
(2014) 01 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Second Appeal No. 157/1992

LIC of India and Others

APPELLANT

Vs

Om Prakash

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 311, 311(2)

Citation : (2014) 01 RAJ CK 0022

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : Bihari Lal Agarwal, Amit Gupta and Akash Gupta, Advocates for the Appellant; C.P. Sharma, Advocates for the Respondent

Judgement

Nisha Gupta, J.—This second appeal under Section 100 CPC has been filed against the judgment and decree dated 22.5.1992 passed by Additional District Judge No. 5, Jaipur City, Jaipur in Civil Regular Appeal No. 9/1984 whereby appeal has been allowed and reversed the judgment and decree dated 23.12.1983 passed by Additional Chief Judicial Magistrate, Jaipur City, Jaipur in Civil Suit No. 62/1983 by which suit of the plaintiff has been decreed.

2. The brief facts of the case giving rise to this appeal are that plaintiff - respondent appointed as Class-IV servant in Life Insurance Corporation of India (in short the Corporation). The appointment order was of dated 27.9.1978 and he joined the duties on 30.9.1978, he worked upto 31.8.1979 and in the intermediate period, he remained absent for 129 days, a show cause notice has also been given to the plaintiff, he was on probation period and his services were terminated on 31.8.1979, appeal was filed by the plaintiff before the competent authority which was rejected. The contention of the plaintiff in the suit was that his services were terminated illegally as no enquiry was conducted, the order of termination is stigmatic and punitive, hence it was duty of the employer to follow the principles of natural justice and to hold an enquiry was obligatory on the part

of the employer. In the written statement filed by the appellants, it was sated that as per clause (5) of the appointment order, plaintiff could be removed at any time without assigning any reason. The termination order was simpliciter , it is not stigmatic and not penal and Corporation has passed a legal order in accordance with law. The court below has framed three issues in the matter and after hearing the parties, the suit was decreed whereas the appellate court has held that it was obligatory on the part of employer to conduct enquiry as regards the allegation of misconduct and dismissal order was held to be illegal, against which this second appeal has been preferred which was admitted on these legal issues:

"(i) Whether the services of the plaintiff/respondent could be terminated or can be terminated during the probation period without assigning any reason whatsoever in view of clause No. 5 of the Appointment order/Letter dated 27.9.1978 (Ex. 1)?

(ii) Whether the services of the plaintiff/respondent could be terminated for his unsatisfactory work during the probation period?

(iii) Whether the appointment order/letter dated 27.9.1978 (Ex. 1) does not carry any weight even if it has been written in the said document Ex. 1 that the respondent/plaintiff remained absent?

(iv) Whether the sufficient opportunity was given to plaintiff/respondent before terminating his services by giving reminders from time to time?"

3. All the substantial question of law framed above are related to each other hence are decided commonly.

4. Mainly, the facts are not in dispute that respondent had joined the services on 30.9.1978 pursuant to appointment order dated 27.9.1978 and his services were terminated on 31.8.1979 vide order Ex. 1. The contention of the appellants is that termination order is simpliciter . The respondent was under probation period and as provided in clause (5) of appointment order, his services could be discharged at any time without assigning any reason. The discharge order is not stigmatic nor punitive, hence no enquiry was needed.

Per contra, the contention of the respondent is that order has been passed on the allegations of misconduct that respondent remained absent from duty and when allegations of misconduct were there, it was bounden duty of the employer to conduct an enquiry and protection of Article 311 sub-clause (2) of the Constitution is also available to the probationer and appellate court has rightly considered the facts and circumstances of the case.

5. Heard the learned counsel for the parties and perused the judgment and decree under appeal as also the original record of the case.

6. The only question which remained in this second appeal is whether before passing order Ex. 1, an enquiry was obligatory for the appellants to conduct and

whether respondent is protected under Article 311 sub-clause (2) of the Constitution. The contention of the appellants is that order of discharge is simpliciter , not stigmatic nor punitive, respondent was in probation period, hence his services has been terminated under clause (5) of apportionment order, hence no enquiry was needed and reliance has been placed on order passed in Special Leave Petition (Civil) No. 20481/96 Kunwar Arun Kumar v. Uttar Pradesh Hill Electronics Corporation Ltd. & ors. Decided on 28.10.1996, wherein it has been held:

"Termination of a probationer. The High Court came to the conclusion that the respondents had lost confidence in the appellant and he was unsuitable for the job and therefore no enquiry is required. The petitioner contended that the finding recorded amounted to stigma and that he is entitled to an opportunity of being heard and can be dismissed only on the ground of misconduct and not by termination simpliciter . Regarding the contention the apex court held that the reasons mentioned in the order may be a motive and not a foundation as a ground for dismissal. If the authorities record a finding that during probation period the work performance of the appellant were unsatisfactory they are entitled to terminate the service without conducting any enquiry."

7. Here in the present case, Ex. 1 discharge order speaks itself that services has been terminated simpliciter in terms of clause (5) of appointment order. It is true that explanation of the respondent has been sought which was considered but Ex. 1 order is not stigmatic or punitive and there is no mention of any misconduct in Ex. 1. The contention of the respondent that on the ground of absence of duty, service has been terminated has not been stated in Ex. 1. Whenever there would be any termination or discharge from duty, definitely there must be some background. Admittedly, respondent was in probation period, his services were found unsatisfactory and without recording any stigma, he has been discharged from service simpliciter . Further reliance has been placed on Prithvi Raj v. Sriganganagar Kshetriya Gramin Bank & Anr., RLW 1998(3) Raj. 1468 wherein it has been held that the authorities may come to the conclusion that the probationer is unsuitable for job and hence be discharged in such a case, no punishment is involved. Here also in the present case, services of the respondent has been terminated simpliciter with a view to give him a chance to make good in other walks of life without stigma, nowhere it has been stated in impugned order Ex. 1 that services of the respondent has been terminated on account of misconduct, hence in the present case, no enquiry is needed. Further reliance has been placed on Paramjit Singh Vs. Director, Public Instructions and Others, where it has been held as under:

"It is a settled legal position that termination of a probationer on account of his non-satisfactory performance can never be treated as "penal". In spite of the said settled legal position, the Tribunal considered termination as "penal" and the said view was confirmed by the High Court. In the circumstances, we do not approve the reasoning of the Tribunal confirmed by the High Court that the

termination of the afore stated teachers was penal in nature. As the termination was not penal in nature, no departmental inquiry was required to be conducted before the termination."

Further reliance has been placed on *Rajesh Kumar Srivastava Vs. State of Jharkhand and Others*, wherein also it has been held:

"The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not."

8. In the light of above pronouncement, if we consider the discharge order Ex. 1, it can safely be concluded that Ex. 1 is discharge order simpliciter and no allegation of misconduct has been recorded in it and looking to the facts and circumstances of the case, no enquiry was needed. The counsel for the respondent has relied upon *Samsher Singh Vs. State of Punjab and Another*, where an enquiry officer was appointed, the enquiry officer gave his finding on allegation of misconduct and thereafter without concluding the disciplinary enquiry, termination was ordered and in facts and circumstances of the case, it was found that the substance of the order is that the termination is by way of punishment and probationer is entitled to the protection of Article 311(2) of the Constitution which is not the case here.

Further reliance has been placed on *Jai Shanker Vs. State of Rajasthan*, where employee was permanent servant of the State, he was removed on the allegations of overstaying and no opportunity of hearing was allowed to him. Here Ex. 1, discharge order has been passed simpliciter, no stigma has been put on the respondent. Further reliance has been placed on *Nepal Singh Vs. State of U.P. and Others*, where disciplinary proceedings were initiated which were quashed. Thereafter on the same allegations, employee was removed which was found to be stigmatic. Further reliance has been placed on *V.P. Ahuja Vs. State of Punjab and Others*, where order was found to be stigmatic on the face of it and it has been held that without holding a regular enquiry, such order could not be passed which is not the case here. Reliance has also been placed on *Anoop Jaiswal Vs. Government of India and Another*, where in the facts and circumstances of the case it was found that enquiry is essential. Further reliance has been placed on *Rajendra Kumar v. Chairman, RSRTC & ors.*, 2008 (4) SCT 646 where three charge-sheets were already pending against the employee and a short-cut method has been adopted to terminate the employee which is not the

case here. Further reliance has been placed on RSRTC, Jaipur & Anr. v. Nawal Singh, 2006 WLC (Raj.) UC 332 and Guru Nanak Dev University, Amritsar & ors. v. Jaspal Singh, SCT (P&H) (DB) 584 where on the allegations of misconduct without holding an enquiry services were terminated but here in the present case, respondent was a probationer, after overall assessment of his work, he has been discharged from service simpliciter, hence no enquiry was needed as held in Paramjit Singh and Kunwar Arun Kumar (supra) findings of the appellate court are per verse as the appellate court has misread the discharge order Ex. 1.

9. Further the facts are worth mentioning that date of birth of respondent is 4.6.1951 and admittedly, he has reached the age of superannuation, his re-appointment in the service could not be ordered. Further, it has been contended on behalf of appellants that he had not worked with them since 31.8.1979, hence no pay or allowance could be allowed to him and he has not stated anywhere that he remained jobless over the years, whereas D.W./1 Om Prakash has stated that respondent was milk vendor and he opted that he may be posted at Jaipur, hence admittedly, respondent has not worked with the appellants over the years.

10. In view of the above, also this second appeal has merit. As regards question No. 1 it can be concluded that as Ex. 1 order was simpliciter, the services of the respondent plaintiff could be terminated without assigning any reason, as regards questions No. 2, the employer were entitled to assess his work and if his work was found to be unsatisfactory or if he has lost his confidence in the employer, his service could be terminated during the period of probation.

11. As regards question No. 3, in Ex. 1 service has not been discharged on the ground of absence from duty, the services were discharged simpliciter and further unauthorised absence has been treated "dies non" which is not the basis of the order but it is only background. As regards question No. 4, it has already been answered that no opportunity of hearing was obligatory on the part of appellants to be accorded to the respondent as termination was simpliciter and no enquiry was essential, respondent cannot claim protection under Article 311(2) of the Constitution.

In view of the above, this second appeal is allowed. The judgment and decree dated 22.5.1992 passed by Additional District Judge No. 5, Jaipur City, Jaipur in Civil Regular Appeal No. 9/1984 is quashed and set aside. Suit of the plaintiff stands dismissed. No order as to costs.