

(2001) 10 RAJ CK 0096

In the Rajasthan High Court

Case No : Civil Special Appeal No. 262 of 2001

Rajasthan Shikshan Prashikshan Vidyapeeth Samiti

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Citation : (2002) 92 FLR 1017 : (2003) 1 RLW 515

Hon'ble Judges : A.R. Lakshmanan, C.J.;Asok Parihar, J

Bench : Division Bench

Advocate : S.P. Sharma, for the Appellant; Manoj Pareek, for the Respondent

Final Decision : Allowed

Judgement

Lakshmanan, C.J.—The matter relates to the service of the probationer, respondent herein. The question herein is whether the services of the probationer can be dispensed with, if his services are not found upto the mark during the period of probation.

2. We have perused the pleadings, orders passed by the authorities and other relevant records. In the present case, the decision to dispense with the services of the respondent was taken on the fact that his services had not been found upto the mark by the Screening Committee, which was constituted to examine the service record by the managing Committee. No allegation of malafide has been alleged by the respondent in his writ petition nor any person has been impleaded as a party thereto, no document has been annexed to the writ petition to show that any ill motive was available to not to continue the service of the respondent. In these circumstances, the decision taken by the Management to dispense with the service of the respondent was a conscious decision taken by a duly constituted Committee, therefore, no fault can be found with the same.

3. A three Judges Bench of the Hon'ble Supreme Court in the case H.F. Sangati v. Registrar General, High Court of Karnataka and Ors. (1), has upheld the order of discharge passed by the State Government on a reference from High Court

after the Administrative Committee of High Court had considered all the relevant material and formed an opinion as to his unsuitability which opinion was accepted by the Full Court. The Supreme Court held that such an order was in accordance with Rule-6 of the KCS (Probation) Rules, 1977 and was neither stigmatic nor punitive. The discharge in the instant case is a discharge simpliciter of a probationer. His Services were dispensed with during the period of probation on his unsuitability to hold the post. Similar view was taken by the Supreme Court in High Court of Madhya Pradesh v. Satya Narayan Jhavar (2). The Hon''ble Supreme Court has held that allowing an unsuitable probationer to continue in service and give further opportunity to improve and continuance of the probationer on expiry of the maximum period of probation cannot be deemed to be as confirmation. In the said case, the Supreme Court has also negated the confirmation by implication.

4. Consequently, the Writ Appeal is allowed and the order of the learned Single Judge is set aside. No order as to costs.