

(2013) 10 AHC CK 0141

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18367 of 2002

Rakesh Kumar Pandey

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2014) 3 ADJ 30

Hon'ble Judges : Rakesh Tiwari, J; P.K.S. Baghel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner has preferred this writ petition for issuance of a writ of certiorari for quashing the order dated 24.8.1995, whereby his services have been terminated and the order dated 7.11.2001 passed by the Central Administrative Tribunal rejecting the application filed by the petitioner. A brief reference to the factual aspects would suffice.

2. The petitioner was initially appointed as an Assistant in the Ministry of Steel and Mines (Department of Mines), Government of India on 24.8.1994. His appointment was on probation for a period of two years, which could be curtailed or extended at the discretion of competent authority. The petitioner joined his duties on 28th November, 1994 and just after three days of his joining he moved an application for casual leave w.e.f. 1.12.1994. After the leave was over he failed to join his duties and made several applications for extension of his leave from time to time on the ground of personal/domestic problems. The Department sent telegrams to the petitioner that he should join his duties immediately. From the record it appears that the said telegrams were sent on 28.3.1995, 22.6.1995 and 17.7.1995. In spite of the aforesaid communication, the petitioner did not join his duties. The Department appears to have had earlier rejected his leave applications and consequently, his services were terminated on 24.8.1995 due to his non-joining.

3. Feeling aggrieved by his termination, the petitioner preferred an O.A. No. 1395 of 1995 before the Central Administrative Tribunal, Allahabad Bench, Allahabad. His claim petition was rejected by the Tribunal, which took a view that as the petitioner was on probation, termination of his service was simpliciter and not punitive as to attract Article 311(2) of the Constitution.

4. We have heard Sri M.M. Sahai, learned Counsel for the petitioner and Sri A.K. Singh, learned Counsel for Union of India.

5. Learned Counsel for the petitioner submits that it is true that petitioner was a probationer but his services were terminated on the ground of misconduct of alleged long absence and non-joining his service inspite of information, therefore, his services could not have been terminated without holding a regular enquiry.

6. Learned Counsel for Union of India Sri A.K. Singh submits that the petitioner was a temporary Government servant and before his confirmation, his services have been terminated by order simpliciter without casting any stigma. He further urged that the Tribunal has also recorded a finding of fact in this regard that the termination order of the petitioner, is simpliciter.

7. We have considered the submissions of respective parties and perused the record.

8. The petitioner was appointed as a temporary Assistant in the Ministry of Steel and Mines. A copy of the appointment letter dated 24.8.1994 is on the record as Annexure-1 to the writ petition. From a perusal of terms and conditions of the appointment letter, it is evident that the petitioner was appointed on probation for two years. It also provides that failure to complete the period of probation to the satisfaction of competent authority, will render him liable to discharge from service. For ready reference his letter of appointment is reproduced below;

Registered

No. 4(7)94-Esstt. Government of India Ministry of Steel and Mines (Department of Mines)

New Delhi the 24-8-94

To

Shri Rakesh Kumar Pandey, S-II/321 Rajya Shiksha, Sansthan Colony, Allanganj, Allahabad.

Subject: Appointment of Assistants on the results of Assistants Grade Examination, 1989.

Sir,

I am directed to say that on the basis of the results of the Assistant Grade Examination, 1989 conducted by the Union Public Service Commission, you are hereby offered an appointment as an Assistant for employment in the cadre of the Department of Mines in the Central Secretariat Service, on the following terms and conditions.

2. The post of Assistant is permanent but you will be on probation for 2 years from the date of appointment, which may be extended or curtailed at the discretion of the Competent Authority. Failure to complete the period of probation to the satisfaction of the competent authority will render you liable to discharge from service or reversion to your substantive post on which you may be having a lien.

3. The scale of pay of the post of Assistant is Rs. 1640-60-2600-EB-75-2900. Your initial pay in this scale will be fixed in accordance with the normal rule and you will, in addition, be eligible for the usual allowances under the rules and orders in force from time to time.

4. On appointment you will be required to take an oath of allegiance to the Constitution of India or make a solemn affirmation to the effect in the prescribed form.

5. You will not be entitled to any travelling allowance for joining the appointment unless you are holding substantively a permanent appointment under the Central or State Government.

6. Your appointment will be subject to:

Your being medically fit for appointment to the post Assistant if not already done. You will be allowed to join the post only on the production of medical fitness report.

7. You may be required to contribute compulsorily from the date of appointment to the General Provident Fund at such minimum rate as may be prescribed by Government, and also to new Group Insurance Scheme introduced with effect from 1.1.1990.

8. If after you have joined the appointment, you resign from the service, whether for the purpose of taking up other employment or for any other reasons whatsoever, or are discharged from service on account of your absence from duty without previous sanction of leave, whether on grounds of personal illness or otherwise on account of your failure to complete probation within a reasonable time, you may be required to refund to Government all the money paid to you on account of pay and allowance, etc.

9. The appointment carries with the liability to serve in any part of India.

10. Other conditions of service will be governed by the relevant rules and others in force from time to time.

11. The appointment will be further subject to the submission of a declaration in the form enclosed.

12. If any declaration given or information furnished by you proves to be false or if you are found to have wilfully suppressed any material information you will be liable to removal from service and to such other action as Government may deem necessary.

13. If you accept the offer to the above terms and conditions you should communicate your acceptance so as to reach the undersigned by 15-9-94 and should report to this Department as soon as possible after getting yourself medically examined. You will be allowed to join duty only on receipt of medical fitness certificate from Government Hospital. If your acceptance is not received by the prescribed date or if after acceptance, you fail to report to this Department by the said date, without sufficient cause, this offer will be treated as cancelled and you will not be considered for any appointment on the results of the Assistants Grade Examination, 1989.

Please bring your original Degree/Certificates along with you.

Yours faithfully,

Sd/- 24.8.94

(S.R. SHARMA)

Under Secretary to the Government of India Copy for information to:

1. The Secretary, S.S.C., New Delhi.

2. The Department of Personnel and Training with reference to their D.O. No. 6/5/928-CS. dated 29.3.94.

(S.R. Sharma)

Under Secretary to the Government of India.

9. Indisputably, the petitioner after working merely for three days, proceeded on leave and allegedly kept on extending his leaves, which had not been sanctioned by the department yet. In spite of the said fact he continued to send alleged application for extension of his leave. The respondent Department sent him three telegrams asking him to join his duties immediately, however, he ignored all the three telegrams sent by the Department.

10. On 24.8.1995 in pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the petitioner's services were terminated. A copy of the termination order has been brought on record as Annexure-6 to the writ petition, which is reproduced as below;

REGISTERED/AD

Government of India Ministry of Mines

.....

No. P-2/707/94-Estt. New Delhi, the 24.8.1995

NOTICE

In pursuance of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the President hereby gives notice to Shri Rakesh Kumar Pandey, Assistant that his services shall stand terminated with effect from the date of expiry of period of one month from the date on which this notice is served on, or as the case may be tendered to him.

By order and in the name of the President.

Sd/- 24.8.1995 (RAKESH BHARTIYA)

Under Secretary To The Government Of India

To

Shri Rakesh Kumar Pandey, S-II/321 Rajya Shiksha Sansthan Colony,
Allanganj, Allahabad (Uttar Pradesh).

11. From a perusal of the termination order it is evident that his termination is simpliciter as it does not carry any stigma. It is a trite law that requirement to hold a regular departmental enquiry before dispensing with the services of probationer, cannot be invoked when his services are terminated by an innocuous order.

12. A probationer is not a regular/permanent employee but only a person under consideration whose work and conduct is under a watch for providing him permanent employment, therefore, he has no right to hold the post and his services can be terminated at any time during or at the end of his probation on the ground of his unsuitability. The employer, to find out his suitability, is vigilant about his work and conduct. He takes a prerogative decision to employ him or not on basis of report and other circumstances. If on basis of materials the employer comes to a decision to discontinue him, his order cannot be treated to be punitive in nature. However, the Courts can always lift the veil and look into the real reason for termination of the services of the probationer. Therefore, there is a difference between "motive" and "foundation".

13. If there is a suspicion of misconduct, the employer may discontinue such employee without holding any enquiry. If there is no injurious reason has been recorded or punitive cutback of his benefit is found, in such situation a misconduct is not moving factor in discharge. Therefore, it depends on the facts and circumstances of each case and the language of the termination to indicate whether the order is punitive or innocuous. If the order is simple orders of termination which did not use any word amounting to stigma, the order shall be treated as innocuous. Only in some cases the Court can lift the veil where the order of the termination is clearly a camouflage for an order of imposing penalty

of termination of service on the ground of misconduct. The aforesaid principle fact has been deduced from several judgments of the Supreme Court in the cases of; Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, AIR 2000 1706 (SC); Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, ; Registrar, High Court of Registrar, High Court of Gujarat and Another Vs. C.G. Sharma, ; Jaswantsingh Pratapsingh Jadeja Vs. Rajkot Municipal Corporation and Another, Union of India (UOI) and Others Vs. Mahaveer C. Singhvi,

14. Having regard to the facts of this case, we are of the view that the termination in the present case, is a simpliciter and not punitive as he was provided with several opportunities to join his duties even telegrams were sent to him for this purpose, which were ignored by the petitioner, therefore, it cannot be said that order of termination in this case, was due to any overt act and ill motive of the employer for which the veil is to be lifted. Even the Tribunal has come to the same conclusion. There was no motive of the employer to terminate the services of the petitioner. The question whether the termination of services is simpliciter or punitive, has been examined by the Supreme Court in several judgments, referred to above. After careful consideration of the submissions of learned Counsel for the parties and for the aforestated reasons, we are of the view that there is no illegality in the order of Central Administrative Tribunal, hence no interference is called for by this Court in this case. The writ petition is accordingly dismissed. No order as to costs.