
(2001) 02 MP CK 0042
In the Madhya Pradesh High Court
Case No : Writ Petition No. 496/99

Rahul Tripathi

APPELLANT

Vs

Rajeev Gandhi Shiksha Mission, Bhopal and others

RESPONDENT

Date of Decision : 15-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) ILR (MP) 1144 : (2001) 3 MPHT 397 : (2001) 3 MPLJ 616

Hon'ble Judges : Mr. Dipak Misra, J

Bench : Single Bench

Advocate : Shri K.K. Trivedi, for the Appellant; Shri Riyaz Mohammad and Shri R.K. Khare, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner has prayed for issue of a writ in the nature of certiorari for quashment of the order dated 5-1-1999 contained in Annexure P-18.

The facts as have been unfolded in the writ petition are that the Central Government has sponsored a scheme for providing better educational facilities to the children of the rural areas and the said scheme is called "Rajeev Gandhi Shiksha Mission". The scheme provides guidelines for smooth functioning of the projects established under the scheme. In accordance with the scheme a post for Block Resource Centre Coordinator was created and it was specifically provided that the appointment would be made to the said post either on deputation or on contract basis and the selection is to be made by the District Level Appointment Committee. The petitioner submitted an application for the appointment of the said post and he was issued the order of appointment on 21-8-1995 and was posted in the office of the respondent 4. The Block Education Officer-cum-Ex-

Officio Block Project Director, Rajeev Gandhi Prathamik Shiksha Mission, Baldcogarh, Distt. Teekamgarh. After completion of the period of the petitioner the matter was referred to the higher authorities of the Mission and the State Project Director of the Mission granted extension. It is averred in the writ petition that under the scheme the Block Resource Centre Co-ordinator (in short "the BRCC") is required to discharge his duties under the direction of respondent 4. It is provided therein that the accounts at block level will be kept in the joint bank account in the name of Block Project Director and BRCC and any withdrawal from the account is to be made under the joint signature of both the persons. It is set forth in the petition that several projects were started under the scheme and huge amount was sanctioned by the Mission. Several persons got interested to get appointment in the Mission's services though they were not qualified. It is urged that one such person was respondent No. 3, who was appointed earlier to the post of BRCC by use of political influence. He got an appointment to the post of District Project Co-ordinator, Teekamgarh in the month of August, 1997. As soon as the respondent 3 got the aforesaid appointment he started pressurising the petitioner to act according to his wishes. The illegal act of the respondent 3 was not acceptable to the petitioner. This created a rift between the two as a result of which the respondent 3 issued a memorandum on 25-11-1997 to the petitioner that he had committed misconduct. The said communication has been brought on record as Annexure P-7. On receipt of the said memorandum the petitioner submitted his reply denying the allegations. The petitioner also brought this fact to the notice of the respondent 4 but no action was taken. On the contrary, a complaint was got made against the petitioner alleging that he misbehaved with the respondent 4. According to the writ petitioner as he was not prepared to act in accordance with the wishes of the respondents 3 and 4 allegations were made that he had committed serious financial irregularities. The petitioner and respondent No. 3 were restrained to operate the bank account of the Mission Project at Baldcogarh. While the matter stood thus, without conducting an enquiry an order of termination contained in Annexure P-18 was served on him. It is pleaded that the order of termination refers to many memos issued to the petitioner. It has been averred that before the order of termination was issued prior approval of the Mission Director, Bhopal was not taken and no notice was issued to the petitioner. It is urged in the petition that order passed vide Annexure P-18 contains stigma inasmuch as there are allegations relating to financial irregularities and other irregularities and in absence of any enquiry the order is unsustainable in law.

A return has been filed by the respondents 1 and 2 that the petitioner has no right to continue inasmuch as his appointment was terminated after expiry of the period by efflux of time and hence, he can have no grievance to make. It is also pleaded that the petitioner was reappointed on 6-9-1996 but as there were serious financial irregularities against him show-cause notices were issued to him on many an occasion but his reply was not found satisfactory and accordingly his services were terminated in lieu of one month salary paid in advance. The

justification has been given for terminating the services of the petitioner.

A counter affidavit has been filed by the respondent 3 that financial irregularities committed by the petitioner was pointed out by the Accountant. It is mentioned that the petitioner had opened a bank account in his own name and some money had been deposited in the bank. Reference has been made to letter dated 25-11-1997 written by District Project Co-ordinator to the petitioner indicating irregularities committed by him. It has been pleaded that the explanation given by the petitioner was not satisfactory and accordingly his services were terminated.

A rejoinder affidavit has been filed by the petitioner which points out certain aspects in relation to other employees justifying the conduct of the petitioner.

I have heard Mr. K.K. Trivedi, learned counsel for the petitioner, Mr. Riaz Mohammad learned counsel for the respondents 1, 2 and 4 and Mr. R.K. Khare, learned counsel for the respondent 3.

Assailing the order passed vide Annexure P-18, Mr. Trivedi, learned counsel for the petitioner has raised a solitary contention that on a bare reading of the said order it is perceivable that stigma is cast on the petitioner and without an enquiry as the petitioner has been removed the order passed by the competent authority is sensitively susceptible. The learned counsel has further canvassed that if the language employed in Annexure P-18 is read conjointly with the assertions made in the counter affidavit, it becomes graphically clear that these allegations form the "foundation" for termination of the services of the petitioner.

Mr. Riaz Mohammad and Mr. Khare, learned counsel for the respondents, on the contrary, have contended as the petitioner's conduct was far from being satisfactory, he was removed from service and there was no necessity to conduct any enquiry inasmuch as he was an employee on contract. It is highlighted by the learned counsel that the petitioner has not been visited with any stigma inasmuch the petitioner was pointed out irregularities in his work which is a pointer to the fact that his work was not satisfactory and hence, he was liable to be terminated. In essence, the proponement of the learned counsel is that the order is a termination simpliciter.

Before I advert to the rival contentions raised at the Bar, I may refer to the case, of Samsher Singh Vs. State of Punjab, MR 1974 SC 423, wherein a seven Judges Bench of the Apex Court made clear distinction between the term "motive" and "foundation" and came to hold that the form of the order is not conclusive and innocuously worded order can be passed on a foundation of grave charges. In the case of The State of U.P. Vs. Ram Chandra Trivedi, , it was held that the motive in passing an order of termination is not a relevant factor. What is determinative is the foundation on which it is based. It has been held that it is foundation which makes the order punitive in the nature. Recently in the case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, two Judges Bench of the Apex Court came to hold as under :

"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 case, the order of termination would stand vitiated on the ground that no regular inquiry was conducted."

At this juncture, I may profitably refer to another decision rendered in the case of Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, , wherein it has been held as under:--

"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 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 enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in Champaklal case. The purpose of the preliminary enquiry 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 enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed if at that point of time, the enquiry 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 case and in Benjamin case. In the latter case, the departmental enquiry 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.

But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct or 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 the principles of natural justice inasmuch as the purpose of the enquiry 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 enquiry. 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 mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry 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."

Recently, in the case of AIR 2000 1706 (SC) the Apex Court after referring to all the decisions in the field came to hold as under:--

"28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

"Motive" is the moving power which implies action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this decision? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry."

The present factual matrix is to be tested on the aforesaid enunciation of law. To find out whether the order of termination is a termination simpliciter or punitive in nature it is apposite to refer to the order contained Annexure P-18. The relevant portion of the same reads as under :--

^^Jh jkgqy f=ikBh vkRet Jh ch-ds- f=ikBh dks fodkl [k.M cYnsox<+ esa fodkl

[k.M lzksr dsUnz leUo;d ds :i esa jktho xka/kh izkFkfed f"kk{kk fe"ku ds varxZr ,d o"KZ dh lafonk fu;qfDr vkns"K ?ekad Mh-ih-bZ-ih-@fu;q-@95@22@6 fnukad 21@8@95 }kjk nh xbZ Fkh] ftldh vof/k fu;ekuqlkj fnukad 20@8@96 dks gks xbZ FkhA bl vof/k dh lekfiR ds mijkar dk;kZy;hu vkns"K ?ekad 839] fnukad 6@9@96 }kjk Jh f=ikBh dks lafonk fu;qfDr dh "krksZa ij gh iqu% vkxkeh vkns"K rd inLFk fd;k x;k Fkk fdUrq Jh f=ikBh ds fo:) xaHkhj fo?kh; vfu;ferrkvksa ,oa ofj"B dk;kZy;ksa ds vkns"Kksa dh vogsyuk dh f"kdK;rsa izkIr gqbZA f"kdK;rksa ds lECU/k esa bl dk;kZy; ds i= ?ekad 710 fnukad 25@11@97] ?ekad 858@1] fnuakd 23@12@97] ?- 983@1] fnuakd 21@1@98] ?ekad 1120] fnukad 18@11@98] ?ekad 1156 fnukad 2@12@98 }kjk Li"Vhdj.k pkgk x;k fdUrq Jh f=ikBh }kjk Li"Vhdj.k ,oa mlesa mYysf[kr vkjksiksa dk dksbZ lek/kkudkj d m?kj izLrqr ugha fd;k x;kA fodkl [k.M f"kk{kk vf/kdkjh cYnsox<+ }kjk Hkh fodkl [k.M lzksr dsUnz oYnsox<+ esa Jh f=ikBh }kjk fo?kh; vfu;ferrk fd, tkus ,oa vius drZO;ksa dk fuoZgu xaHkhjrk ls u djus lECU/kh izfrosnu izLrqr fd;k gS] ftlls cYnsox<+ fodkl [k.M esa fe"ku dk;Z vR;ar izHkkfor gqvK gSA vr% mijksDr dkj.ksa dks n`f"Vxr j[krs gq, Jh f=ikBh dks rRdky izHkko ls fodkl [k.M lzksr dsUnz leUo;d cYnsox<+ in ls i`Fkd fd;k tkrk gSA bUgs uksfVI u fn, tkus ds dkj.k fu;ekuqlkj ,d ekg dk osru ns; gksxkA

?dysDVj ,oa ftyk fe"ku lapkyd }kjk vksnf"kr?*

On a bare glance at the aforesaid order it becomes graphically clear that the petitioner's appointment was extended from time to time but during his continuance serious allegations with regard to financial irregularities were received. The order also reflects that the petitioner was asked to show-cause in number of correspondences but the petitioner could not explain the charges, levelled against him. It has also been mentioned in the order as the petitioner has committed financial irregularities and has not performed his duties with sincerity the work of the Mission has been affected and accordingly he has been removed. At this juncture, it is worthwhile to refer to the counter affidavit wherein it has been also mentioned that against the petitioner there were serious financial irregularities and he was asked to show cause but his reply was not found satisfactory. The return filed by the respondent No.3 also reflects the same. On a scrutiny of the entire factual scenario, there remains no scintilla of doubt that the order of termination passed against the petitioner is stigmatic and cannot be regarded as a termination simpliciter. The allegations incorporated in the order clearly establish that stigma has been cast and it will affect the future prospects of the petitioner. Accordingly, the order contained in Annexure P-18 deserves to be quashed and accordingly, I so do. Needless to emphasise the petitioner shall reap all the consequential benefits.

Resultantly, the writ petition is allowed without any order as to costs.

Writ Petition allowed.