
(2001) 03 DEL CK 0172
In the Delhi High Court
Case No : C.W. No. 2928 of 2000

Ms. Meenakshi Thakur

APPELLANT

Vs

M/s Bharat Petroleum Corporation Limited

RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Citation : (2001) 03 DEL CK 0172

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. A. Mazumdar and Mr. Sanjay Jain, for the Appellant; Mr. Raj Birbal and Mr. Babu Malayil, for the Respondent

Judgement

Dr. Mukundakam Sharma, J.—The petitioner herein being aggrieved by the order dated 8.9.1999 passed by the respondents terminating her services, has preferred this writ petition, praying for quashing and setting aside the said order with a further relief of reinstatement in service with full back wages and continuity of service.

2. The petitioner was appointed as Officer (Civil) in the Management cadre in Grade "A" of the respondent by an order dated 17.8.1998, a copy of which is placed on record as Annexure "C". It is stated in the said appointment letter that the said appointment would be effective from the date the petitioner joined here duty and that she would be on probation for a period which is normally one year but the said period could be extended if considered necessary by the Corporation. Along with the said letter of appointment the other terms and conditions of the appointment were also annexed as set out in Annexure "A" to the said letter. Paragraph 4 thereof states that the company could dispense with the services of the petitioner without assigning any reason by giving her 30 days notice or 30 days pay in lieu of the notice and that the petitioner would have the option to resign from service subject to 30 days notice of her intention to do so or paying to the respondent a sum equivalent to 30 days pay in lieu of notice. It was also stipulated therein that both the parties namely - the petitioner and the

respondent expressly understood and agreed between them that neither party would have cause to complain if other party wishes to take advantage of the right of termination during the period of probation. The petitioner accepted the aforesaid offer of appointment as also the terms and conditions of her appointment and joined the services of the respondent. The petitioner underwent the required training and thereafter she was appointed as a Probationary Officer in Grade "A" as Officer Civil on 17.8.1998. On 13.1.1999 a show cause notice was issued to the petitioner asking her to show cause why her services be not terminated for unauthorised absence in terms of clause 4 of her appointment letter dated 17.8.1998. In the said show cause notice it was stated that the petitioner remained unauthorisedly absent from duty without prior intimation/permission/authorised leave during the period from 19.10.1998 and 13.1.1999. It further transpires from the aforesaid letter that two letters were sent by the petitioner on 23.10.1998 and 3.12.1998 seeking for grant of leave in response to which telegrams were sent by the respondents on 13.11.1998 and 9.12.1998 wherein the petitioner was asked to report for duty immediately due to exigencies of work. As the petitioner failed to report for duties it was stated in the said notice that the said act on the part of the petitioner tantamounts to serious misconduct of remaining unauthorisedly absent for more than 83 days.

3. The petitioner replied to the aforesaid show cause notice by her letter dated 20.1.1999. Subsequently, by letter dated 15.3.1999 the petitioner sought for transfer to NOIDA, U.P. or Delhi as her husband is in service under the Central Government and was posted at Etawah. The aforesaid request of the petitioner was accepted by the respondent and she was transferred to Delhi granting her choice posting at Delhi, pursuant to which the petitioner joined and worked at Delhi for four days in March, 1999 and again started absenting and did not report for duties. The probation period of the petitioner was also extended for a further period of five months w.e.f. 17.8.1999 vide letter dated 22.3.1999. As the petitioner continued to remain absent from duties the respondents issued the aforesaid order of termination on 8.9.1999 to the petitioner. It was stated in the said letter that the petitioner, during the period of probation i.e. since 17.8.1998 had been very irregular in attending to her duties and had been unauthorisedly absenting from duty. It was also stated that in view of the said absence from duty the respondent vide letter dated 22.3.1999 advised her that her probationary period would stand extended for a further period of 5 months w.e.f. 17.8.1999 and that despite above she did not report for duty and continued to abstain and absenting from duty and her services were accordingly terminated in terms of the conditions of her appointment.

4. The respondents have filed a counter affidavit contending inter alias that the petitioner after reporting for duty as probationary officer w.e.f. 17.8.1998 worked with the respondent for about 2 months and that thereafter she stopped reporting for duty w.e.f. 16.10.1998 and kept on absenting all through for 326 days i.e. up to 8.9.1999 when her services were terminated barring 4 days in March, 1999 i.e. after she was transferred to Delhi in terms of her own request.

It is also stated that the services of the petitioner were terminated in accordance with the terms and conditions of her appointment and during the currency of the probationary period. It was stated that for a public sector corporation it is not possible to take in its regular employment an officer who does not report for duty continuously for 320 days during the probationary period in spite of the fact that the respondents had given her maximum leverage including giving her a choice posting by transferring her from Mumbai to Delhi during her probation, but even after that the petitioner did not report for duty except for four days.

5. Counsel appearing for the petitioner submitted before me that the order of termination in the present case is punitive in nature as is established from the contents of the show cause notice issued to her and Therefore, her services could not have been terminated without resorting to institution and conduct of a departmental enquiry in terms of Standing Order of the respondent Corporation.

6. Counsel appearing for the respondent however, drew my attention to Annexure R-1 annexed to the counter affidavit which is attendance details of the petitioner after her appointment as Officer Civil on 17.8.1998. Relying on the said document, he submitted that from 18.10.1998 to 8.9.1999 out of total 326 days the petitioner as a probationary officer had reported for duty only for 4 days during her probationary period, and that in that view of the matter it was not possible for the respondents to confirm the services of the petitioner and accordingly her services were terminated under letter dated 8.9.1999. It was also submitted by him that the aforesaid action of terminating the services of the petitioner cannot be termed as punitive for the said order was passed in accordance with the terms and conditions of her appointment and is a very innocuous order.

7. Counsel for the parties placed reliance on a number of decisions of the Supreme Court and this Court in Ganganagar Zila Dugdh Utpadak Sahkari Sangh Ltd. & another Vs. Priyanka Joshi & another, 1999 LLR 957 Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, Nar Singh Pal Vs. Union of India and Others, ; Kunwar Arun Kumar Vs. Uttar Pradesh Hill Electronics Corporation Ltd. & others, 1997(1) LLN 570; AIR 2000 1706 (SC) and the decision of this Court in Malik G.K. Vs. Hindustan Petroleum Corporation Ltd., 1998 (II) LLJ 243.

8. The petitioner was appointed as Officer Civil by the respondent under letter of appointment dated 17.8.1999. The said letter specifically indicates that she was placed on probation for a period which was normally of one year but the said period could be extended if considered necessary by the Corporation. The aforesaid period of one year Therefore, expired on 16.8.1999. Her probationary period was extended by letter dated 22.3.1999 for a further period of 5 months w.e.f. 7.8.1999. A copy of the said letter is also placed on record as Annexure "H" to the writ petition. In the said letter itself it was brought to the notice of the petitioner that although she was appointed on probation for one year but during the said period of probation she had been absenting continuously on medical

grounds from 17.10.1998. It was also stated therein that as the aforesaid period of absence would be treated as loss of pay, her probation Therefore, would stand extended for a further period of 5 months w.e.f. 17.8.1999. It was specifically stated in the said letter that her confirmation at the end of the extended period of probation would depend on the satisfactory performance and punctuality in attending duties. In the show cause notice upon which much reliance was placed by the counsel for the petitioner the same facts were brought to the notice of the petitioner and she was asked to show cause why her services with the Corporation be not terminated for unauthorised absence as per clause 4 of her appointment letter dated 17.8.1998. It is established from the record that the petitioner reported as a Probationary Officer w.e.f. 17.8.1998 and she continued to work for about a period of 2 months after which she stopped reporting for duty w.e.f. 16.12.1998 and kept on absenting for 326 days barring 4 days in March, 1999 i.e. up to 8.10.1999. The aforesaid position is made clear from the attendance sheet of the petitioner enclosed with the counter affidavit. It is stated in the counter affidavit that the petitioner was advised/ counselled a number of times and sent letters advising her to report for duty but the petitioner kept on sending medical certificates of some minor ailments and kept on absenting on such frivolous medical grounds. The petitioner was advised under letter dated 28.7.1999 by the respondent for a medical examination/check up to be conducted by Corporation's Doctor/Medical Board but she even did not report for such medical examination nor did she report for duty. It cannot be denied that the letter of termination was issued by the respondent during the period of probation. The probation period of the petitioner was expiring on 16.1.2000, in terms of the letter dated 22.3.1999.

9. The question to be considered in this case is whether the aforesaid order of termination is in any manner punitive or stigmatic. In support of his contention that the order of termination is stigmatic and punitive reliance was placed by the counsel appearing for the petitioner on the show cause notice to which reference is already made. The aforesaid letter clearly indicates that the petitioner was informed about her irregularity in attending the office and also the fact that her services could be terminated in terms of clause (4) of the order of appointment. In the decision of Ravinder Kumar Misra Vs. U.P. State Handloom Corporation Ltd., (1988) 1 LLJ it was held by the Supreme Court that for finding out the effect of the order of termination, the concept of "motive" and "foundation" has to be kept in mind. If the delinquency of the officer in temporary service is taken as the operative motive in terminating the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. Therefore, the relevant consideration in a case like this would be as to what is the motive/ foundation for the order passed.

10. On analysis of the aforesaid show cause notice I am of the considered opinion that the intention in issuing the aforesaid letter was to bring to the notice of the petitioner that her attendance in the office is very irregular. It was issued

to her to make her aware of her responsibility of attending the office regularly failing which it would be open to the respondent to proceed in accordance with clause (4) of the order of appointment. Even after issuance of the said letter probation period of the petitioner was extended by another 5 months to give her another opportunity to be punctual in attendance and she was also transferred to her choice posting at Delhi in order to enable her to report for duty in terms of her request. Even inspite of the said action on the part of the respondent the petitioner did not report for duty except for 4 days thereafter. In that view of the matter it cannot be said that the aforesaid order of termination is in any manner punitive or stigmatic as alleged by the petitioner.

11. In *Ganganagar Zila Dugdh Utpadak Sahkari Sangh Ltd. & Another Vs. Priyanka Joshi & another*, 1999 LLR 957 the Supreme Court has held that when judging the performance of a person if the services are terminated during the period of probation, obviously there has to be a reason for such termination. If the services are terminated during the probationary period without any reason whatsoever, it is possible that such an order may be impugned on the ground that it has been passed arbitrarily and that on the other hand, when there is a reason for terminating the services during the probationary period and the order terminating services is worded in an innocuous manner, we do not see any force in the contention that such an order has to be regarded as by way of punishment.

In the said case also the petitioner failed to return to duty on expiry of leave even after notice and he was on probation at the time of order of dismissal, and in the background of the said facts the High Court held that the order of dismissal casts no stigma, which finding was upheld by the Supreme Court.

12. In *Dipti Prakash Banerjee's* case (supra) it was held by the Supreme Court that in order to find out whether an order of termination is punitive or not or simple order of termination the motive and foundation for passing the said order is of utmost relevance. It also reiterated the principle laid down by the Supreme Court in some of its cases that the termination order is not punitive when an employee has been given suitable warnings or has been advised to improve himself or where he has been given a long rope by way of extension of probation.

13. In *Kunwar Arun Kumar's* case (supra.) it was held by the Supreme Court that the reasons mentioned in the order that the work performance of the petitioner was found unsatisfactory could be a motive and not a foundation for the ground of dismissal. It was further held that during the period of probation the authorities are entitled to assess the suitability of the candidates and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. It was further held that under the circumstances, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period the work and performance of the duties were unsatisfactory they are entitled to terminate the services in terms of the letter of appointment.

without conducting an enquiry and that it does not amount to any stigma.

14. In Chandra Prakash Shahi Vs. State of U.P. & Others. (supra) it was held that the important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question.

15. The ratio of the aforesaid decision of the Supreme Court are applicable to the facts of the present case. The delinquency of the officer as mentioned in the show cause notice at best could be said to be motive and not foundation of the order of termination. The performance of the petitioner was required to be assessed for deciding whether her services should be confirmed. I am of the considered opinion that the respondents were entitled to assess the suitability of the petitioner and upon such assessment it was found that the petitioner was absent from duty unauthorisedly for a long period of time and on that ground found her to be not suitable to be kept in service and accordingly, resorted to the action of terminating her services in accordance with the terms of the appointment. In the present case, the respondents have categorically stated that the petitioner was regularly absenting on one ground or the other and Therefore, her services were terminated in accordance with the terms and the conditions of appointment. I find no illegality in the action taken by the respondents particularly when she was given an advance warning about her irregular attendance and also because she was given an opportunity to improve upon her performance by extending her probationary period and by giving her a choice transfer.

16. During the course of his arguments, the counsel for the petitioner relied upon the standing orders of Bharat Petroleum Corporation Limited. However, the said Standing Orders are not applicable to the petitioner as the petitioner was not a workman and she was governed by the rules and regulations meant for the officers of the management cadre.

17. In the result, I find no merit in this petition and the same is dismissed, but without any order as to costs.