

(2012) 03 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16273 of 2009

Madhu (Smt)

APPELLANT

Vs

Prersiding Officer, Labour Court, Amritsar and Another

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10(1)(c), 2(oo)(bb), 25B, 25F, 25G

Citation : (2012) 134 FLR 829 : (2012) LLR 830

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : D.R. Punia, for the Appellant; Sudhir Nehra, Addl. A.G., Punjab., for the Respondent

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J.—This petition has been filed by the workman under Articles 226 & 227 of the Constitution against the impugned award dated 8.11.2007 (Annexure P-1) passed by the Labour Court, Amritsar answering the reference in favour of the respondent-Management. The case of the respondent-Management lies in the testimony of its own witness MW-1, Dalbir Singh Sohal. Therefore, the admitted facts CWP No. 16273 of 2009 are that the petitioner competed with 37 candidates recommended by the local Employment Exchange for selection and appointment as a Safai Sewak. The Selection Committee interviewed the candidates on 24.9.1991. The petitioner was selected and joined the duty at the Government-College for Women, Amritsar on 25.9.1991. On 9.5.1992, the Head Girl of the School reported misconduct of the petitioner to the Principal which led to the termination of her services on 14.5.1992. The foundation of the order lay in misconduct. No : charge-sheet was issued to her nor was an enquiry held to establish the misconduct before causing employment severance. Consequently, the petitioner served the College from 25.9.1991 to 14.5.1992, a week short of 240 days. MW-1 admitted that the job was perennial in nature and the workman's services were terminated vide order Ex.R5 for the misconduct. The

petitioner worked for 233 days at the College. The defence of the Management before the Labour Court on a reference u/s 10(1)(c) of the Industrial Disputes Act, 1947 (for short "the Act") was that the workman had put in only 233 days of service and thus she had acquired no industrial rights u/s 25F of the Act; she was removed from service in terms of her appointment letter under which her services could be terminated at any time, without any notice; the order of removal was saved under the provisions of Section 2(oo)(bb) of the Act. Reliance was placed on a decision of this Court in the case of Kamal Central Coop. Bank v. Presiding Officer, 1994 (2) RSJ 132 to contend that a workman who had not put in 240 days of service could not complain CWP No. 16273 of 2009 of consequences of non compliance of the provisions of the. Section 25F of the Act. She was not entitled to any relief before the Tribunal.

2. I have heard learned counsel for the parties at length and perused the record. There can be no manner of doubt that the services were abruptly terminated 7 days short of completing 240 days on the ground of imputation of misconduct as contained in Annexure R2/2T. This is a letter from the Principal of the College addressed to an unnamed person which reads as follows:--

Office of the Principal S.R. Government College for Women, Amritsar.

Madam, This is to inform you that Madhu Sweepress who is working at the hostel is not doing her job satisfactorily. She does not perform her duty properly and is always late. She also goes back every day without reporting and also before time. She does not get her leave sanctioned and becomes absent from duty without informing the authorities. She is rude towards the students also and does not clean their rooms properly. When she is asked to mend her ways and do her duty properly she responds in a rude and abusive way. This application is for necessary action.

Thanking you,

Sd/- Principal

S.R. Govt. College (W)

ASR.

3. The photocopy of the original document mentions a complaint of Ms Gurminder Kahlon (Head Girl), Ms Rupinder Jeet (Mess President) with the noting at the end "relieve her with Immediate effect". The charges were serious in nature. The appointment was a regular one. It is not even the case of the Management that it was a back door entry. It may have been temporary employment not curtailed by time, but the Management could not have so easily resorted to the Clause in the appointment letter empowering the management to relieve the workman from service at any time, without any prior notice. Such blanket power in the context of permanent employees has been deprecated by the Supreme Court in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress & others, 1991 Supp (1) 600 that such a clause is unreasonable,

arbitrary and discriminatory and was dubbed by the Constitution Bench as a Henry the VIII clausp. The ratio of the decision ought to percolate down to save the petitioner. Admittedly, no charge-sheet was issued, nor was the alleged misconduct established on record. What appears to be even more ominous is that not even a basic fact finding enquiry was held. No opportunity was given to the workman to counter the report of the Head Girl and the Mess President, nor opportunity given to confront the complainants with her defence at a cross-examination, however grave the misconduct was perceived. No prior warning letter was placed on record by the Management leading to the action taken on 9.5.1992. The legal position vis-a-vis an order which ex-facie visits an employee with civil consequences, has been laid down by the Supreme Court in the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, It was observed by Ruma Pal, J. in paragraphs 13, 14 and 29 of the judgment as under:--

13. Another Constitution Bench of this Court in Benjamin (A.G.) V. Union of India, explained the decision of Parshotam Lal Dhingra. It followed the two tests mentioned in Dhingra case viz. (LLJ.721).

(1) whether the temporary government servant had a right to the post of the rank, or

(2) whether he has been visited with evil consequences.

14. If "punishment" were restricted to "evil consequences", the court's task in deciding the nature of an order of termination would have been easier. Courts would only have to scan the termination order to see whether it ex facie contains the stigma or refers to a document which stigmatises the officer, in which case the termination order would have to be set aside on the ground that it is punitive. In these cases, the "evil consequences" must be assessed in relation to the blemish on the employee's reputation so as to render him unfit for service elsewhere and not in relation to the post-temporarily occupied by him. This perhaps is the underlying rationale of several of the decisions on the issue.

29. Before considering the facts of the case before us one further seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the petitioner is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit In the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job

4. The Labour Court failed to examine these vital aspects of the case and simply

closed the door for the petitioner on the ground that 240 days" service had not been put in. The Labour Court further failed to see or address itself to the core question that putting in 240 days of continuous service within the meaning of Section 25B of the Act does not arise in a case of misconduct. In any case, terminating the services of the petitioner in an admitted case of misconduct, 7 days short of completing 240 days may amount to unfair labour practice. This also does not appear to be a case falling u/s 2(oo)(bb) of the Act at all. The petitioner was not a contractual employee. There was no such mention in the appointment letter. No contractual service was spelled out in the appointment of could be inferred.

5. In the totality of circumstances, this Court is not convinced as to the correctness of the order passed by the Labour Court. In fact the judgments cited by the workman in support of her case including the celebrated decision of the Final Court in Anoop Jaiswal Vs. Government of India and Another, ought to have come to her rescue. Though Anoop Jaiswal was a case of discharge of a probationer appointed to government service on the ground of misconduct, yet the court held that proper enquiry was necessary to establish that misconduct since the termination order was found stigmatic. The veil was lifted, reinstatement ordered with all consequential benefits. I do not see why the principle of law laid down in that precedent should not be applied to the present case, however short the duration of service was. The management would have to pay through its nose for passing a patently bad, perverse and knee jerk order depriving the workman of her livelihood, therefore, this court would not feel overburdened to consider granting full back-wages in case reinstatement is found just and appropriate in a case of alleged misconduct as contradistinguished from a case of violation of Sections 25F, 25G and 25H of the Act where Courts normally have discretion to award full or lesser wages depending on the facts of each case. The Supreme Court in Harjinder Singh Vs. Punjab State Warehousing Corporation, has aptly observed in paragraph 31:

6. The decision in the case Kamal Central Coop. Bank (supra) of this Court is, however; clearly distinguishable on facts as the same was not a case of imputation of misconduct which led to the passing of the termination order. I hold that termination without enquiry was an illegal act. Notwithstanding the above, I further hold that termination of services of the petitioner 7 days short of 240 days amounted to unfair labour practice. Therefore, I have no hesitation in allowing this writ petition. Consequently, the writ petition is allowed and the impugned award dated 8.11.2007 (Annexure P-1) is hereby quashed. The petitioner is directed to be reinstated with continuity of service and full back-wages even though considerable time has flown by from the date of termination but for which the petitioner cannot be blamed. However, the management would be at liberty to hold fresh enquiry on the same allegations in accordance with law but only after implementing this order.