
(1988) 12 AHC CK 0056
In the Allahabad High Court

Kallu Prasad Dinkar

APPELLANT

Vs

Regional Manager, Allahabad Bank and Others

RESPONDENT

Date of Decision : 15-12-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 310, 311
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19
Constitution of India, 1950 — Article 226, 310, 311
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Constitution of India, 1950 — Article 226, 310, 311

Citation : (1989) 2 LLJ 478

Hon'ble Judges : K.K. Birla, J;B.L. Yadav, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.L. Yadav, J.—By the present petition under Article 226 of the Constitution of India, the order of termination dated 8th October 1987 (Annexure-6 to the petition), is sought to be quashed by issuing a writ of certiorari.

2. The petitioner was appointed on 15th October 84 as Agriculture Field Officer by the Allahabad Bank through its Chairman and Managing Director, in the Junior Management of the Allahabad Bank and was posted at Jaspura Branch of the Allahabad Bank in the District of Banda. The petitioner was placed on probation for a period of two years in view of Regulation 15 of the Allahabad Bank (Officers") Service Regulations. 1979. (for short the Regulations), framed in exercise of the powers conferred by Section 19 read with Sub-section (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, vide appointment letter dated 25th September 84 (Annexure-1 to the petition). Para 2 of the appointment letter indicates that the appointment in the first place is on probation for a period of two years which may be extended by a further period not exceeding one year. Similar was provided under Regulations 15 and 16 of the Regulations. Ex abundanti cautela, the provisions of Regulations 15 and 16 are

set out below:-

15. (1) An officer directly appointed to the Junior Management grade shall be on probation for a period of two years.

(2) An employee of the Bank promoted as an Officer in the Junior Management grade shall be on probation for one year.

(3) An officer appointed to any other grade shall be on probation for such period as may be decided by the Bank:

Provided that the competent authority may, in the case of any officer, reduce the period of probation or dispense with probation.

16. (1) An officer shall be confirmed in the service of the Bank if, in the opinion of the competent authority, the officer has satisfactorily completed the training in an institution to which the officer may have been deputed for training, and the in-service training in the Bank:

Provided that an officer directly recruited to the Junior Management grade may be required also to pass a test in a language other than his mother tongue.

(2) If in the opinion of the competent authority an officer has not satisfactorily completed either or both the trainings referred to in sub-regulation (1) or if the officer has not passed the test referred to therein, the officer's probation may be extended by a further period not exceeding one year.

(3) Where during the period of probation, including the period of extension, if any, the competent authority is of the opinion that the officer is not fit for confirmation:-

(a) in the case of a direct appointee his services may be terminated by one month's notice or payment of one month's emoluments in lieu thereof; and

(b) in the case of a promote from the Bank's services, he may be reverted to the grade or cadre from which he was promoted.

3. During the first two years of petitioner's service, his services were appreciated by letter dated 25th July 85 issued by the Lead Bank Officer (Annexure-2 to the petition), to the effect that petitioner's service and efforts were appreciated in compilation and submission of Lead Bank Information System-Return for the quarter ending June 1985 of five branches, Atarra, Badoa, Naraini, Kartal and Kalinjer. Before completion of two years' probation, an enquiry was made by the Manager, Allahabad Bank, by letter dated 29th August 86, enquiring from the Manager, Allahabad Bank, Jasra Branch, Banda, as to whether the petitioner has obtained leave without pay, and what was his purpose etc. (Annexure-3 to the petition). By letter dated 9th September 86 (Annexure-4 to the petition), an information was furnished that the petitioner had joined on 15th October. 84 and was transferred to Atarra (Banda) Branch and " has not obtained any leave without pay and his conduct and performance has been quite

satisfactory. This was the report submitted just about a month and five days prior to the completion of two years' probationary period. In normal course the petitioner ought to have been confirmed on this report. But much after completion of two years an order dated 14th July 87 (Annexure-5) was passed extending his period of probation till 14th October 87, just few months before completing one year extended period other than two years' probation period. As the petitioner's performance was not found satisfactory, he was instructed to improve the same. The petitioner's services, however, were terminated by order dated 8th October 87 (Annexure-6 to the petition) with effect from 10th October 87 by the Regional Manager, Allahabad Bank. It is against this order the present petition has been filed.

4. Sri G.C. Bhattacharya, learned Counsel for 1 the petitioner, urged that a bare reading of Regulations 15 and 16 of the Regulations would indicate that the probationary period for an officer in the Junior Management directly appointed (not as a promote), was two years, which could have been reduced or dispensed with in view of proviso added to Regulation 15. Regulation 16(1) prescribes that in case an employee of the Bank is promoted as, an officer in the Junior Management, he has to complete a training in an institution to which the officer may have been deputed for training. There was a proviso added to Regulation 16(1) applicable to the case of petitioner as he was an officer directly recruited to the Junior Management. He was required to pass a test in a language other than his mother tongue. But in fact, there was no such test held nor the petitioner was ever required to pass test in a language other than the mother tongue. Otherwise the petitioner would have passed that test also, as he has got" a very brilliant academic record and was very sincere and devoted to his services. Sub-clause (2) of Regulation 16 provides that the Competent Authority may extend probationary period only under two circumstances, either the officer A promoted has not completed his training referred to in Sub-Regulation (1) or the officer, as has been the case of petitioner, has not passed the test referred to therein. The petitioner has passed B.Sc. (Agri) and Animal Husbandry from the Chandra 4 Shekhar Azad University of Agriculture and Technology, Kanpur in 1st Division in 1982 in English Medium and the mother tongue of the petitioner was Hindi. He could very well have passed the test in English language. But he was never directed to do so, nor there was any such examination held as required by the provision to Regulation 16. Consequently, the extension of probationary period of two years was without authority or jurisdiction. It was next urged that the petitioner would stand confirmed on completion of the period of probation of two years as the proviso of Regulation 16 was not applicable to his case, inasmuch as he was never required to pass the test in a language other than the mother tongue. It was further urged that the Regional Manager was not the appointing authority of the petitioner. Consequently, he has no power or authority to terminate the services of the petitioner by the impugned order dated 8th October 87 (Annexure-6 to the petition). The appointing authority of the petitioner was respondent No. 2, Allahabad Bank through its Chairman and

Managing Director. In any case, it was not a simple order of termination, rather it was an order of dismissal attaching stigma to the petitioner's conduct. It appears that some enquiry behind the back of the petitioner was held and some secret report was obtained without affording the petitioner an opportunity of being heard. Hence the impugned order was passed in violation of principles of natural justice and other relevant regulations.

5. Sri T.P. Singh, learned Counsel appearing for the respondents, on the other hand, urged that Regulations 15 and 16 have been correctly applied and the probationary period has correctly been extended by one year. The power of appointing authority was delegated to the Regional Manager by Order dated 6th October 87 (Annexure CA-11 to the counter affidavit) directing the termination of services of the petitioner before 14th October 87, and Annexure-22 of the counter affidavit was the telegram authorising the General Manager to sign the order of termination.

6. Having heard the learned Counsel for the parties, the points for our determination are as to whether the petitioner's probationary period could have been extended in view of the provisions of Regulations 15 and 16; whether the termination order was passed by the appointing authority or by the Regional Manager who has got no authority to pass the same; and whether the impugned order of termination of the services of petitioner is a simple order of termination or it is an order of punishment, or substantially an order of dismissal, as without affording any opportunity of being heard some enquiry was held and on the basis of that enquiry the petitioner's services were terminated.

7. Before coming to the first point it is better to refer to the elementary rules of interpretation. These rules are well known, that the construction should be in the context of scheme, purpose, setting of the Act or the Regulation keeping in view the principles of social justice. As the meaning of Regulations 15 and 16 have to be reconciled, it must be a harmonious construction, otherwise the principles contained could not obviously be reconciled. It may be that there maybe some specific provision in some other statute under which the probationary period of an officer directly appointed to the Junior Management cadre may be extended. Unless the said provision has been made in the present Regulations 15 and 16, the same cannot be deemed to have been incorporated or provided under Regulations 15 and 16 of the Regulations. See *Tel Utpadak Kendrav. Dy, Commissioner, Sales Tax (AIR)1981 SC 1617 ; Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others, .*

8. In respect of the first point, as the petitioner was about to complete his probationary period when the report about his conduct and performance was demanded along with the details of his having obtained leave without pay, and a satisfactory report was submitted by the officer concerned vide letter dated 9th September 86 (Annexure-4), there was nothing on record to indicate as to what was the report submitted containing the performance and conduct of petitioner not being satisfactory. There appears to be certainly something positive

inasmuch as in Annexure CA-19 to the counter-affidavit, before extending the probationary period there appears to be some letters dated 3rd December 86 and 28th December 86, presumably written by the Deputy General Manager, Zonal Office, Lucknow, on the basis of which in spite of the best recommendation that the petitioner's performance and conduct has been quite satisfactory and he did not obtain any leave without pay, his probationary period was extended. This leads to an irresistible inference that there was some oblique motive behind the extension of petitioner's probationary period, particularly when the same was not warranted under the Regulations.

9. If the textual and contextual interpretation is applied by making reference to the actual provision it is obvious that Regulation 16, more or less, is like a proviso, inasmuch as Regulation 15(1) provides that an officer directly appointed (as the petitioner) to the Junior Management Grade shall be placed on probation for a period of two years. This condition of two years' probation was also mentioned in para 2 of the letter of appointment dated 25th September 84 (Annexure-1 to the petition). But there was a provision added to it that the said probationary period can be even curtailed. This connotes that the proviso is by way of exception and operates to deal with the case, but it would have fallen within the ambit of the provision to which the proviso has been added. It means that by Regulation 15 it was not intended that the probationary period may be extended. It is by way of Regulation 16 that the extension of probationary period for one year was contemplated. Regulation 16, cannot, therefore, be anything else, other than the proviso appended to Regulation 15. We are of the view that more express provision is required when a proviso has to be interpreted, inasmuch as if such a comprehensive meaning has to be assigned to the proviso so as to bring it within the ambit and purview of the main provision, both have to be read together. In case the proviso is capable of wider connotation as well as narrower connotation, it is the narrower connotation which would be preferred, as the same would bring it within the purview of the main provision. In the present case there were two modes of selection of the officers in the Junior Management Grade. The first was through direct competition as the petitioner went through that process and selected. The second mode is by promotion of the employees of the Bank as officer in the Junior Management Grade.

10. Regulation 16(1) provides the extension of period of probation in case of an employee of the Bank being promoted to the Junior Management Grade. But with that we are not concerned. There is a proviso added to Regulation 16(1) which deals with the officers directly recruited, as the petitioner was, to the Junior Management Grade. By the said proviso that officer was required to pass a test in a language other than his mother tongue. This was the only condition precedent for extending the period of probation of the petitioner. The petitioner knows English apart from the mother tongue Hindi and there could have been no difficulty to the petitioner in having passed the test, provided the same was held or the petitioner was informed about the same. The petitioner was neither

informed, as a matter of fact, nor the said test was held, nor even that was made the basis while recommending the conduct and performance of the petitioner being quite satisfactory by letter dated 9th September 86(Annexure-4). Consequently, Regulations 15 and 16 read together, and being interpreted harmoniously, two years, the probationary period of the petitioner, could not have been extended for a period of another one year. Keeping in view the recommendation of the officer an enquiry was made and a report was submitted in favour of the petitioner by letter dated 9th September 86(Annexure-4) that neither the petitioner has taken any leave without pay and that his conduct and performance was quite satisfactory.

11. We are conscious that the object of probationary period is to watch the performance of the officer concerned or the employees. The period of probation does vary from post to post. The discretion of the employer to watch the conduct and performance of the officer concerned is subject to rules governing the appointment of the officer. If the rule is not assigned the due importance, the same would be counterproductive. As when the petitioner was about to complete his probation period on 14th October 86 and a report was obtained by letter dated 29th August 86 (Annexure-3) about the conduct and performance of the petitioner, and the reply was given by letter dated 9th September 86(Annexure-4) that the conduct and performance of the petitioner was quite satisfactory, there was no reason why the extension of probationary period was granted by letter dated 14th July 87 when the third year was about to be completed (by October 14, 1987). There was no evidence against the conduct of petitioner as there was no complaint from any quarter that his conduct and performance was not satisfactory. How this was ascertained, is a mystery, and even if there was anything positive, the same could have been pointed out to the petitioner or if some enquiry was held, the petitioner must have been given opportunity to defend himself. It appears that by some secret enquiry being made, it was assumed by the employer, that the petitioner's performance was unsatisfactory. When the petitioner has completed about two years with satisfactory performance, that period could have been extended only by following the procedure contemplated under Regulation 16, but that was not done, hence extension of probationary period was arbitrary, illegal and beyond Regulation 16.

12. As regards the second point as to whether the Regional Manager was the competent authority to terminate the services of the petitioner, suffice it to say that the appointing authority was, no doubt, the Allahabad Bank, through its Chairman and Managing Director, as is obvious by the letter of appointment dated 25th September 84 (Annexure-1). In the counter-affidavit also it has been stated in para 17 that the Assistant General Manager is the delegated authority of the employer and the Regional Manager was the competent authority to terminate his services (vide Annexure-21 to the counter-affidavit). But there was nothing to indicate, nor there was any provision under the Regulations as to how "the competent authority", which was a defined term under Regulation 3(d) to the effect that the "competent authority" means the authority designated for

the purpose by the Board. It has to be remembered that when a word has been statutorily defined to convey certain meaning in the provisions to follow, the same cannot be discarded, nor taken to connote sense in an ordinary dictionary meaning. When the legislature has taken trouble to define a term, it means that the same construction has to be placed by the Court. Whenever an expression has been defined, as in the present case, it connotes that the legislature wants only that meaning which has been given by it, to be assigned by the Court also while interpreting the said expression or word. In the present case "competent authority" means "authority designated for the purpose of appointment and termination of service by the Board" and if the meaning of the term "competent authority" was to be curtailed or the same was to be delegated, the same could have been done only by the Board and not by anybody else. There is no evidence on record, nor anything positive has been stated in the counter-affidavit, nor urged by the learned Counsel for respondents as to how the Board has delegated its authority to Regional Manager. It is not by implication that the same may be assumed or just by indicating in the telegram "that you sign the letter of termination", the said authority can be designated. It was the "competent authority" or the appointing authority alone which could have signed the letter of termination of service of the petitioner. In the telegram (Annexure-22 to the counter- affidavit) it was stated that the Regional Manager may sign the letter of termination of service.

13. It is noticable that under Regulation 14 it has been provided that all appointments in, and promotions to, the officer grade shall be made by the competent authority. Under Regulation 15 it has been provided that the competent authority may, in the case of any officer, reduce the period of probation or dispense with probation. Under Regulation 16 it has been provided that the competent authority may confirm an officer if he has successfully completed the training. Under Regulation 16(2) it has been provided that the competent authority may extend the period of probation. Regulation 16(3) provides that in case the competent authority is of the opinion that the officer is not fit for promotion, his services may be terminated. The emphasis by the legislature is on the "competent authority", either to make appointment, to extend the period of probation or to dismiss. Nowhere it has been provided that any delegated authority other than "the competent authority", can either make appointment, confirm the officer or extend the period of probation or pass the order of termination. The definition clause under Regulation 3(d) is, as stated above, that the "competent authority", means authority designated for the purpose by the Board. The definition clause does not open with the words "includes", as shall be deemed to include just a general term with a view to equalize the meaning of words and phrases occurring in the body of the statute. When the definition clause opens with the word "means", it is with a view that the meaning of the word is restricted and other meaning other than the word given, or provided for, is to be excluded.

14. In the present case the legislature was conscious in providing that "the

competent authority", means authority designated for the purpose by the Board. The designation must be by Board. The constitutional mandate is that under Article 311(1) of the Constitution, no person who is a member of the civil service or who holds a civil post under the Union or the State, shall be dismissed or removed by the authority subordinate to that by which he was appointed. Further, the expression civil post *prima facie* means an appointment or office on the civil side of the administration as distinguished from the post under the defence forces. The persons who are excluded from the purview of Article 311(1) of the Constitution are the members of defence forces or the persons holding any post connected with defence. In fact, Article 311(1) is in the nature of exception within the general provisions of Article 310(1). The provisions of Regulations 14, 15 and 16 being read in the light of definition clause and keeping in view the provisions of Article 311(1), it becomes transparent that the appointing authority cannot delegate his power of dismissal, or removal to a subordinate authority so as to destroy the protection afforded by Article 311(1) of the Constitution, unless of course, the Constitution itself authorises such a delegation by making some order provision. The position cannot be different where the statutory provisions, as in the present case, the Regulation, vests power of dismissal etc. in specified authority, namely, the competent authority. The legislature has taken all precaution in conferring the power of appointment, extension of probationary period or termination of services etc., only in the appointing authority which could not be delegated just by implication. We are, accordingly, of the view that the Regional Manager was not the competent authority, nor the powers of appointing authority were delegated to him in accordance with law so as to authorise him to pass the order of termination of service of the petitioner. Consequently, the impugned order terminating the services of petitioner was manifestly erroneous.

15. Reverting to the last question as to whether the order of discharge of the probationer or the order of termination of service of the petitioner during the extended period of probation was a simple order of termination. Even though the petitioner was a probationer, but he could not be punished without a formal charge or enquiry, particularly, in view of the fact that when the enquiry was made, as stated above, the conduct and performance of the petitioner was found to be satisfactory (vide Annexures 3 and 4), There was nothing on the record to indicate that the performance of petitioner was unsatisfactory during his third year extended period of probation. There was no doubt that for the first two years the performance of the petitioner has been quite satisfactory. But certainly there does appear something in the letter dated 19th January 87 (Annexure CA-19). The letters dated 3rd December 86 and 28th December 86 did indicate something against the unsatisfactory conduct of the petitioner. But the contents of these two letters were never conveyed to the petitioner, nor the petitioner was ever informed about the same, nor any explanation was demanded from him. But just on the contents of those letters the order of discharge was passed. This does obviate that a secret enquiry was held behind the back of the petitioner

without affording him any opportunity to defend himself by meeting the charges. The letter dated 14th July 87 extending the period of probation of the petitioner indicates that performance of the petitioner has not been found satisfactory. Whereas the order of discharge dated 8th October 87 (Annexure-6) indicates that the petitioner's service has been terminated and he was entitled to one month's emoluments. That order may appear just a simple order of termination. But keeping in view the background under which the order of discharge has "been passed, it is manifest that the order was passed on the ground of misconduct and was conducted with penal consequences and it attaches a stigma to the conduct of the petitioner. In such matters Article 311(2) of the Constitution, or in any case the provisions contained therein are attracted.

16. In *Anoop Jaiswal Vs. Government of India and Another*, , it was held that the form of order was not decisive as to whether a particular order is by way of punishment and that even an innocuously worded order terminating the services may, under the facts and circumstances of the case, establish that an enquiry into the allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provisions of Article 311(2). Where the form of order is merely a camouflage for an order of dismissal for misconduct, it is always open to the Court before which the order is challenged, to go behind the form and ascertain the true character of the order.

17. With profound regards following the aforesaid observations of their Lordships of the Supreme Court, keeping in view the antecedents and background, particularly in view of the letter dated 3rd December 86 and 28th December 86 and the letter dated 19th January 87, we are of the considered opinion that the order, though in the form is merely in the form of discharge of service of a probationer, but it was in reality a cloak for an order of dismissal or an order of punishment. In such matters the court is not debarred merely because of the form of order in giving effect to the rights conferred by law upon the petitioner. The impugned order, in fact, was an order of dismissal and an order of punishment attaching stigma to the conduct of the petitioner without affording any reasonable opportunity of hearing to the petitioner. Consequently, a case for issuance of a writ of certiorari has been made out by the petitioner, and hence the impugned order dated 8th October 87 deserves to be quashed.

18. Applying the posteriori and priori reasoning's, the impugned order cannot be sustained and the writ petition deserves to be allowed.

19. In the result, the petition succeeds and is allowed with cost. The impugned order dated 8th October 87 is hereby quashed. The respondents are directed to reinstate the petitioner in service forth with and pay his entire arrears of salary with other admissible emoluments from the date his services were terminated and to pay him regularly in future in accordance with law.