(2000) 10 P&H CK 0136

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3252 of 1987

Ram Dyal Pahuja APPELLANT

Vs

Punjab State Leather Development Corporation RESPONDENT

Date of Decision : 20-10-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311, 311, 311(2)
Punjab State Leather Development Corporation Ltd. Service (Amendment) Rules, 1997 — Rule 1.4.1, 1.4.11, 1.4.3, 1.4.8, 10

Citation : (2000) 10 P&H CK 0136

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Mr. J.M. Sethi, for the Appellant; Mr. D.V. Sharma, for the Respondent

Judgement

G.S. Singhvi, J.—This is a petition for quashing of the order dated 11.11.1986 vide which the Managing Director, Punjab Slate Leather Development Corporalion Limited (for short, the Corporation) terminated the petitioner''s service by way of discharge,

The facts :-

2. The petitioner joined service as Instructor, Leather in the Industries Department of the erstwhile State of Punjab in May, 1960. In 1965, he was appointed as Foreman-cum-Supervisor on the recommendations of the Punjab Public Service Commission. After re-organisation of the State in 1966, his services were allocated to the State of Punjab. In 1983, the State Government decided to transfer the Leather Centres functioning under the control of the Industries Department to the Corporation and to abolish the surplus posts. The employees holding those posts were given pensionary benefits with an option to them to seek re-employment in the services of the Corporation. The petitioner opted to serve under the Corporation. After considering his case, the Corporation appointed him as Foreman-cum-Supervisor at Rural Industrial Development Centre (Leather), Kharar with effect from 1.7.1984 in the pay scale of Rs.

570-1080 subject to the terms and conditions embodied in the letter Annexure P6 dated 10.8.1984. The tenure of the petitioner''s probation, which commenced in August, 1984, was extended for one year vide letter dated 10.7.1985 (Annexure P7). After expiry of the extended period of probation, the General Manager of the Corporation vide letter Annexure P8 dated 3.11.1986 directed the petitioner to appear before the Managing Director on 10.11.1986 and on the very next day, the impugned order terminating his service by way of discharge was issued. On receipt of the said order, the petitioner submitted representation Annexure P9 dated 13.11.1986 giving explanation in respect of the allegations which were discussed during his meeting with the Managing Director. However, without examining any of the points raised by him, the Corporation rejected the same vide letter Annexure P 13 dated 5.1.1987.

3. The petitioner has challenged the termination of his service on the following grounds :-

(1) The Managing Director of the Corporation was not competent to terminate his service.

(2) After expiry of the maximum period of probation of the two years he stood confirmed and therafter, his service could not have been terminated without holding an enquiry in accordance with the disciplinary rules.

(3) The impugned order is violative of the principles of natural justice.

4. In the written statement filed on behalf of respondent No. 1, the termination of the petitioner''s service has been justified on the ground that during the period of probation, his work and conduct were found unsatisfactory. According to the said respondent, the order of discharge was passed after giving due opportunity to the petitioner to explain his actions and conduct with reference to the allegations which were brought to the notice of the management of the Corporation. In support of this statement, a copy of the detailed order passed by the Managing Director of the Corporation has been placed on record as Annexure Rl/3. As regards the petitioner''s assertion that the Managing Director of the Corporation was not competent to terminate his service, it has been averred that power to make appointment on the posts carrying maximum pay scale running up to Rs. 1800/- had been delegated to the Managing Director and as such he had the power to terminate the services of the persons appointed on those posts.

5. Before adverting to the arguments of the learned counsel for the parties, we consider it proper to mention that after conclusion of the argument on 15.9.2000, the petitioner filed an affidavit dated 18.9.2000 stating therein that he was senior-most Foreman-cum-Supervisor in the services of the Corporation and his junior Shri Mohinder Singh had retired from service on 30.9.1998 while holding the post of Programmer and Production Officer and further that another junior person, namely, Shri Mohammad Is-mail is still in the service of the Corporation.

6. Shri D.V. Sharma, counsel for respondent No. I also produced photostat copies of the proceedings of the meeting held on 30.6.1992 under the chairmanship of the Chief Secretary, Punjab to review the work of Industries Department including its Corporation and the minutes of the meeting of the Board of Directors of the Corporation held on 26.5.1993.

7. Shri J.M, Sethi argued that the impugned order should be declared void and quashed because the Managing Director of the Corporation did not have the power to terminate the petitioner''s service. He submitted that the petitioner had been appointed as Foreman-cum-Supervisor by the Board and not by the Managing Director and, therefore, the latter was not empowered to terminate his service. In support of this argument, learned counsel relied on the provisions on Rules 1.4.1, 1.4.11, 3.1.4 and 3.2 of the Punjab State Leather Development Corporation Limited Service Rules, 1982 (for short, the Rules). He then argued that the resolution passed in the 23rd meeting of the Board of Directors held on 31.7.1985 (Annexure P14) cannot clothe the Managing Director with the power to terminate the services of a person, like the petitioner.

8. Shri D.V. Sharma relied on resolution No. 28 passed in the meeting of the Board of Directors held on 31.7.1985 and argued that in view of the delegation of the power to the Managing Director to make appointment on the posts with maximum of pay scale running up to Rs. 1300/-, the termination of the petitioner''s service cannot be invalidated on the ground that the officer concerned did not have the power to do so. Learned counsel argued that in his capacity as the appointing authority, the Managing Director was empowered to terminate the services of the persons, like the petitioner.

9.1 have thoughtfully considered the respective submissions. Rules 1.4.1, 1.4.3, 1.4.8, 1.4.11, 3.1.4, 3.1.9, 3.1.10, 3.1.11, 3.2.1, 8.1, 8.4, 9 and 10 of the Rules which have bearing on the issue relating to the competence of the Managing Director and other points raised by the petitioner read as under ;-

" 1.4.1 "The Board" means the Board of Directors of Punjab State Leather Development Corporation Limited and shall include any committees thereof constituted for the purpose.

1.4.3 "The Corporation" means the Punjab State Leather Development Corporation Limited acting through the Board, the Chairman, the Managing Director or any other duly authorised officer of the Corporation.

1.4.8 "Managing Director" means the officer appointed by the Government for being the Managing Director of the Corporation.

1.4.11 "Appointing Authority" means the authority competent to make the concerned appointment.

3.1.4 Appointment to all post under the Corporation carrying net emoluments above Rs. 1,000 shall be made by the Board of Directors and to all other posts by the Managing Director.

3.1.9 All appointments shall in the first instance, except as the appointing authority may stipulate in any particular case, be on probation in respect of permanent posts and on temporary basis in respect of temporary spots.

3.1.11 If, at the expiration of the period of probation the work of a probationer is found to the satisfactory, the appointing authority may confirm him with effect from a date after the date of his first appointment on probation.

3.2 Termination of Services :

3.2.1 The services of an employee of the Corporation may be terminated by the appointing authority :-

3.2.1 In case of a permanent employee of an employee appointed to tenure post, by giving three months notice on either side or in lieu thereof pay for the period by which the notice falls short of three months.

8.1 An Officer or other employee of the Corporation may be awarded any one or more of the following penalties :-

i) Warning of reprimand or censure;

ii) Withholding of increment of increment;

iii) Reduction to a lower time scale and reversion to lower rank;

iv) Recovery from pay of loss caused to the Corporation;

v) Removal or dismissal from service.

8.4 The penalties enumerated in 8.1 above may be imposed on any one or more of the following grounds :-

a) Strike or inducing others to strike;

b) Wilful in-subordination or disobedience;

c) Negligence, inefficiency or indolence;

d) Irregular attendance;

e) Unauthorised divulgence of any information or document or detrimental to the interests of reputation of the Corporation;

f) theft, pilferage, fraud, dishonestly, mis-appropriation, defalcation or embezzlement;

g) absence from duty without leave or overstaying leave, except under circumstance beyond control provided that the appointing authority may order such period to be treated as spent on leave of any kind available to the employee.

h) arrest or conviction on criminal charge or for offence involving moral turpitude or depravity or degradation of character.

i) insanity,

ii) anti-national activities; or

iii) any other sufficient ground.

9. Delegations:

The Board may by resolution confer upon the Chairman, the Managing Director or any other officer of the Corporation all or any of its powers under these service Rules. The Managing Director may, with the approval of the Board, in writing confer on any officer of the Corporation all or any of his powers, including powers delegated to him by the Board, Delegated powers shall be exercised subject to such restrictions, conditions and limitations as may be prescribed in the resolution or authorisation by the Board, or the Managing Director, as the case may be.

10. Amendment:

The Corporation reserves the right to modify, cancel or amend all or any of these rules and issue supplementary rules or amendments thereto without previous notice and give effect to them from the date of issue or any other date. Matters not covered by these rules would be decided by the Managing Director, at his discretion, keeping in view the rules applicable to State Government employees."

For the sake of convenience, extract of the resolution passed in the 23rd meeting of the Board of Directors held on 31.7.1985 is also reproduced below :-

"To consider and approve the modification in the administration power delegated in the Managing Director in respect of the employees of the Corporation.

The Board considered the proposal about the modification in the administrative power delegated to the Managing Director in respect of the employees of the Corporation including the employees working in various leather centres transferred to the Corporation and after discussions authorised the Managing Director to create a post, constitute a Selection Committee and appoint and punish a person on regular/temporary working against the post with the maximum of pay scale running upto Rs. 1300/-subject to the observance of the guidelines issued by the Govt. in this respect."

10. A conjoint reading of the Rule 3.1.4 and the resolution passed by the Board of Directors of the Corporation shows that initially the power to make appoint-merits to all the posts carrying net emoluments above Rs. 1000/- per month vested in the Board of Directors and appointments on other posts could be made by the Managing Director, but vide resolution dated 31.7.1983, the power to make appointment on the posts with maximum pay scale running up to Rs. 1300/- was delegated to the Managing Director and in view of the said resolution, the Managing Director will be deemed to be the appointing authority in respect of the persons holding posts with maximum of pay scale running up to Rs. 1300/- for the purpose of appointment as well as termination of service. As

on the date of the impugned order, the petitioner was holding the post in the time scale of Rs. 510-1080/- and, therefore, the impugned order cannot be nullified on the ground that the Managing Director was not competent to terminate his service.

11. In view of the above discussion, we hold that the termination of the petitioner''s service cannot be invalidated on the ground that the Managing Director of the Corporation was not empowered to pass the impugned order.

12. The second contention of Shri Sethi is that after expiry of the maximum period of probation of two years, the petitioner will be deemed to have been con-finned and his services could not have been terminated without holding a regular departmental enquiry. In my opinion, the submission of the learned counsel is wholly untenable and deserves to be rejected. A persual of Rules 3.1.9, 3.1.10 and 3.1.11 makes it clear that every person appointed by direct recruitment has to be placed on probation for a period of one year which can be extended by another one year at the discretion of the appointing authority. At the end of the period of probation or extended period of probation, the appointing authority can confirm the employee if his work is found to be satisfactory. The use of word ''may'' in Rule 8.1.11 clearly indicates that satisfactory completion of probation does not lead to automatic confirmation. Therefore, the theory of deemed confirmation propounded in State of Punjab v. Dharm Singh AIR 1969 S.C. 1210, Paramjit Singh and Others Vs. Ram Rakha and Others, and State of Gujarat Vs. Akhilesh C. Bhargav and Others, , cannot be invoked in the present case and the petitioner cannot be deemed as confirmed simply because extended period of his probation had expired on 9.8.1986. As a logical corollary to this conclusion, I hold that the petitioner cannot seek a declaration that he is a confirmed employee of the Corporation and, therefore, his service could not have been terminated without holding a regular departmental enquiry. In Dhanjibhai Ramjibhai Vs. State of Gujarat, , their Lordships of the Supreme Court considered a case similar to the present one and rejected the argument of deemed confirmation by making the following observations :-

"There is no right in the probationer to be confirmed merely because he had completed the period of probation of two years and had passed the requisite tests and completed the prescribed training. The function of confirmation implies the exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service.

There is no distinction between a probationer whose services are terminated on the expiry of the period of two years and a probationer, who has completed the normal span of two years and whose services are terminated some time later after he has put in a further period of service. It is perfectly possible that during the initial period of probation the confirming authority may be unable to reach a definite conclusion on whether the candidate should be confirmed or his services should be terminated. Such candidate may be allowed to continue beyond the initial period of two years in order to allow the confirming authority to arrive at a definite opinion. A candidate does not enjoy any greater right to confirmation if he is allowed to continue beyond the initial period of probation."

13. The third and the last argument of Shri Sethi is that the impugned order should be quashed on the ground of violation of the principles of natural justice. Learned counsel submitted that even though the language of the impugned order does not suggest that the termination of the petitioner''s service is punitive, but in reality it is so. He referred to Annexure R1/3 to show that the decision of the Managing Director to terminate the petitioner''s service was founded on the specific allegations of misconduct and argued that the same should be nullified because no enquiry consistent with the rules of natural justice was held before passing of the impugned order. Learned counsel submitted that the letter dated 3.11.1986 issued by the General Manger (L.C.) did not contain any indication about the purpose for which the petitioner was asked to appear before the Managing Director and the mere mention in Annexure R1/3 of the allegations and the oral explanation given by him cannot be treated as sufficient compliance of the rules of natural justice. Shri D.V. Sharma, counsel for respondent No. 2 argued that the impugned order cannot be voided on the ground of non-compliance of the rule of hearing because it does not cast any stigma upon the petitioner. He submitted, that the order Annexure R1/3 had not been conveyed to the petitioner and, therefore, the same cannot be read as a part of the impugned order for the purpose of determination of its true character. Learned counsel further admitted that the poor performance of the petitioner during the period of probation was the real cause for dispensing with his service and, therefore, it was not necessary for the Managing Director to comply with the rule of audi alteram partem.

14. I have given thoughtful consideration to the respective submissions. It is true that the order Annexure P10 does not contain anything from which it can be inferred that the petitioner''s service was terminated by way of punishment and if the same is read without making reference to the order Annexure R1/3, it cannot be said that the petitioner has been penalised for misconduct. However, in view of the assertion made in paragraph 25 of the written statement of respondent No. 2 that the Managing Director has passed the detailed order (Annexure R1/3) for terminating the petitioner''s service, it is not possible to ignore that order while considering his plea that the termination of his service is punitive in character. Rather, in view of the law laid down by the Supreme Court in Appar Singh v. State of Punjab and others 1971 (2) SLR 71; Anoop Jaiswal Vs. Government of India and Another, ; Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, ; Chandra Prakash Shahi v. State of U.P, and others, AIR 2000 SCW 1816 : 2000 (2) SCT 946 (SC) and Major Singh Vs. State of Punjab and Others, , the order Annexure R1/3 will have to be read with the impugned order for deciding whether or not termination of the petitioner''s service is simplicter or punitive. In Anoop Jaiswal''s case (supra), their Lordships of the Supreme Court dealt with a case of a member of Indian Police Service, who was on probation and was undergoing training at the

time of termination of service on the allegation of misconduct committed during the period of training. The order passed by the Government of India terminating the service of the appellant did not contain any stigma, but after examining the background in which the decision to terminate his service had been taken, their Lordships of the Supreme Court held as under :-

"The form of the order is not decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the fact and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311(2).

It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employees."

15. In Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora, , a three Judges Bench of the Supreme Court considered a case involving termination of service of a principlal of the educational institution, who was on probation. While upholding the appellant''s plea that termination of his service was stigmatic their Lordships observed as under :-

"Now the copy of Resolution of the Managing Committee appended to the order of termination staled that the Report of the Manager was read at the meeting and that the "facts contained in the Report of the Manager being serious and not in the interests of the institute, that therefore the committee unanimously resolved to terminate his probation." The Report of the Manager was not extracted in the enclosure to the termination order but was extracted in the Counter filed in me case and read as follows:

"It will be evident from the above, that the Principal''s stay will not be in the interest of the Institution. It is also evident that the serious view of the lapses is enough to justify dismissal but no educational institution should take all this botheration. As such my suggestion is that our purpose will be served by termination of his services. Why, then we should enter into any botheration. For the termination of his period of probation, too, the approval of the DIOS will be necessary. Accordingly, any delay in the matter may also be harmful to our interests.

According, I suggest that instead of taking serious action, the period of probation of Shri Inder Pal Gupta be terminated without waiting for the period to end."

This is a clear case where the order of termination issued is merely a camouflage for an order imposing a penalty of termination of service on the ground of misconduct, that these findings in the Manager''s report amounted to a mark of disgrace or infamy and that the appellant there was visited with evil consequences."

16. In Dipti Prakash Banerjee''s case (supra), the Supreme Court reviewed a number of judicial precedents on the subject and held that the words amounting to stigma need not be contained in the order of termination, but may also be contained in an order or proceeding referred to in the order of termination or in an Annexure thereto and would vitiate the order of termination.

17. The proposition of law which emerges from the above decisions is that if an order terminating the service of an employee is challenged on the ground that it is punitive in character, then notwithstanding its facial innocuousness, the Court is duty-bound to look into the preceding and attending circumstances and lift the veil of innocuousness to find out the true and real character of the impugned order.

18. In the light of the above, it is to be seen whether the present one is a case of termination of service simpliciter or by way of punishment. A careful and conjoint reading of Annexures Pip and R1/3 shows that the decision of the Managing Director to terminate the petitioner''s service was founded on the specific allegations of misconduct, the substance of which reads as under :-

(a) He had misused the Corporation''s fund by advancing more money to the workers under his charge in spite of the fact that they had already been given heavy advances.

(b) He had failed to exercise supervisory check on the quality of the goods made under his direct super-vision and had thus caused heavy loss to the Corporation by gross negligence in the performance of his supervisory functions.

(c) He failed to keep control over the pilferage of the raw-material or excessive wastage of material in the process of production.

(d) He had committed grave financial irregularities in the performance of his duties by withdrawing Rs. 441/- in his own favour from the Corporation''s fund and Rs. 1328.40 were found short in his hand.

(e) He has not been going to Patiala office and takes furlough without submitting leave application.

19. The allegations of negligence, inefficiency, absence from duty, pilferage, dishonesty, misappropriation, defalcation or embezzlement have been enumerated as acts of misconduct in para 8.4 of the Rules. Therefore, before terminating the petitioner''s service on such allegations, the Managing Director was under an obligation to serve a charge-sheet upon him and give him a reasonable opportunity of defence qua the allegations of misconduct. Admittedly, no such step was taken by the concerned authority. Therefore, I have no hesitation to hold that the impugned order is vitiated due to violation of the

principles of natural justice.

20. The argument of Shri D.V. Sharma that the termination of the petitioner''s service should be upheld in view of the adverse remarks recorded in his annual confidential reports sounds attractive but cannot be accepted because, as mentioned above, a conjoint reading of the orders Annexures P10 and Rl/3 leaves no manner of doubt that the impugned order is founded on the allegations of misconduct and not on the entries in his annual confidential reports. Therefore, the same cannot be sustained with reference to the adverse remarks recorded in his annual confidential reports.

21. The issue which remains to be considered is about the relief to be given to the petitioner. Admittedly, he had joined service in 1960. Therefore, as on date, he must have attained the age of 58 years. A period of 14 years has also elapsed from the date of termination of his services. Neither the petitioner has placed any evidence on the record about the source of sustenance during all these years nor the respondents have placed any material before the Court to show that after termination of his service, the petitioner had remained employed in any other governmental/private institution/organisation. Ordinarily, this should have been sufficient for directing the respondent to give him all monetary benefits. However, keeping in view in fact that the Corporation has virtually become defunct (this fact is borne out from the letter dated 23.4.1999 produced by Shri Sharma and most of its employees have left the service by taking the benefit under the Golden Hand-Shake policy. I feel that ends of justice would be met be directing the respondents to pay 50% of the wages to the petitioner and also to give him the benefit of Golden Hand-Shake policy.

22. In the result, the writ petition is allowed. The order dated 11.11.1986 (Annexure P10) terminating the petitioner''s service is declared illegal and quashed with the direction to respondent No. 1 to pay 50% of the back wages to him and also give him option to avail benefit under the Golden Hand-Shake policy.

