

(2023) 08 DEL CK 0147

In the Delhi High Court

Case No : Letter Patent Appeal No. 146 Of 2021, Civil Miscellaneous Application
No. 14038, 14039, 14041 Of 2021

Ramesh Kumar Bawalia

APPELLANT

Vs

Uttar Pradesh Samaj Society And Anr

RESPONDENT

Date of Decision : 21-08-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)
Industrial Disputes (Central) Rules, 1957 — Rule 77
Industrial Employment (Standing Orders) Central Rules, 1946 — Rule 2C
Delhi High Courts Act, 1966 — Section 10
Industrial Disputes Act, 1947 — Section 2A, 2(j), 2(k), 2(oo), 2(oo)(bb), 2(s), 25F,
25F(a), 25F(b)

Citation : (2023) 08 DEL CK 0147

Hon'ble Judges : Yashwant Varma, J; Dharmesh Sharma, J

Bench : Division Bench

Advocate : Ranbir Singh Kundu, Kirti Aggarwal, Raavi Birbal, R.K. Saini, Sunita Shukla

Final Decision : Dismissed

Judgement

Dharmesh Sharma, J

1. Petitioner has instituted the instant "Letters Patent Appeal" in terms of Clause X of the Letters Patent of Lahore, as applicable to the Delhi High Court, read with Section 10 of the Delhi High Courts Act, 1996, assailing the impugned order dated 11 March 2020 passed by the learned Single Judge of this Court. The impugned order arises out of the Writ Petition filed by the respondents-Uttar Pradesh Samaj (Society), whereby while answering the reference of the industrial dispute in favour of the petitioner, the award passed by the learned Labour Court dated 15 July 2010, was set aside.

FACTUAL BACKGROUND:

2. The facts of this case lie in a narrow compass. Admittedly, the appellant was

appointed as a Lab Assistant vide appointment letter dated 16 June 1993 by the respondent through its Managing Committee for a period of one year, whereby the appointment was extendable by another year, and accordingly the appellant joined his duties w.e.f., 15 July 1993. The appellant states that while he was discharging his official duties to the best of his abilities and with dedication, suddenly without any rhyme or reason, he was slapped with a letter of termination from service dated 3 June 1994 on flimsy grounds of his performance not being satisfactory. It was the case of the appellant that the Principal of the School had rather issued an "Appreciation Letter" dated 30 June 1994 in his favour commending his competence and diligence in the performance of his duties. Needless to state that as his representation dated 20 July 1994 did not find favour with the Chairman of the Managing Committee of the respondent, the appellant raised an industrial dispute and the appropriate Government sent a Ref. no. F.24(427)95 - LAB/13461-67 dated 1 June 1995 to the Labour Court:

"Whether the services of Sh. Ramesh Kumar Bawa/JEJ have been terminated illegally and/or unjustifiably by the Management and if so, to what reliefs he is entitled and what directions are necessary in this respect?"

3. During the course of proceedings, learned Labour Court framed the following issues:-

- i. Whether the Respondent Managing Committee of UPRAS Vidhyalya is an industry or not?
- ii. Whether the Applicant herein is a workman or not?
- iii. Whether the Applicant herein is entitled to relief or not?

IMPUGNED AWARD/ORDER:

4. In a nutshell, the learned Labour Court held that the applicant was a "workman" within the scope and meaning of the Industrial Disputes Act, 1947 [The Act] as amended up to date and the respondent was an "industry" within the meaning of the said Act; it concluded that the termination of services of the applicant amounted to "retrenchment" within the meaning of Section 25F (a) & (b) of the Act read with Rule 77 of the Industrial Disputes Rules. It was also observed that the contract period was contrary to Rule 2C of Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946, since it provided for a probation period of one year and the termination was effected even before the expiry of such period. Accordingly, the termination of the services of the applicant was held to be illegal and unjustifiable, thereby directing the reinstatement of the applicant/appellant back into service, also allowing him 80% of back wages from the date of his alleged termination i.e. 4 August 1999 till enforcement of order.

5. The award passed by the learned Labour Court was assailed by the respondent by filing a Writ under Article 226 of the Constitution of India and the learned Single Judge vide the impugned order dated 11 March 2020 held that that

termination of a probationer during the period of probation does not amount to "retrenchment" within the meaning of Section 2 (oo) (bb) of the Act, and therefore, the Writ petition was allowed and the impugned order was set aside.

GROUND FOR APPEAL:

6. The appellant/applicant has filed the present intra-court appeal assailing the impugned order dated 11 March 2020 primarily on the ground that the learned Single Judge failed to appreciate that the termination of services of the appellant vide letter dated 3 June 1994 amounted to stigmatizing him and in such cases not only a disciplinary inquiry was warranted but also that it was a colourful exercise of power, since his contract was denied renewal on flimsy grounds.

ANALYSIS AND DECISION

7. We have given our thoughtful consideration to the submissions made by the learned counsels for the parties. We have also perused the relevant documents placed on the record.

8. In order to arrive at a decision, it would be necessary to examine the relevant provisions under the Act. The term "industry" is defined by Section 2(j) to mean "any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment...". Section 2(k) of the Act defines an "industrial dispute" inter alia to mean any dispute or difference between employers and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Section 2A of the Act then provides that dismissal, etc., of an individual workman to be deemed to be an industrial dispute, where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman and it includes any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination".

9. Further, the term "workman" is defined under Section 2(s) to mean "any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute [But does not include any such person - (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity, draws wages exceeding 3[ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly

of a managerial nature.]]. That brings us to the term "retrenchment" which is defined in Section 2(oo) of the Act to mean:

"...the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; [(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or] (c) termination of the service of a workman on the ground of continued ill-health;

10. Section 25F of the Act provides for conditions precedent to retrenchment of workmen, and it would be expedient to re-produce it fully which reads as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

11. In view of the above referred provisions and reverting to the instant case, there can be no dispute that the appellant was a "workman" and the respondent an "industry" within the scope and meaning of Section 2(s) & (j) respectively, and ex facie the dispute as to the dismissal of the appellant from services within one year before completion of the period of probation is an "industrial dispute" vide section 2A of the Act. In deciding whether the dismissal of the appellant amounted to "retrenchment", a careful perusal of the letter of appointment dated 16 June, 1993 would show that he was appointed on contractual basis as a Lab Assistant and he was also to be assigned other school work as and when required; he was also to be treated on probation for a period of one year, which was to continue till confirmation of his services. It was also stipulated that his services may be dispensed with during the period of probation without assigning any reasons by giving one month's notice or payment of one month's salary in advance in lieu of notice. It is in light of the said stipulations that we are called upon to construe the impugned termination letter which is reproduced as under:-

Phone:677797

UPRAS VIDYALAYA

Vasant Marg, Vasant Vihar,

New Delhi- 110057

No. UPRAS/Memo/9495/1185 Dated: 03.06.94

NOTICE/MEMO

To,

Sh. Ramesh Kumar

Whenever your services are required for the school during vacation period, it is observed oftenly that you are not co-operative. Besides you are very irregular during school period. It causes obstructions in work of school. You have been intimated several times orally as well as through written notices. Despite the same, you are not improving your performance. The management of the school committee has decide to intimidate you that your services are not required for school from 4th July 1994. Please consider it a notice.

Dr. R. K. Rai

Manager

Cc- Principal

12. Learned counsel for the appellant vehemently urged that the reasons for dismissal reflected in the letter stigmatized him, impacting his future prospects to get a job, and thus, the action of the respondent amounted to retrenchment and the mandatory conditions under Section 25F of the Act were not followed. Reliance was placed on the decisions in *Anoop Jaiswal v. Government of India and Ors.* (1984) 2 SCC 369; *V.P.Ahuja v. State of Punjab & Ors.* (2000) 3 SCC 239; *Dr. Vijayakumaran CPV v. Central University of Kerala & Ors.* (2020) 12 SCC 426.

13. Per contra, learned counsel for the respondent as also the learned Amicus supported the impugned order passed by the learned Single Judge, relying on decisions in *M. Venugopal v. Divisional Manager, LIC* (1994) 2 SCC 323; *Escorts Ltd. v. Presiding Officer and Ors.* (1997) 11 SCC 323; *Abhay Jain v. High Court of Judicature for Rajasthan & Anr.* 2022 SCC OnLine SC 319; *Indra Pal Gupta v. Managing Committee, Model Inter College, Thora* (1984) 3 SCC 384.

14. On a cumulative reading of the impugned termination letter dated 3 June 1994, we find that the Management of the respondent society found the appellant to be "non co-operative" and also "irregular in attending to his duties" and thus resulting in obstruction of the work of the school. The tone and tenor of the letter amply demonstrate that the appellant was found "unsuitable" for the requirements or call of duty; and that the reasons for dismissal can by no stretch of reasoning could be considered to be stigmatic. We have no hesitation in agreeing with the submissions of the learned Amicus that the impugned termination letter dated 3 June 1994 by the Respondents cannot be said to be

“stigmatic”. It merely related to the conduct of the Petitioner as non-satisfactory on account of his non-suitability to the service requirements as a Lab Assistant and other school work. Needless to state, an appreciation letter by the Principal of the School holds no importance as the Principal herself was an employee of the management.

15. The case law relied upon by learned counsel for the petitioner have no direct bearing on the matter in issue. There is no gainsaying that no proposition of law laid down by the superior Courts can be read divorced from the facts and circumstances of the matter involved. The decision in the cited case titled *Anoop Jaiswal v. Government of India* (supra) was one where the appellant was selected by the Union Public Service Commission for appointment to the IPS. The service of the appellant was terminated on the ground of misconduct. On challenge, the appellant was asked to be reinstated in service. It was held that the period of probation and the case was one which attracted Article 311(2) of the Constitution as the impugned order amounted to a termination of service by way of punishment and an enquiry should have been held in accordance with the said constitutional provision. The cited case of *V.P. Ahuja v. State of Punjab* (supra) was one where the Appellant was appointed as the Chief Executive in the Establishment of Punjab Co-operative Cotton Marketing & Spinning Mills Federation Ltd. According to the termination order, the appellant failed to discharge his duties, administratively and technically. The termination order was set aside holding that a “probationer, like a temporary servant, was also entitled to certain protection and his services could not have been terminated arbitrarily, nor could the services be terminated in a punitive manner without complying with the principles of natural justice. It was further held that such an order, on the face of it was stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing.”

16. Another cited case was *Dr. Vijayakumaran C.P.V. v. Central University of Kerala & Ors.* (supra), where the appellant was appointed as the Associate Professor in the Respondent University. A complaint was filed by the students against the appellant, and thus an Internal Complaints Committee was constituted in terms of the (Prevention, Prohibition and Redress of Sexual Harassment of Women Workers and Students in Higher Education Institutions) Regulations, 2015. An inquiry report was submitted which was assailed by the appellant on the ground that the impugned order was stigmatic. The impugned order was set aside and the appellant was reinstated since he was not subjected to a regular inquiry. It was observed that:

“the material which amounts to stigma need not to be contained in the order of the termination of the probationer, but might be contained in “any document referred to in the termination order” and the order must be construed as ex-facie stigmatic order of termination.”

17. In the aforesaid case, reliance was placed on the decision in *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences & Anr.* (2002) 1 SCC

520, wherein it was held that "one of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was: (a) a full- scale formal enquiry; (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt". At the cost of repetition, the aforesaid decisions are of no help to the appellant since he was not appointed to a substantive post but by virtue of the contract of service, his services could have been dispensed with during the probation period for a justifiable reason provided it fell within section 2(oo)(bb) of the Act. Although this Court cannot go into the merits of the matter, there is no challenge by the appellant that the termination was in any manner unfair or arbitrary.

18. Reverting to the case law relied upon by learned counsel for the respondent and the learned Amicus, in the case of *M. Venugopal v. Divisional Manager, LIC* (supra), the appellant was appointed as a Development Officer by the Respondent on probation. His services were terminated before the end of the probation period. Upholding the termination, it was held that even under general law, the service of a probationer can be terminated after making an overall assessment of his performance during the period of probation and no notice is required to be given before termination of such service and it was not a case of retrenchment within the scope and meaning of Section 2(oo) (bb) of the Act. In *Escorts Ltd. v. Presiding Officer and Ors.* (supra), an industrial dispute relating to termination of services of the respondent no. 2 was raised. The Supreme Court set aside the order of the High Court and the Labour Court, holding that "since the termination was in accordance with the terms of the contract though before the expiry of the period of probation it fell within the ambit of Section 2(oo)(bb) of the Act and did not constitute retrenchment. Since the services of the workmen were terminated as per the terms of the contract of employment, it does not amount to retrenchment u/s 2(oo)(bb) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by Sec.25F of the Act". In *Abhay Jain v. High Court of Judicature for Rajasthan & Anr.* (supra), the petitioner joined as a Judicial Officer in 2013 and was discharged from service. He was ordered to be reinstated holding that "there was no material to showcase unsatisfactory performance of the appellant and the non-communication of the ACRs to the appellant has been proved to be arbitrary and since the respondent choose to hold an enquiry into appellant's alleged misconduct, the termination of his service is by way of punishment because it puts a stigma on his competence and thus affects his future. In such a case, the appellant would be entitled to the protection of Article 311(2) of the Constitution". In the case of *Indra Pal Gupta v. Managing Committee* (supra), it was observed:

"In short, if the termination of service is founded on the right flowing from contract or the service rules, then prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the govt. has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for

inflicting the punishment of dismissal or removal or reduction in rank, the govt. may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.

19. In the case of LIC v. Raghavendra Seshagiri Rao Kulkarni (1997) 8 SCC 461, where the services of the respondent appointed as Assistant Development Officer was dispensed with during the period of probation on the ground that he was not suitable for the job, it was observed as under:

"The period of probation is a period of test during which the work and conduct of an employee is under scrutiny. If on an assessment of his work and conduct during this period it is found that he was not suitable for the post it would be open to the employer to terminate his services. His services cannot be equated with that of a permanent employee who, on account of his status, is entitled to be retained in service and his services cannot be terminated abruptly without any notice or plausible cause. This is based on the principle that a substantive appointment to a permanent post in a public service confers substantive right to the post and the person appointed on that post becomes entitled to hold a lien on the post. He gets the right to continue on the post till he attains the age of superannuation or is dismissed or removed from service for misconduct etc. after disciplinary proceedings in accordance with the rules at which he is given a fair and reasonable opportunity of being heard. He may also come to lose the post on compulsory retirement." {paragraph 6}

20. There is no gainsaying that the aforesaid dictum of law squarely applies to a probationer appointed on a contractual basis. While Article 311 of the Constitution of India is applicable to civil servants and not to workmen under the Act, the general principles that emanate from the aforesaid decisions are that where the termination during probation is on account of some misconduct, an inquiry is warranted by law since stigmatization may affect the future employment of such employee. The word "stigma" means a mark of disgrace associated with a particular circumstance, quality or character of a person. It would amount to a set of negative beliefs about a person in the context of employment. In the instant case, we reiterate that a careful appreciation of the impugned letter of termination dated 3 June 1994 would show that the appellant was not found "suitable" for the duties assigned. There was no stigma attached and there was nothing reflecting upon his moral turpitude. The appellant has miserably failed to show that the said termination affected his future prospects of getting employment.

21. In view of the foregoing discussion, the present appeal is dismissed. The pending applications also stand disposed of.