
(2015) 02 RAJ CK 0064
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1368/2015

Pradeep Kumar Yadav

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2015) 02 RAJ CK 0064

Hon'ble Judges : Bela M. Trivedi, J.

Bench : Single Bench

Advocate : Sunil Kumar Singodiya, for the Appellant; Vinayak Joshi, Advocates for the Respondent

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.—In the present petition the question of law that arises for determination is, whether the respondent-corporation could terminate the services of the petitioner, who was working on the probation, by passing the order attaching stigma on him without holding any enquiry?

2. In the instant case, it appears that the petitioner was appointed by the respondent as the conductor on the fixed monthly remuneration, on probation for a period of two years vide the order dated 19.12.2013. The services of the petitioner were sought to be terminated vide the impugned order dated 18.12.2014 alleging therein inter alia that the petitioner had committed several irregularities while working as the conductor, for which the charge sheets were issued to him, and that the petitioner was used to commit misconduct/corruption and violate the Rules of the corporation, and therefore his performance was not found to be satisfactory during the period of probation. The services of the petitioner, therefore, were terminated with immediate effect as per Section 8(iii) (iv) of the Rajasthan State Road Transport Workers And Workshop Employees, Standing Orders 1965 (hereinafter referred to as "the Standing Orders 1965").

3. It has been sought to be submitted by the learned counsel Mr. Sunil Kumar Singodiya for the petitioner that the impugned order being stigmatic in nature and no enquiry having been held against the petitioner, the said order deserves to be set-aside. He has relied upon the decision of the Apex Court in case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, , and decision of this Court in case of Rajendra Kumar Versus The Chairman, RSRTC and Ors., 2008 WLC page 359, in support of his submissions. However, the learned counsel Mr. Vinayak Joshi appearing for the respondent-Corporation submitted that the petitioner being on probation, no enquiry was required to be held, and the services of the petitioner could be terminated as per the provisions contained in the Standing Orders, 1965. Mr. Joshi has relied upon the decisions of Apex Court in cases of Life Insurance Corporation of India and Another Vs. Raghavendra Seshagiri Rao Kulkarni, , in case of Registrar, High Court of Gujarat and Another Vs. C.G. Sharma, , and in case of Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, .

4. Having regard to the submissions made by the learned counsels for the parties and to the documents on record, it appears that the petitioner was served with various charge sheets by the respondents for the alleged misconduct committed by him during the period of probation. However, the respondents without giving the petitioner sufficient opportunity of hearing in respect of the said charge sheets issued to him, passed the impugned order terminating his services with immediate effect stating that the petitioner is in the habit of committing misconduct/corruption and has violated the Rules of the corporation and therefore it is not desirable to continue him in service.

5. It clearly transpires from the said impugned order that it was not the termination simpliciter but it was termination with stigma attached to it. In this regard law is well settled by the Apex Court in case of Dipti Prakash Banerjee v. Satvendra Nath Bose (supra). In the said decision the Apex Court on similar case as of the present one had raised following-three questions:--

"(1) In what circumstances, the termination of a probationer's services can be said to be founded on misconduct and in what circumstances could it be said that the allegations were only the motive?

(2) When can an order of termination of a probationer be said to contain an express stigma?

(3) Can the stigma be gathered by referring back to proceedings referred to in the order of termination?"

6. While answering question No. 1, the Apex Court held as under:

"21. If findings were arrived at in inquiry as to misconduct, behind the back of the officer or Without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But

if the inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay, in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid." While answering question No. 2, the Apex Court held as under:--

"25. In the matter of "stigma" this Court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven Judge case in *Samsher Singh Vs. State of Punjab and Another*, , Ray, CJ observed that if a simple order of termination was passed, that would enable the officer to "make good in other walks of life without a stigma". It was also stated in *Bishan Lal Gupta Vs. The State of Haryana and Others*, that if the order contained a stigma LR the termination would be bad for "the individual concerned must Suffer a substantial loss of reputation which may affect his future prospects." While answering question No. 3, the Apex Court held as under:--

"35. The above decision is, in our view, clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its Annexures. Obviously such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular inquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma. 7. If the impugned order of termination is appreciated in the light of the aforestated legal position, it clearly transpires that it was not a simple order of termination, but the termination was based on the allegations of misconduct and corruption, attaching stigma, which would have effect on the petitioner's future prospects of employment, and therefore the said order being bad in the eye of law can not be countenanced. It is true that employees of the corporation are not the civil servants, and therefore are not entitled to the protection under Article 311 of the Constitution of India. The terms of their appointment are governed by the letter of appointment, and therefore the management is within its right to terminate the services of the probationer employee during the period of his probation, if his services were not found to be satisfactory during the said period, as held by the Apex Court in case of *Rajasthan State Road Transport Corpn. and Ors. v. Zakir Hussain (supra)*. There can also not be any disagreement to the proposition of law reiterated by the Apex Court in case of *Registrar, High Court of Gujrat and Anr. v. C.G. Sharma, (supra)* that in case of termination simplicitor and not punitive, no opportunity is required to be given to the probationer and his services could be terminated on being satisfied that his work was not found

satisfactory. However, in the judgments relied upon by the learned counsel for the respondents, the termination orders were construed as the termination simplicitor of the concerned employees, and there was no stigma found to be attached to the said termination, and therefore the Apex Court had upheld such orders. However, in the instant case as apparent from the impugned order of termination, the concerned authority of the respondent while terminating the services of the petitioner has caste stigma on the petitioner. The said order being punitive in nature was bad, in absence of any inquiry and in absence of compliance of the principles of natural justice.

8. In that view of the matter, the impugned order deserves to i.e. and is be set-aside and is hereby set-aside. However, it is clarified that the respondents shall be at liberty to terminate the services of the petitioner, if not found satisfactory in accordance with law. The petition stands allowed accordingly.