

(1993) 08 AHC CK 0066

In the Allahabad High Court

Case No : Civil Misc. Writ Petition too. 4997 of 1979

Om Prakash Srirastava

APPELLANT

Vs

Regional Rural Bank Ballia and Another

RESPONDENT

Date of Decision : 20-08-1993

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (1994) 1 AWC 209

Hon'ble Judges : V.K. Khanna, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Yatindra Singh, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—This petition has been filed for quashing the order dated 26-3-1979 by which the services of the Petitioner were terminated.

2. Regional Rural Bank Ballia (hereinafter referred to as Bank) in response to petitioner's application dated 6-7-1977 offered the post of Branch Manager to him by means of a memo dated 29-7-1978. The memo (appointment-order) clearly provided that he will be on probation for one year and the relevant clause reads as follows:

He will be appointed on probation for one year w.e.f. 1-8-1978. The probation period may be further extended by one more year in case his performance, conduct, and attendance is not found satisfactory. Notwithstanding any thing contained in this letter, the services are liable to be terminated in the sole discretion of the Bank, even before the expiry of the probation period, without assigning any reason or reasons, by giving one month's notice or on payment of one month salary in lieu of notice.

3. The services of the Petitioner were however, terminated by the order dated 26-3-79 which is reproduced below:

Your services are hereby terminated with immediate effect in accordance with the terms and conditions of your services. A cheque No. 009305 of date for Rs. 700/- is enclosed herewith towards payment of one month's salary in lieu of one month's notice.

The Petitioner seeks quashing of the aforesaid termination order.

4. The first submission of Sri Yatindra Singh is that the Petitioner was holding the post of Branch Manager and the competent authority to terminate the services of a Branch Manager was the Board of Directors of the Bank but the termination order has been issued by the Chairman and therefore, the same was illegal. A supplementary affidavit has been filed by Sri Anil Prakash, Senior Manager of the Bank wherein it is averred that the decision to terminate the services of the Petitioner was unanimously taken by the Board of Directors and not by the Chairman and the Chairman had only communicated the decision of the Board to the Petitioner by his letter dated 26-3-1979. The extract of the Minutes of the meeting of the Board of Directors held on 19-3-1979 has also been filed as Annexure SA-1 to the affidavit. We have carefully examined the Minutes of the Board's meeting held on 19-3-1979. It clearly shows that it was the members of the Board of Directors who had taken the decision to terminate the services of the Petitioner. Therefore, the contention of the learned counsel that the Chairman had terminated the services of the Petitioner cannot be accepted and the termination order cannot be quashed on that ground.

5. Learned counsel has next submitted that though the termination order dated 26-3-1979 recites that the same was being passed in accordance with the terms and conditions of petitioner's services but in reality the order had been passed by way of penalty. It is urged that a show cause notice was issued to the Petitioner on 19-3-1979 stating that he had misutilised the discretionary power delegated to him and had sanctioned disbursed loans to himself and to the clerk cum cashier of the Bank and also to his family members and relatives. The notice further directed him to show cause within three days why suitable action should not be taken against him. According to learned counsel the fact that a show cause notice alleging misconduct on the part of the Petitioner was issued to him, conclusively establishes that the termination order which was passed a week thereafter was in fact an order of punishment. It is thus submitted that as the services of the Petitioner had been terminated by way of punishment without affording him any opportunity of hearing, the same was illegal and contrary to law.

6. The record shows that a show cause notice was issued to the Petitioner on 19-3-1979 wherein it was stated that he had misutilised the discretionary power delegated to him and had disbursed loans to himself and to some other persons in personal interest without keeping in view the interest of the Bank. The notice further directed him to show cause as to why suitable action should not be taken against him. However, on 22-3-1979 the Petitioner was informed by a communication sent by Chairman that it had been decided to drop the show

cause proceedings started against him. Copy of this document has been iled as annexure-3 to the writ petition. It is, therefore, clear that even before the expiry of the period mentioned in the notice for showing cause, the show cause notice itself was dropped. It is not the petitioner's cause that he gave any reply to the notice. No formal disciplinary proceedings were initiated against the Petitioner in accordance with rules applicable to him. He was not served with any charge-sheet. No one was appointed as an inquiry-officer nor any evidence was recorded against him. It is, therefore, fully established that disciplinary proceedings were never commenced against the Petitioner. Quite often some sort of a preliminary enquiry is held by the employer before taking a decision as to whether a formal disciplinary enquiry should be instituted against an employee or not. If some objectionable act of an employee comes to the notice of an employer, he is certainly entitled to enquire about the things and in that connection call for an explanation from the employee concerned. However, from the mere fact that an explanation was called from an employee, it cannot be inferred that any formal disciplinary enquiry or departmental proceedings were either under contemplation or were initiated. It is well settled that the form of the order of termination of service is not conclusive on the question whether the order was in the nature of punishment. The entirety of circumstances preceding or attendant of the impugned order must be examined and the overriding test will always be whether the mis-conduct is mere motive or is the very foundation of the order, in the present case even before the expiry of the period granted by the show cause notice the same was withdrawn. The surrounding circumstances in the present case do not lead to an inference that the services of the Petitioner had been terminated on account of any positive act of misconduct or by way of punishment.

7. Sri Yatindra Singh has placed strong reliance on some Supreme Court decisions which may now be examined. In *The State of Bihar and Others Vs. Shiva Bhikshuk Mishra*, on facts it was found that the order of reversion was directly "and proximately founded on what the Commandant and the Deputy Inspector General said relating to the employees' conduct generally and in particular with reference to the incident of assault by him on his Orderly. It was in these circumstances that the order of reversion was held to be punitive in character; In *The State of Punjab Vs. Prakash Singh Cheema*, the services of the Respondent who was a temporary Tax Sub Inspector were terminated by giving him a month's notice. It was established that charges were framed against him by the Vigilance Department and a charge sheet for taking action under Punjab Civil Services (Punishment and Appeal) Rules was also served in which he filed written statement. It was thereafter that his services were terminated. In these circumstances the Court ruled that the termination was by way of punishment: In *Anoop Jaiswal Vs. Government of India and Another*, the services of a probationer had been terminated. On facts it was held that the order of termination really amounted to punishment because the real foundation of the action against the employee was the act of misconduct on a particular day. The Court also arrived at a conclusion that the Director of Academy wished to

make the case of the concerned probationer an example for others including those other probationers who were similarly situated so that they may learn a lesson therefrom. In *Jarnail Singh and Others Vs. State of Punjab and Others*, , it was found that the services of the employees concerned were terminated on account of allegations of embezzlement and on these facts it was held that the termination order was by way of punishment. In *Smt. Rajinder Kaur v. Punjab State* AIR 1986 SC 1970, it was found that an enquiry had been made relating to the misconduct of a lady constable staying in night with a male constable and thus it was held that the order of discharge amounted to dismissal on ground of misconduct. All these cases are distinguishable. Firstly, they relate to government servants and turned on the interpretation of Article 311 of the Constitution. The Petitioner in the present case is not a member of a Civil Service of the Union or a Civil Service of a State, nor holds a civil post under the Union or State and therefore, Article 311 does not apply to him. Secondly, in each case it was order. Sri Singh has also placed reliance upon a decision by a learned Single Judge of this Court in *Kesho Ram v. G.B. Pant University*, 1993 ALJ 750, where the termination of service in March, 1976 of the Appellants. who had been appointed in the University in March, 1969, was held to be by way of punishment. The point for consideration formulated by the learned Judge was whether the termination order, if after lifting the veil was found to be an order of dismissal and penal in nature, could be sustained without following the procedure under Article 311(2) of the Constitution. In this case the Appellants was an employee of an University. He was not a member of the Civil Service of the Union or a State nor was holding a civil post under the Union or State and therefore, in our opinion Article 311 of the Constitution did not apply to him. The learned Single Judge decided the appeal on the footing as if the Appellants was entitled to the protection of Article 311 of the Constitution. The case is also distinguishable on facts as it was found by the Court that the services of the Appellants were terminated on account of his misconduct including continued absence from duty.

8. In *Bishan Lal Gupta Vs. The State of Haryana and Others*, , the Petitioner joined Haryana Civil Service as a probationer on 8-12-1966. He was served with two show cause notices on 22-10-1968 and 18-6-1969 asking him to explain certain allegations to which he gave reply. He was served a third show cause notice by the Chief Secretary on 19-6-1969. After considering his explanations, his services were terminated by an innocuously worded order dated 11-9-1969. It was urged that his services had been terminated by way of punishment. The Court repelled the attack with the observation that where the intention behind an enquiry against the probationer was not to hold a full departmental trial to punish but a summary enquiry to decide only suitability to continue in service and the probationer "was given ample opportunity to answer in writing whatever was alleged against him in show cause notices, the communication of order of termination, following such summary enquiry, could not be said to be an order of punishment which entitled him to a full fledged departmental enquiry

contemplated by Article 311. In *Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali*, a departmental enquiry was held against the employee during the period of his probation as there were reports against him but the enquiry was not proceeded with and his services were terminated. It was urged that there was violation of Article 311 of the Constitution. The Court rejected the contention on behalf of the employee by observing that even if misconduct, negligence, inefficiency might be the motive or inducing factor which influenced the employer to terminate the services of the employee, a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service, termination of services could not be termed (sic) penalty or punishment. In *Ravindra Kumar v. U.P. State Handloom Corporation*, 1987 SC 2408, the Appellant was placed under suspension on 22-11-1982 by an order which mentioned that he was responsible for misconduct, dereliction of duty, mismanagement and showing fictitious production of cloth. On 1-2-1983 the suspension order was revoked and on 10-2-1983 a simple order terminating his services was passed. It was held that the order of termination was in innocuous terms and did not cast any stigma nor visited the employee with any evil consequences. It was further held that the termination order being not founded on a misconduct, was not open to challenge. Recently in *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another*, the Court after reviewing earlier judgments including that in the case of *Anoop Jahwal*, supra observed as follows:

But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it can not be held that as some enquiry had been made against him before issuance of order of termination it really amounted to his removal from service on a charge, as such penal in nature.

The principle of tearing of veil for finding out real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and action taken. If decision is taken, to terminate the service of an employee during period of probation, after taking into consideration overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment.

9. The Petitioner was appointed on probation for one year on 1-8-1978 and his services have been terminated during the period of probation on 26-3 -- 1979 in terms of the contract of service. The notice dated 19-3-1979 asked him to show cause within three days of the receipt of the letter regarding some allegation of misutilization of discretionary power delegated to him and also grant of loan to himself and also to his cashier and to his relatives. Even before the time for giving reply had expired, the notice was withdrawn and the proceedings were

dropped. The Petitioner had also not given any reply to the show cause notice. On these facts it can not at all be held that the termination order dated 26-3-1979 was either founded upon any misconduct or had been passed by way of punishment. The Petitioner was holding the post of Branch Manager in a Bank which is a financial institution and on overall assessment of work, the Board of Directors felt satisfied that he was not a fit person to be retained in service. The termination order does not cast, any stigma nor visits him with any evil consequences. In these circumstances, the order cannot be said to be punitive in character which would have warranted an opportunity of hearing. We have examined the entire record and in our opinion the- Petitioner has not made out any case for quashing of the order on the aforesaid ground.

10. Sri Yatindra Singh has next submitted that the punishment imposed upon the Petitioner is disproportionate to the misconduct alleged against him. The submission of the learned counsel is wholly misconceived. We have held above that no punishment had been imposed upon the Petitioner and as such the question of it being disproportionate does not arise.

11. For the reasons mentioned above, the writ petition -lacks merit and is accordingly dismissed.

12. Parties to bear their own cost.