
(1994) 09 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No. 3670 of 1989

Jagannath Dnyanoba Parkhe

APPELLANT

Vs

Air India and others

RESPONDENT

Date of Decision : 22-09-1994

Acts Referred:

Air Corporations Act, 1953 — Section 34
Constitution of India, 1950 — Article 226

Citation : (1995) 70 FLR 849 : (1996) 1 LLJ 65

Hon'ble Judges : S.M. Jhunjhunwala, J; M.L. Pendse, J

Bench : Division Bench

Judgement

Pendse, J.—There is no merit whatsoever in this petitioner filed under Article 226 of the Constitution to challenge the order of termination dated August 20, 1979 passed by respondents terminating the probation period of the petitioner. The order of termination was confirmed by the Appellate Authority. The petition is filed ten years after the impugned order was passed.

2. The petitioner was appointed on June 28, 1978 as Junior Technical Officer. The appointment was on probation for a duration of one year. During the probation period, it was noticed that the work of the petitioner was unsatisfactory. The petitioner could not express himself either orally or in writing and did not bother to think about the problems due to lack of knowledge. The relations of the petitioner with the other employees also required improvement. As the work of the petitioner was not found satisfactory, the probation period was extended. During the extended period, it was noticed on a surprise check that seven out of thirteen coaches had got upholstery in torn and detached condition. The petitioner was required to attend to the coaches and the petitioner was guilty of lapses in performing his duty. The shortcomings of the petitioner were repeatedly brought to the attention of the petitioner but the petitioner did not improve. Ultimately, on August 20, 1979 the petitioner was informed that the management had decided to determine probation in terms of clause 5 of paragraph 1 their letter dated April 17, 1978. The representation of the petitioner

was turned down by letter dated October 18, 1979. The letter recites that the work of the petitioner was unsatisfactory during the probation period and the petitioner was also involved in misconduct on June 23, 1979.

3. The petitioner produced letters alleged to have been signed by two Ministers of Civil Aviation recommending that the petitioner, who belongs to the Scheduled Caste, should be reinstated in service. The respondents found that the letters were bogus and fabricated and thereupon the petitioner was prosecuted. The petitioner approached this Court by filing the present petition on December 22, 1989. Shri Grover, learned counsel appearing on behalf of the petitioner, raised two contentions in support of the relief sought in the petition. The first contention is that the termination during the extended period of probation was not termination simpliciter but was as a penalty for the alleged misconduct on the part of the petitioner. It was urged that it was incumbent upon the respondents to hold a departmental enquiry for the alleged misconduct before issuing order of termination. There is no merit whatsoever in this contention. The facts set out hereinabove clearly reflect that the work of the petitioner was entirely unsatisfactory and in spite of repeated warnings, the petitioner refused to show any improvement. The claim of Shri Grover that the petitioner was removed from service in view of misconduct, is not correct. The petitioner was guilty of lapses in not maintaining the coaches properly and the mere fact that the expression "misconduct" is used by Deputy Managing Director while turning down the representation against the order of termination cannot lead to the conclusion that the order of termination of probation period was as a penalty. In our judgment, on the material available on record, no fault can be found with the respondents for terminating the services of the petitioner during the extended period of probation.

4. The second contention urged by Shri Grover is merely required to be stated to be rejected. The learned counsel urged that the petitioner had addressed representation to the Minister of Civil Aviation and two Ministers consecutively recommended the reinstatement of the petitioner in service. Shri Grover submitted that the two Ministers had recommended consideration of the relief sought by the petitioner and the endorsements made by the Ministers on the letter should be considered as a direction binding on the respondents in accordance with the provisions of section 34 of the Air Corporation Act. In our judgment, it is impossible to accede to the contention that the endorsements made by the Ministers on the representation forwarded by the employees should be treated as statutory direction binding on the respondents u/s 34 of the said Act. It also cannot be overlooked that the respondents are claiming that the alleged letters and the endorsements by the Ministers was an outright forgery and for which the petitioner was prosecuted in a criminal Court. In our judgment, the petitioner is not entitled to any relief and the petition must fail.

5. Accordingly, rule is discharged with costs.