecessarily. This has no reference with the termination of the services of the respondent. In fact, the appellant should have taken all care that its officers should not file such type of affidavit. The reasons which are never given in the termination order, have been given in the counter affidavit by ignorant officer of the appellant, without knowing the repercussion of the counter affidavit.

(viii) It has been held by Hon"ble the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , especially at paragraph 8, as under:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older. "

(emphasis supplied)

In view of the aforesaid decision, the reasons which are never given in the impugned order, cannot be given in the counter affidavit. Here, the counter affidavit has made the termination simplicitor as punitive termination. This is not permissible. This is a mistaken affidavit filed by the ignorant officer of the appellant. The reasons cannot be supplied in the counter affidavit to the impugned order. These aspects of the matter have not been properly appreciated

by the learned Single Judge. No premium can be given to the probationer when his performance is not up to the mark of satisfaction. In fact, degree of satisfaction of the performance is a subjective satisfaction of the employer and the Court cannot replace that subjective satisfaction of the employer while exercising powers under Article 226 of the Constitution of India. This Court cannot say that the performance of the respondent was up to the mark of satisfaction and, therefore, his services should have been continued. By no stretch of imagination, the order passed by the appellant dated 17th August, 2004 can be said to be a punitive termination order."

5. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncement, we hereby quash and set aside the judgment and order delivered by the learned Single Judge in W.P.(S) No. 5415 of 2006 dated 27th February, 2015.

6. Accordingly, this appeal is allowed and disposed of.