
(2021) 07 GAU CK 0122
In the Gauhati High Court
Case No : Writ Petition No. 1185 OF 2016

Deputy Commissioner	Vs	APPELLANT
Shabnam Sultana		RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Administrative Tribunal Act, 1985 — Section 22(3)

Citation : (2021) 07 GAU CK 0122

Hon'ble Judges : Sudhanshu Dhulia, CJ;Ranjan Pathak, J

Bench : Division Bench

Advocate : Rs Choudhury, P Mahanta

Final Decision : Disposed Of

Judgement

1. The matter is taken up through video conferencing.
 2. Heard Ms. RS Choudhury, learned counsel for the petitioners. Also heard Mr. P Mahanta, learned Amicus Curiae.
 3. This writ petition has been filed by the petitioner who is the Deputy Commissioner of Navodaya Vidyalaya Samiti, challenging the order of the Central Administrative Tribunal dated 17.12.2015 passed in Original Application No.97/2008 by which the Original Application of the respondent No.1 herein was allowed directing that the respondent No.1 be reinstated in service as a Trained Graduate Teacher (TGT) English.
 4. This case has a long and chequered history and this is second round of litigation before this Court. The facts of the case being important, needs to be stated first.
- The respondent No.1 was appointed as TGT English teacher after she was duly selected. This was by an appointment order dated 07.06.2006 where

she was asked to join as TGT English Teacher in Jawahar Navodaya Vidyalaya at Banduar, Udaipur, South Tripura. There is absolutely no dispute

about the fact that the appointment of the respondent No.1 was initially for two years on probation. The condition also stipulated that the two years of

probation could be extended for further period of one year, and the authority concerned was empowered to terminate the services of the respondent

No.1 at any point of time during the period of probation, without assigning any reasons. The appointment order dated 07.06.2006 clearly stipulates the

aforesaid condition, which reads as under:

“2. You will be initially on probation for a period of two years from the date of your joining which may further be extended at the discretion of the

competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render you liable to discharge from

service. Further during the period of probation your service can be dispensed with by the Samiti without assigning any reasons. While on probation,

you will be required to give one month’s notice of resignation in case you leave the Samiti.”

(emphasis provided)

5. While the respondent No.1 was serving as a TGT English Teacher during the period of probation at Navodaya Vidyalaya, it appears that she was

reminded from time to time about the lapses on her part in performing as a teacher. In that regard, there are three letters dated 23.11.2006, 10.08.2007

and 15.08.2007 which are on record. It is again an admitted fact that performance of the candidates who are on probation is evaluated from time to

time by the Inspector of Class Room Teaching and Learning and such evaluation report is forwarded to the concerned higher authority in Delhi. In the

present case, the evaluation report of 62 candidates/teaching staff, including the respondent No.1, were forwarded by the concerned Principals along

with their remarks. In majority of the cases, the DPC recommended either confirmation of service or extension of the probation period, but in four

cases, including the case of the respondent No.1, the DPC was of the opinion that due to their poor performance, their services should be terminated.

Consequent to the said report, a termination order (Annexure-8) was passed on 11.02.2008, which reads as under:

“OFFICE ORDER

In pursuance of Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules 1965, the undersigned hereby terminates the services

of Ms. S. Sultana, TGT (Eng.), JNV-South Tripura, with immediate effect.

(M.L. SHARMA)

DEPUTY COMMISSIONER??

6. This order was challenged by the respondent No.1 before the Central Administrative Tribunal at Guwahati where the respondent No.1 inter alia

raised allegation of bias against the Principal of the school and also made allegation which is in the nature of sexual harassment. The Tribunal came to

the conclusion that the impugned termination order dated 11.02.2008 had been passed due to mala fide reasons and in such matters even a

probationary officer is protected under the law and, having come to such conclusion, the Tribunal vide order dated 09.09.2009 set aside the order of

termination. The said order of the Tribunal dated 09.09.2009 was challenged by the present petitioner in the first round of litigation viz. WP(C)

4158/2009, before this Court and the Division Bench of this Court came to the conclusion that the allegation of sexual harassment is in the realm of

disputed questions of fact and such questions of fact had not been properly examined by the Tribunal though the Tribunal has the power to examine

these facts under sub-section 3 of Section 22 of the Administrative Tribunal Act, 1985. Therefore, this Court remanded the matter back to the

Tribunal for further examination. The matter was heard once again by the Tribunal. The respondent No.1 before this Court was examined and her

statement was recorded. As far as the allegation of sexual harassment made against the Principal of the school is concerned, the Principal was not

examined and the case of the petitioner before this Court would be that by this time he has been transferred to another school in southern part of India

where notice was not given to him and therefore, he could not present himself before the Tribunal, etc.

â??(3) A tribunal shall have, for the purposes of [discharging its functions under this Act], the same powers as are vested in a civil court under the

Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of documents;
- (c) receiving evidence of affidavit;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.â??

7. Be that as it may, the fact remains that, in this case, where serious allegations of sexual harassment were made against the Principal of the school, he was never examined by the Tribunal. Nevertheless, having noted the statement of the respondent No.1, the Tribunal came to the conclusion that the real reason behind the termination of services of the respondent No.1 is not her unsatisfactory performance but malafide on the part of the Principal and, consequently, the Tribunal once again set aside the order of termination, vide its order dated 17.12.2015. The petitioner has again challenged the order of the Tribunal before this Court in the present writ petition.

8. In the present case, though notice was served on the respondent No.1, she did not enter her appearance. Therefore, this Court appointed a practising lawyer of this Court, Mr. Preetam Mahanta, as amicus curiae. Mr. Mahanta has seen the record of the case and has argued the case at length before this Court.

9. We have heard the counsel appearing for both the parties.

10. Mrs. RS Choudhury, learned counsel for the petitioner would argue that the admitted case is that the services of the respondent No.1 were terminated during the period of her probation. It is again true that though the period of probation was for two years which would have come to an end in June, 2008, the services were terminated by the authority before the period of probation could come to an end in exercise of the powers given to the authority under the terms of the appointment order dated 07.06.2006 which we already referred to above. The terms of the appointment order clearly

stipulate that the services of a teacher on probation can be terminated at any point of time during the period of probation without assigning any reasons.

11. What is important for this Court to examine is that though the rights of a government servant during the period of probation are limited, yet such an employee is given protection under the law. The very purpose of placing an employee initially on probation is to examine his/her work and conduct by the employer. It is true that while an employee is on probation, his/her performance is actually under scrutiny and unsatisfactory performance will not confirm him/her in service. He is only liable to be confined on completing satisfactory service during probation.

12. In the present case, services of the respondent No.1 had been terminated even before the period of probation had come to an end, as we have already referred above. But then such are the powers given to the authority. So, it is not something which is in violation of law. Moreover, it is not a case of malafide inasmuch as there was no allegation of misconduct against the respondent No.1. She was only being judged for her performance as a teacher which was not satisfactory and therefore, her services were terminated. The allegation of sexual harassment is clearly an afterthought as this allegation has come for the first time when the respondent No.1 had moved an original application before the Tribunal subsequent to her termination from service. It is an admitted fact that there was no such complaint earlier, not even in her reply to the authorities where she was asked to improve her performance from time to time.

13. All this Court has to examine in the present case is whether the reports, including the report of the Principal, on the basis of which services of the respondent No.1 came to an end was merely motive or was it the foundation for the termination of services of the respondent No.1. The difference between these two concepts i.e. motive and foundation, in service law is now well settled. In *Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. and Another*, reported in (1999) 2 SCC 21, explaining the two concepts in paragraphs 11 and 27, the Honâ??ble Apex Court stated as under:

â??11. Now, there are two lines of cases decided by this Court which deal with the question in issue. In certain cases of temporary servants and

probationers, this Court has taken the view that if the ex parte enquiry or report is the motive for the termination order, then the termination is not to be called punitive merely because the principles of natural justice have not been followed. On the other hand, there is another line of cases, where this Court has held that the facts revealed in the enquiry are not the motive but the foundation for the termination of the services of the temporary servant or probationer, and hence punitive as the principles of natural justice have not been followed, and such orders are to be declared void. This Court has held that for finding out whether a given case falls within either of these two categories, it is permissible for the High Court or the Administrative Tribunal to go behind the order and look into the record of the proceedings, the antecedent and attendant circumstances culminating in the order of termination.

It was then stated in paragraph 27 as under:

27. In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations. But if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation and the termination will be bad.â??

The facts of the present case clearly reveal that the respondent No.1 who was on probation was being asked from time to time to explain her conduct in various matters relating to her teaching and other school activities. Her performance was judged by an independent authority i.e. the Inspector of Class Room Teaching and Learning. This report was then examined by DPC in Delhi which came to the conclusion that the performance of respondent No.1 being unsatisfactory should not continue as teacher and on the basis of all these, her services were terminated. Therefore, there is no fact on record which can reveal that there was any enquiry against the respondent No.1 regarding her misconduct and enquiry which was done behind her back which became the foundation of termination of service. The only enquiry and the reports which are on record relate to the performance of the respondent No.1 as a teacher which was below satisfaction. The same position has been reiterated by the Honâ??ble Apex Court in the case of

Director, Aryabhata Research Institute of Observational Sciences (ARIES) vs. Devendra Joshi and others, reported in (2018) 15 SCC 73.

14. In view of the aforesaid discussion and the judgments of the Honâ??ble Apex Court referred to above, we are of the opinion that no interference

is called for with the termination of respondent No.1. Accordingly, the impugned order dated 17.12.2015, passed by the Central Administrative

Tribunal, Guwahati in Original Application No.97/2008 is hereby set aside. We affirm the termination order against the respondent No.1.

15. The writ petition is disposed of accordingly.

16. The Gauhati High Court Legal Services Authority will pay Mr. Preetam Mahanta, learned Advocate, the remuneration, as admissible, for the assistance rendered by him as Amicus Curiae in this case.