

(2011) 11 MP CK 0033
In the Madhya Pradesh High Court
Case No : Writ Petition No. 14511 of 2011

Nitesh Singh Pawar

APPELLANT

Vs

Sainik Schools Society and Another

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Sainik Schools Society Regulations, 1997 — Rule 10
Sainik Schools Society Rules, 1997 — Rule 9.09

Citation : (2012) ILR (MP) 94 : (2012) 2 MPHT 98

Hon'ble Judges : R.S. Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Jha, J

1. The petitioner has filed this petition being aggrieved by the order of termination dated 1-8-2011 by which his services, as a Librarian, under the establishment of the respondent-school have been dispensed with. The brief facts leading to the filing of the present petition are that the respondent-Sainik School is managed by a Society registered under the provisions of the Societies Registration Act, 1860. It is submitted by the learned counsel for the petitioner that the petitioner was appointed as a Librarian at Sainik School, Rewa in accordance with the Sainik Schools Society Rules & Regulations 1997 (hereinafter referred to as the "Rules") by order dated 12-6-2010. The petitioner accepted the terms of appointment and submitted his written acceptance to the terms thereof vide his letter dated 1-7-2010. The appointment of the petitioner was on probation for a period of one year extendable by two years in accordance with the Rules. The respondents issued a letter of performance counselling to the petitioner on 17-3-2010 informing him that his work during the period of probation was not found satisfactory and that he should show substantial improvement in his performance. The petitioner filed a reply to the letter of performance counselling on 28-3-2011 giving explanations for the shortcomings

found by the authority in his performance. On 15-4-2011 the respondents again called for an explanation of the petitioner regarding delay in preparation of the result sheet of one of the students to which the petitioner submitted his reply on 25-4-2011.

2. Thereafter, the respondents served the petitioner with a charge sheet on 3-6-2011 alleging that the petitioner had been negligent in the performance of the duties as a result of which certain important parts of the computer were stolen from the library resulting in the loss of property worth Rs. 11,900/-and, therefore, his conduct was in violations of Rules 9.01 (e) and 9.01 (o) of the Rules. Immediately on receipt of the charge sheet the petitioner submitted a detailed reply on 26-6-2011 wherein the petitioner while giving his explanation also brought on record the fact that the loss of computer parts was on account of theft by one of the students, namely Abhishek Kumar Mishra, who had confessed his guilt and had also informed as to how the ram/ hard disc of the computer was sold in the market.

3. On 29-7-2011 the probation period of the petitioner was extended by two months up to 31-8-2011. On 1-8-2011 the respondents issued the impugned order of termination of the petitioner in view of paragraph 3(a) of the terms of appointment enshrined in the letter of appointment dated 12-6-2010 informing the petitioner that his services would stand terminated with effect from 31-8-2011, being aggrieved by which the petitioner has filed the present petition.

4. It is submitted by the learned counsel appearing for the petitioner that the impugned order of termination is in fact punitive, stigmatic and malafide and has been passed without following the procedure prescribed for conducting a full fledged departmental enquiry and, therefore, the same deserves to be quashed. It is submitted that the foundation for issuance of the order is the impugned charge sheet against the petitioner alleging theft of computer parts and, therefore, the petitioner's service could not have been terminated without conducting a full fledged enquiry as prescribed by Rule 10 of the Regulations. It is further stated that as the student who had stolen the computer parts had confessed, apparently and admittedly no misconduct has been committed by the petitioner and in such circumstances the impugned order deserves to be quashed.

5. Per contra, the learned counsel appearing for the respondents submitted that the petitioner was appointed on probation for a period of one year extendable by two years. During the initial period of probation his work was not found satisfactory and therefore a letter specifically directing the petitioner to substantially improve his performance was issued on 17-3-2011. The petitioner was again informed to improve his performance by letter dated 15-4-2011 but the petitioner failed to do so. It is specifically stated by the respondents in the return that in respect of an incident of theft of computer parts the petitioner being the librarian was served with a charge sheet on 3-6-2011 to which he filed a detailed reply along with the confessional statement of a student to the effect that he had stolen the computer parts and had sold them in the open market

and, therefore, no further steps were taken in the enquiry by either appointing an enquiry officer or recording the statement of any witness etc. in respect of the alleged charges, however, at the end of the initial period of probation the petitioner's work was again reassessed and the Registrar as well as the Head Master of the school found several deficiencies and shortcomings in the functioning of the petitioner in spite of which they gave him a chance by recommending his case for extension of the period of probation and accordingly by order dated 29-7-2011 the period of probation of the petitioner was extended by two months up to 31-8-2011 with a view to give the petitioner a chance to improve his performance.

6. It is submitted that as the petitioner failed to do so, the Head Master and the Registrar again minutely assessed the petitioner's performance and recommended not to extend his probation beyond 31-8-2011, on 30-7-2011 which was duly accepted by the competent authority and accordingly, the impugned order dated 1-8-2011 has been issued terminating the petitioner from services during his period of probation. The learned counsel for the respondents has filed the relevant order sheets and note sheets wherein the petitioner's case was considered by the concerned authority for extension and discontinuance as Annexures R-2-3 and R-2-4 along with the return.

7. It is further submitted that a full fledged enquiry was not conducted against the petitioner and the matter was closed as the reply to the charge sheet issued to him on 3-6-2011 was found to be satisfactory and, therefore, the contention of the petitioner that the respondents have terminated the petitioner's services without conducting a full fledged departmental enquiry is not factually correct. The learned counsel for the respondents has relied on the decisions of the Supreme Court in the cases of: State of Punjab and others v. Balbir Singh, 2004 AIR SCW 5248 , State of Punjab and Others Vs. Sukhwinder Singh, and Rajesh Kohli Vs. High Court of J. and K. and Another, in support of his submissions.

8. On the basis of the aforesaid the learned counsel for the respondents submits that the petitioner has been terminated during the period of probation on account of unsatisfactory service on his part which did not show any improvement in spite of repeated letters of counselling issued to him and in such circumstances no case is made out for interference by this Court.

9. I have heard the learned counsel appearing for the parties at length and perused the record.

10. From a perusal of the documents on record it is clear that the petitioner was working as a librarian in the establishment of the respondent-school on probation for a period of one year extendable by two years. It is also clear from the initial order of probation that the respondent/authorities issued two letters of performance counselling to the petitioner on 17-3-2011 and 15-4-2011 in spite of which it is stated that the petitioner did not show any improvement. It is also apparent that the charge sheet was issued to the petitioner on 3-6-2011 in

respect of the theft relating to certain parts of the computer in the library to which the petitioner filed the reply, however, thereafter no further steps in the said enquiry were taken by the respondents and in fact, the respondents in paragraph 6 of the return filed by them have specifically stated that :-

However, since the cost of the stores lost was recovered from the culprits students who exploited the opportunity created due to dereliction of duty performed by petitioner, the authority was magnanimous to give petitioner yet another chance to improve his performance without reducing the same to writing.

It is, therefore, clear that the petitioner's performance during the period of probation was not found to be satisfactory by the respondent/authorities and in spite of issuing letters of counselling he did not show any improvement in his performance. It is also clear that while a charge sheet was issued to the petitioner the authorities on their own accord did not proceed any further in the enquiry as stated by them in paragraph 6 of the return.

11. From a perusal of Annexure R-2-3 filed by the respondents along with the return, which is a note sheet dated 27-6-2011 prepared by the authorities concerned while scrutinizing the petitioner's service during probation for the purposes of recommending extension, that the authorities have recorded that the petitioner's performance was inadequate, that he did not adhere to the laid down Code of Conduct and that he needed improvement, while recommending his case for extension of probation. Ex.P-2-4 filed by the respondents which is the note sheet wherein the petitioner's case was not recommended for extension of probation beyond 31-8-2011, indicates that the Head Master has given as many as 8 reasons for not recommending his case clearly recording therein that the performance of the petitioner as probationer was found deficient and inadequate and he did not show any improvement in spite of giving him many chances. The same has also been reiterated by the Registrar. It is clear from a perusal of the aforesaid note sheets that the reason for not recommending the extension of the petitioner's probation is not the initiation of the departmental proceedings against the petitioner vide issuance of charge sheet dated 3-6-2011 or the theft of computer parts, as alleged by the petitioner but is in fact the deficient, unsatisfactory and inadequate performance of the petitioner which did not show any improvement in spite of being informed in writing by the authorities to do so by performance counselling letters issued on 17-3-2011 and 15-4-2011.

12. In the circumstances, the issue that requires adjudication by this Court is as to whether the impugned order is stigmatic or punitive as it has been issued after issuance of the charge sheet or an order of termination simplicitor and as to whether a full fledged enquiry was required to be conducted by the respondents before terminating the services of the probationer-petitioner.

13. To determine the aforesaid issue it would be appropriate to take into consideration the law laid down by the Supreme Court on this issue. In the case

of Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, the Supreme Court has analysed the entire case law relating to the aforesaid issue in paragraphs 30 to 34 in the following terms :-

30. We shall now refer to a different type of cases where a departmental inquiry was started, then dropped and a simple order of termination was passed. In State of Punjab and Another Vs. Shri Sukh Raj Bahadur, . the charge memo was served, reply given and at that stage itself, the proceedings were dropped and a termination order was passed. The High Court felt that the "object of departmental inquiry, being to punish the employee, the order of termination must be treated as punitive. This was not accepted by a three Judge Bench consisting of Justice Shah (as he then was) who had laid down in Madan Gopal Vs. State of Punjab, the principle of "object of the inquiry". This court reversed the High Court Judgment and held that neither Madan Gopal's case nor Jagdish Mitter Vs. The Union of India (UOI), applied. This was because in the case before them the inquiry did not go beyond the stage of the explanation. No findings were given and no inquiry report was submitted as in the above two cases. In that case (i.e. Sukh Raj Bahadur) this Court felt that the decision in A.G. Benjamin vs. Union of India Civil Appeal No 341 of 1966 dated 13.12.1966 (SC) was more direct. In Benjamin's case, a charge memo was issued, explanation was received and an Enquiry Officer was also appointed but before the inquiry could be completed, the proceedings were dropped stating that: "departmental proceedings will take a much longer time and we are not sure whether after going through all the formalities, we will be able to deal with the accused in the way he deserves." There also, the order was held not to be punitive. Following the above case, this court in Sukh Raj Bahadur's case stated that the position before them was similar to what happened in Benjamin's case and concluded as follows:

the departmental inquiry did not proceed beyond the stage of submission of a chargesheet followed by the respondent's explanation thereto. The inquiry was not preceded with, there were no sittings of any inquiry officer, no evidence recorded and no conclusion arrived at in the inquiry.

31. The italicised words are very important and demarcate the line of distinction. If the inquiry officer held no sittings, did not take evidence nor record any conclusions and if at that stage the inquiry was dropped and a simple order of termination was, passed, the same would not be punitive.

32. In Ishwar Chand Jain Vs. High Court of Punjab and Haryana and Another, a three Judge Bench held the order to be punitive as it was passed after issuing a charge memo, a reply received, even though no evidence was adduced and no findings were given. But in a latter three Judge Bench case in State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, Nepali Singh's case was not followed as being a judgment rendered per incuriam as it did not consider Champak Lal's case 1963 INSC 211 ; Champaklal Chimanlal Shah Vs. The Union of India (UOI), Of course, the above case, i.e. Kaushal Kishore Shukla's case

was one where there was an adverse entry and only a preliminary report and then a simple order of termination was issued. That order was upheld. Similarly, in Commissioner, Food and Civil Supplies, Lucknow, U.P. and Another Vs. Prakash Chandra Saxena and Another, the facts were that the departmental inquiry was started and dropped and this Court held the order not to be punitive.

33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the Officer, as stated by Shah, J. (as he then was) in Ram Narayan Das's case. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary inquiry is held because the purpose of a preliminary inquiry is to find out if there is prima facie evidence or material to initiate a regular departmental inquiry. It has been so decided in Champaklal's case. The purpose of the preliminary inquiry is not to find out misconduct on the part of the Officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental inquiry is started, a charge memo issued, reply obtained, and an enquiry Officer is appointed - if at that point of time, the inquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry Officer has not recorded evidence nor given any findings on the charges. That is what is held in Sukh Raj Bahadur's case and in Benjamin's case. In the latter case, the departmental inquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J. in Gujrat Steel Tubes case, the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer, by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive.

34. But in cases where the termination is preceded by an inquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the Officer and where on the basis of such a report, the termination order is issued, such an order will be violative of principles of natural justice inasmuch as the purpose of the inquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental inquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are

obviously not cases where the employer feels that there is a mere cloud against the employees conduct but are cases where the employer has virtually accepted the definitive and clear findings of the Inquiry Officer, which are all arrived at behind the back of the employee -even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive, in such cases.

The view taken by the Supreme Court in the aforesaid case has been affirmed and reiterated in the case relied upon by the respondents i.e. State of Punjab and others v. Balbir Singh, 2004 AIR SCW 5248 (supra) in paragraph 6 wherein paragraphs 34 and 35 of the judgment in the case of Radhey Shyam Gupta (supra) have been reproduced and reaffirmed. Similar view has again been taken by the Supreme Court in a decision rendered in the case of State of Punjab and Others Vs. Sukhwinder Singh, relying upon a decision in the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, wherein the Supreme Court has held as under :-

One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct (c) which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.

Generally speaking when a probationers appointment is terminated it means that the probationer 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 probationers 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.

The decision of the Supreme Court rendered in the case of Rajesh Kohli (supra) relied upon by the learned counsel for the respondents is also in the similar terms.

14. In the instant case, it is an admitted fact that the petitioner who was under suspension was served with a charge sheet on 3-6-2011, that he submitted his reply thereto and thereafter no further proceedings in the enquiry took place and the respondents in the return have stated that they dropped the enquiry. It is also undisputed that the petitioner's performance as probationer was assessed and extended by two months and thereafter it was again reassessed and the impugned order of termination was issued.

15. In view of the aforesaid as it is clear from the facts of the present case that

after issuance of charge sheet and submission of reply thereto, no further proceedings were taken up i.e. enquiry officer has not been appointed, evidence of witnesses has not been recorded, no enquiry report is submitted and without taking any steps in the enquiry, the authorities on the basis of the assessment of the service record of the petitioner decided to terminate the services of the petitioner and not to extend the period of his probation, no fault can be found in the action of the authorities. It is also clear that the impugned order of discontinuance amounts to termination simplicitor and is neither punitive nor does it cast any stigma upon the petitioner as has been held by the Supreme Court in the aforesaid cases. In the facts and circumstances of the case the contention of the petitioner that a full fledged departmental enquiry should have been conducted by the respondents is also rejected.

16. In view of the aforesaid, I do not find any infirmity in the impugned order of termination dated 1-8-2011 which is accordingly upheld. The petition being meritless stands dismissed. In the facts and circumstances of the case there shall be no order as to costs.