
(2001) 01 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No's. 3535 and 3536 of 1999

R. Swaminathan and Another

APPELLANT

Vs

The Manipal Academy of Higher Education and Another

RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Citation : (2001) ILR (Kar) 1337 : (2002) 1 KarLJ 444 : (2001) 2 KCCR 949

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : M. Narayana Bhat, for K. Subba Rao, for the Appellant; G.K. Shevgoor, for the Respondent

Final Decision : Partly Allowed

Judgement

The Court

1. These two petitioners have approached this Court with their respective writ petitions praying to issue a writ of certiorari or any other appropriate writ quashing the orders bearing No. MAHE/EST/REG/99 marked Annexure-E and No. MAHE/EST/REG/99 marked Annexure-F, both dated 28-1-1999, passed by respondent-Institution discharging them from service during their probation period; and to direct respondent to continue their services till the end of their probation period and confirm them in service with all consequential benefits.

2. The undisputed facts are that petitioner 1-S. Swaminathan was appointed as Assistant Professor in the educational institution of respondent under order dated 23-12-1997 vide Annexure-C. One of the conditions of appointment was:

"1. You will be on probation for a period of two years from the date of joining. During this period, if your work and conduct is found satisfactory, you will be confirmed in the post of Assistant Professor. Otherwise your services are liable to be terminated".

3. Petitioner 2-V. Parthasarathy was also appointed as Assistant Professor in the

educational institution of respondent-Academy under its appointment letter dated 17-9-1997 vide Annexure-D containing the aforequoted material condition as one of the conditions of his appointment also.

4. Pursuant to the aforestated appointment orders when both petitioners were working as Assistant Professors in the respondent's Institution, they were issued with the respective impugned discharge orders per Annexure-E and F, both dated 28-1-1999, stating:

"As your performance is not satisfactory, your services are hereby terminated with effect from the forenoon of February 01, 1999 as per Clause 1 of appointment order....".

The appointment order referred to in the above Annexure-E and F are the respective said orders vide Annexure-C, dated 23-12-1997 and Annexure-D, dated 17-9-1997. The aforequoted condition in these orders is referred to as "Clause 1" in Annexure-E and F. The two years probation of petitioner 1 envisaged in Annexure-C, dated 23-12-1997 was to expire on 23-12-1999 and that of petitioner 2 stipulated in Annexure-D was to expire on 17-9-1999. Thus, admittedly, the discharge of the services of both petitioners under respective Annexure-E and F, both dated 28-1-1999, was made before expiry of their said probation period of two years. It was, therefore, contended by the learned Counsel for petitioners, placing reliance on the ruling of Supreme Court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, that termination orders at Annexure-E and F of respondent are invalid and void orders.

5. Mr. Shevgoor, learned Counsel representing respondents, argued otherwise in support of the impugned termination orders at Annexure-E and F contending that they are the termination simpliciter of the petitioners who were on probation and they are valid orders which do not call for interference. Support for this proposition was drawn by him from the decisions of Supreme Court in *Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali*, ; *State of Maharashtra v. Veerappa R. Saboji*; *Commodore Commanding, Southern Naval Area, Cochin Vs. V.N. Rajan*, and *Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others*, .

6. The three Judges Bench of Supreme Court in the case of *Express Newspapers, supra*, was seized of the question whether the discharge of petitioner therein from services by his employer during the period of probation was legally sustainable. The order appointing the petitioner in that case has been quoted by their Lordships in the judgment, which is reproduced below:

"Your appointment will, in the first instance, be on probation for six months. If during this period we find you satisfactory, and you find the job suitable, we will confirm you".

On consideration of the terms of that appointment order, their Lordships of

Supreme Court have held that the employer was not empowered to discharge the petitioner therein before expiry of the probation period and, therefore, that termination order was not legally sustainable. In that regard, the Apex Court held:

"There can, in our opinion, be no doubt about the position of law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period of his services had either not been terminated or is confirmed. It appears clear to us that without anything more, an appointment on probation for six months given the employer no right to terminate the service of an employee before six months had expired, except on the ground of misconduct or other sufficient reasons in which case even the service of a permanent employee could be terminated".

The above pronouncement of the Apex Court clearly lays down the law that an employer would have no power to terminate an employee during the period of probation, unless of course such a right has been reserved either under the appointment order itself or by any relevant rules/regulations relating to appointment, probation and confirmation of appointees.

7. In the instant case, a plain reading of the relevant clause or condition (1) of the orders at Annexure-C and D concerning appointment of petitioners shows that the probation period of each of them was two years from the respective dates of their appointment and that during this period of probation, if their work and conduct were found satisfactory by the employer, then, their services were to be confirmed in the post of Assistant Professor. If not, their services were liable to be terminated. Therefore, the right which was reserved by the employer under the said appointment order was to confirm the services of each of the petitioners within their respective probation periods if their work and conduct were found satisfactory. In case, if the same was not found satisfactory, then the respective services of petitioners were liable to be terminated not during their probationary period, but after expiry thereof. The learned Counsel for respondent sought to make out a case from the contents of the said appointment orders that the employer had reserved his right to terminate the services of the petitioners even during their respective periods of probation if their work and conduct were not found satisfactory. This submission militates against the plain meaning of the three sentences contained in Clause (1) of the respective appointment orders at Annexure-C and D and, therefore, is not acceptable. In none of the authorities cited by the learned Counsel for petitioners, the Supreme Court has taken a view divergent from its ruling in the case of *Express Newspapers Limited*, supra, which was rendered by a Bench of three Judges. The aforesaid decisions cited by him are beside this point and they are in support of the undisputed proposition that the termination order terminating the services of a probationer without casting any stigma on him is a termination simpliciter which any employer has a right to make such order. Therefore, the impugned orders of respondent at Annexure-E and F are legally unsustainable and are liable to be quashed.

8. For the reasons aforesaid, the petitions are allowed in part. The impugned orders of respondent at Annexure-E and F, both dated 28-1-1999, are quashed and the respondent is directed to reinstate petitioners in their respective posts of Assistant Professor and allow them to continue under its services as such with all consequential monetary benefits until their services are terminated in accordance with law if respondent deems fit to take and initiate any fresh action against them for their removal from service. The petitioners' further prayer to direct respondent to confirm their services in their respective posts is declined, since such a direction is not permissible.