
(2018) 06 CAL CK 0053
In the Calcutta High Court
Case No : Writ Petition9355 (W) of 2018

Nani Gopal Sen

APPELLANT

Vs

University Of Burdwan & Ors.

RESPONDENT

Date of Decision : 28-06-2018

Acts Referred:

Citation : (2018) 06 CAL CK 0053

Hon'ble Judges : ARINDAM SINHA, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Faizul Islam, Pijush Chaturbedi, Bhagbat Chowdhury, Asit Baran Ghosh, Somesh Kumar Ghosh, N. C. Bihani, Sumana Basu

Final Decision : Disposed Of

Judgement

Mr. Mukherjee, learned senior advocate appears on behalf of petitioner and draws attention to letter dated 11th July, 2017 by which Director,

Distance Education, of the University, addressed the Registrar regarding confirmation of petitioner after probationary period of his service. An extract

from the letter is reproduced below:

“I am pleased to state that Sri Nani Gopal Sen’s performance is highly commendable and satisfactory. His commitment to the students of

DDE, B.U. and the Directorate is admirable. He is diligent, regular and sincere in administering of his service. I strongly recommended his

confirmation of service.” He submits further, thereafter his client’s probationary period was extended twice and ultimately by impugned

notice dated 4/5th June, 2018 his probationary service terminated with effect from 5th July, 2018, that is on the expiry of extended probationary period.

Text of impugned termination notice is reproduced below:

â??You have been appointed probationary in the post of Assistant Director (A&A), Directorate of Distance Education under The University of

Burdwan and you are still on probation and your service is yet to be confirmed. It has been resolved by the Executive Council in its meeting dated

04.06.2018 vide Item No.25 that your service in the post of Assistant Director (A&A) is no longer required in the office of the Directorate of

Distance Education under The University of Burdwan and further resolved not to confirm your service and to terminate your service. Accordingly,

you are hereby notified that your service stands automatically terminated on and from 05.07.2018. After that you may join back at your earlier post of

Senior Office Assistant in the Directorate of Distance Education, the University of Burdwan.â??

Mr. Mukherjee submits, in the two extension there is nothing indicated regarding defect in his clientâ??s work or deficiency in his performance. On

the contrary he received letter of commendation from his immediate higher authority. He relies on Dr. Mrs. Sumati P. Shere Versus Union of India

and Others, a judgment of Supreme Court reported in (1989) 3 SCC 311, paragraph 5 which is extracted below:

â??We must emphasize that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and-take,

on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his

performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely

communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it

would be arbitrary to give a movement order to the employee on the ground of unsuitability.â??

He seeks interference or interim order protecting his clientâ??s probationary service. Mr. Bihani, learned advocate appears on behalf of the

University. He relies on several judgments of Supreme Court to submit law declared by the Court over a considerable period of time has left it to the

discretion of employer to terminate a probationer without initiating inquiry or giving reasons. (i) Parshotam Lal Dhingra versus Union of India reported

in AIR 1958 SC 36, to paragraph 12. He submits, Supreme Court in that judgment had said that appointment to a post, permanent or temporary, on

probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his

service may be terminated unless his service had ripened into what is, in the service rules, called a quasipermanent service.

(i) *Samsher Singh versus State of Punjab* and another reported in (1974) 2 SCC 831, to paragraphs 63 and 64. He submits, by this judgment said Court

noticed its earlier judgment in *Parshotam Lal Dhingra* (supra). The Court said termination of probationary service does not operate as a forfeiture of

any right of a servant to hold the post, for he has no such right. An extract from paragraph 64 is reproduced below:

“Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or

whether he is suitable for the post. In the absence of any rules governing a probationer in this respect the authority may come to the conclusion that on

account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and

hence must be discharged. No punishment is involved in this.”

(i) Mr. Bihani relied on following extract in *Ajit Singh versus State of Punjab* reported in (1983) 2 SCC 217:

“...Period of probation gave a sort of locus penitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the

servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end

of the prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer

during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue

to hold such a post any more than a servant employed on probation by a private employer is entitled to (see *Parshotam Lal Dhingra v. Union of India*).

The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the

period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service.”

(i) *Union of India versus Rati Pal Saroj and Another* reported in (1998) 2 SCC 574, to paragraph 8. He submits, Supreme Court declared it is well

settled that a probationer's service can be terminated during the period of probation if he is found unsuitable. No enquiry is necessary for such

termination of the services of a probationer. He submits, Samsher Singh (supra) was noticed by this judgement.

(i) Kamal Nayan Mishra versus State of Madhya Pradesh and others reported in (2010) 2 SCC 169, to paragraph 16. In Sumati P. Shere (supra)

Supreme Court said what it did on consideration of submissions made by appellant. She had submitted that though she had been appointed on ad hoc

basis against a vacancy but from time to time orders were made to continue her service. She had also earned increments in pay scale admissible to

the post. Therefore, in the normal case she would have continued till a selected candidate replaced her. The respondents, however, had taken the

stand that they were not satisfied with the performance of appellant. Supreme Court found, it appeared that at no point of time she was informed

about her deficiencies. The order of termination came like a thunder bolt from the blue.

This Court finds similarity in the facts presented by petitioner with the facts in Sumati P. Shere (supra). Petitioner has not sought to assert a right over

the post in which he has been appointed as probationer. He is only seeking to assert that he is suitable and cannot be said to have deficiency in work

or deficiency in performance, being in possession of a letter of commendation. This Court is moved by his assertion of unfairness on the part of his

employer. There will be an interim order staying operation of impugned notice of termination till disposal of this writ petition. List on 5th July, 2018.