

(2003) 05 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1721 of 2002

Ravindra Singh Yadav

APPELLANT

Vs

Sainik School Society and Another

RESPONDENT

Date of Decision : 05-05-2003

Acts Referred:

Citation : (2003) 3 RLW 1912 : (2003) 3 WLC 648

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : G.K. Vyas, for the Appellant; Manish Shishodiya, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 24.5.2002 against the respondents with the prayer that by an appropriate writ, order or direction, the impugned order dated 3.5.2002 (Annex. 9) passed by the respondent No. 2 Principal, Sainik School, Chittorgarh by which the services of the petitioner were terminated with effect from 30th June, 2002 holding that his services were now no more required by the respondent No. 1 Sainik School, Chittorgarh, be quashed and set aside and further, the respondents be directed to take the petitioner back in service, as if the impugned order of termination Annex. 9 was not passed, with all consequential benefits.

2. The case of the petitioner as put forward by him in this writ petition is as follows :-

An advertisement dated 30.9.2000 (Annex. 1) was issued by the respondent No. 1 Sainik School, Chittorgarh inviting applications for recruitment to the post of Librarian and since the petitioner was fulfilling the requisite qualifications, therefore, in pursuance of the said advertisement Annex. 1, the petitioner applied for the said post of librarian and he was directed to appear in the written test and he appeared in the written test on 10.11.2000 and in the written test,

he was declared successful and thereafter, he was called for interview on 25.11.2000 and after adjudging his suitability, he was offered appointment vide order dated 19.12.2000 (Annex. 2). A perusal of the said appointment order Annex. 2 reveals that the petitioner was given appointment to the post of Librarian for a period of 89 days.

The further case of the petitioner is that though the post of Librarian was substantive one, but the respondents issued appointment order Annex. 2 for only 89 days and it was further mentioned in the appointment order Annex. 2 that in case the petitioner was found fit, his case would be considered for regular appointment as per the Sainik Schools Society Rules and Regulations (hereinafter referred to as "the Rules and Regulations") and thus, the appointment of the petitioner was on adhoc basis.

The further case of the petitioner is that after completion of 89 days, another appointment order dated 3.4.2001 (Annex. 3) was issued by the respondent No. 2 Principal of Sainik School stating therein that the petitioner was appointed on the post of Adhoc Librarian from 4.4.2001 to 30.4.2001.

The further case of the petitioner is that thereafter, another appointment order dated 30.4.2001 (Annex. 4) was issued by the respondent No. 2 Principal, Sainik School, Chittorgarh by which the petitioner was put on probation for a period of one year and it was further stated in that appointment order Annex. 4 that the said period of probation for one year could be extended to two years at the discretion of the Principal and it was further stated in that appointment order Annex. 4 that the petitioner had to confirm acceptance of that offer by returning the attached certificate duly signed.

The further case of the petitioner is that after issuance of appointment order Annex. 4 dated 30.4.2001, another order dated 2.5.2001 (Annex. 5) was issued by the respondent No. 2 Principal, Sainik School incorporating some conditions in the appointment order of the petitioner dated 30.4.2001 (Annex. 4) and one of the conditions mentioned in the order Annex. 5 dated 2.5.2001 was that the services of the petitioner, who was on probation, might be terminated without assigning any reason with one month's notice and furthermore, his services might be terminated even without notice and without assigning any reason on disciplinary grounds.

The further case of the petitioner is that he performed his duties as Librarian satisfactorily and for that, a certificate Annex. 6 dated 13.8.2001 was issued by the authority of the respondent No. 1 Sainik School.

The further case of the petitioner is that he sought permission for appearing in M.Lib. Science examinations and the same was granted to him through order Annex. 7 dated 4.10.2001.

The further case of the petitioner is that on 28.2.2002, through counselling letter Annex. 8, he was warned for not complying with some directions.

The further case of the petitioner is that thereafter, impugned order Annex. 9 dated 3.5.2002 was passed by the respondent No. 2 Principal, Sainik School, Ghittorgarh by which the services of the petitioner were terminated with effect from 30.6.2002.

In this writ petition, that impugned order of termination Annex. 9 dated 3.5.2002 has been challenged by the petitioner on various grounds and some of them are as follows :-

(i) That the impugned order of termination Annex. 9 cannot be termed as termination simpliciter and, therefore, without taking disciplinary proceedings, the impugned termination order Annex. 9 is bad in law.

(ii) That before terminating the services of the petitioner through impugned order Annex. 9, no opportunity of hearing was given to the petitioner and thus, principles of natural justice have been violated in the present case and from this point of view also, the impugned termination order Annex. 9 is bad in law and should be quashed and set aside.

(iii) That as per the appointment order, the assessment of petitioner's service should have been made on 1.7.2002, but the respondent No. 2 Principal has passed the order two months prior and, therefore, it is clear that the impugned termination order Annex. 9 is non-set as per the terms and conditions of the appointment order and thus, the same is liable to be quashed and set aside.

(iv) That since the initial appointment of the petitioner was for 89 days and it was further extended for one month and thereafter, he was put on probation for one year, therefore, in these circumstances, his appointment should have been treated as regular appointment and services of regular appointee could not be terminated in the manner as has been done in the present case and thus, from this point of view also, the impugned termination order Annex. 9 cannot be sustained and liable to be quashed and set side.

A reply to the writ petition was filed by the respondents and they have placed reliance on Clauses 10.17 to 10.20 of the Rules and Regulations and since an alternative remedy of appeal is provided under the Rules and Regulations, therefore, the writ petition is premature and should be dismissed on that ground alone.

On merits, it has been contended by the respondents that the terms and conditions on which the appointment was issued to the petitioner were accepted by the petitioner himself through acceptance letter Annex. R/1 dated 2.5.2001.

So far as the issuance of letter Annex. 5 dated 2.5.2001 by which some terms and conditions were incorporated, is concerned, it has been submitted by the respondents that the said letter Annex. 5 is not an order amounting to appointment order but simply a compliance of directions issued by the Board of Governor's Sainik School Society, New Delhi vide letter No. 22(1)/97/D/SCC and by this letter, the respondent Sainik School was informed of certain changes

incorporated in the terms and conditions of the service of the employees of the Sainik Schools and thus, formal changes to that effect were made in the petitioner's appointment order.

It was further submitted by the respondents that the services of the petitioner were terminated for the simple reason that the appointment order itself empowered the respondents to terminate his services at any time during the period of probation and the impugned termination order Annex. 9 was not passed by way of punishment and it should be regarded as termination simpliciter and, therefore, it could not be challenged. Hence, this writ petition filed by the petitioner be dismissed.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

4. There is no dispute on the point that through order Annex. 2 dated 19.12.2000, the petitioner was first appointed to the post of Librarian for a period of 89 days.

5. There is also no dispute on the point that through order Annex. 3 dated 3.4.2001, the petitioner was appointed on the post of Adhoc Librarian from 4.4.2001 to 30.4.2001.

6. There is also no dispute on the point that through order Annex. 4 dated 30.4.2001, the petitioner was appointed as Librarian on probation for a period of one year, which could be extended to two years at the discretion of the Principal.

7. There is also no dispute on the point that through order Annex. 5 dated 2.5.2001, some conditions were incorporated in the appointment of the petitioner, which was made through Annex. 4 dated 30.4.2001 and the relevant condition No. 4 mentioned in Annex. 5 is quoted here :-

"4. You will be on probation for a period of one year extendable to 2 years as per Sainik Schools Society's Rules and regulations. On successful completion of probation period you may be considered for confirmation in the above post. During the period of probation your services may be terminated by the appointing authority without assigning any reason with one month's notice. Your services may also be terminated without notice and without assigning any reason on disciplinary grounds. The previous service rendered by you in organisation other than Sainik Schools will be considered for counting of pensionary benefits at the time of retirement provided....."

8. There is also no dispute on the point that the terms and conditions which were incorporated in the appointment of the petitioner were accepted by the petitioner through acceptance letter Annex. R/1 dated 2.5.2001.

9. There is also no dispute on the point that there is a certificate Annex. 6 dated 13.8.2001 issued by the authority of the respondent No. 1 Sainik School, which

shows that services of the petitioner were found satisfactory.

10. There is also no dispute on the point that through counselling letter Annex. 8 dated 28.2.2002, the petitioner was warned to adhere to the instruction of the school authority in future as he went to Cadet Mess in PT shoes and without tie.

11. Thus, if there is any warning issued by the respondents against the petitioner, the same is found in the shape of Annex. 8.

12. The services of the petitioner were terminated through impugned order Annex. 9 dated 3.5.2002 with effect from 30.6.2002 and the language of that termination order for convenience is quoted here :-

"You were kept on probation for a period of one year for the post of Librarian. Your one year period of probation is completing on 1 July 2002. As per appointment letter your services are now no more required by Sainik School Chittorgarh. Hence please treat your service terminated with effect from 30 June 2002 as per conditions of above referred appointment letter."

13. Thus, from the above facts and seeing all appointment orders of the petitioner, it is clear that the petitioner was on probation and during the period of probation, his services were terminated by the respondents.

14. The question for consideration in the above facts and circumstances is whether the services of the petitioner, who was on probation, were rightly terminated by the respondents through impugned order Annex. 9 dated 3.5.2002 or not.

15. For answering the above question, first it is to be seen whether the termination of services of the petitioner, who was probationer, through impugned order Annex. 9 was simpliciter termination or by way of punishment.

16. The Hon'ble Supreme Court in so many cases has laid down the law in respect of termination of services of probationers and temporary employees in the following manner :-

(1) That services of a probationer or a person appointed on adhoc or temporary basis can be lawfully brought to an end before the expiry of the period of probation or before the expiry of the period of adhoc or temporary appointment by way of simpliciter termination.

(2) But the termination will be illegal if it was really brought about to punish the employee for misconduct or the termination casts a stigma on him.

17. The Hon'ble Supreme Court in AIR 2000 1706 (SC) has explained the test for determination whether the termination order is simpliciter or punitive by holding that termination motivated by employee's general unsuitability is valid. If however there are allegations of serious misconduct for which preliminary enquiry is conducted behind his back to ascertain the truth and then termination is brought about, such termination, having regard to other circumstances of a

case, has to be taken as founded on misconduct and, therefore, to be treated as punitive. In regard to termination of a probationer, it has to be seen whether enquiry was for the purpose of determining his suitability for retention in service/confirmation, or for the purpose of finding out the truth in allegations against him. Former would be a case of termination simpliciter while the latter would be case of punitive termination founded on misconduct.

18. The Hon''ble Supreme Court in another case in V.P. Ahuja v. State of Punjab and Ors., 2000 (4) SRJ 69 has further held that probationer, like temporary servant also entitled to certain protection and his services cannot be terminated arbitrarily nor can those services be terminated in punitive manner without complying with principles of natural justice. Such order on face of it, stigmatic could not have been passed without holding regular enquiry and giving opportunity of hearing to appellant. In that case, the termination order was quashed.

19. Keeping in mind the above position of law and looking to the entire facts and circumstances of the case and the facts that the petitioner was on probation and his services were terminated during the period of probation, that the petitioner accepted all the terms and conditions of appointment and one of the conditions was that during the period of probation, his services could be terminated without assigning any reason with one month's notice and during the period of probation, his services were terminating through impugned order Annex. 9 w.e.f. 30.6.2002 after giving notice, that only on one occasion, the petitioner was warned through counselling letter Annex.8 and except that warning, there were no allegations of serious mis- conduct against the petitioner; that the services of the petitioner were terminated through order Annex.9 as his services were no more required by the respondents and not on account of negligence or misconduct or unsatisfactory work of the petitioner, therefore, in these circumstances, the termination of services of the petitioner through impugned order Annex. 9 would come under the head "simpliciter termination" because his services were terminated as per the terms and conditions of the appointment order itself, on the ground that his services were no more required by the respondents.

20. No doubt the petitioner was warned on one occasion through Annex. 8, but except that there is not an iota of allegations against the petitioner and therefore, in these circumstances, there was no need in the present case to make preliminary enquiry against the conduct of the petitioner. Apart from this, the services of the petitioner were not terminated because of negligence or misconduct or unsatisfactory work of the petitioner, but as his services were not required any more by the respondents, therefore, his services were terminated during the period of probation, as per the terms and conditions of the appointment order itself. Therefore, termination of services of the petitioner can be regarded as termination simpliciter and not by way of punishment, as it was not founded on misconduct and it also does not put any stigma on the petitioner

affecting his future career.

21. Furthermore, if the appointing authority considers it expedient to terminate the service of the probationer, it could not be said that the order of termination attracted the provisions of Article 311 of the Constitution of India, when the appointing authority had the right to terminate the service without assigning any reasons. In such a case even if misconduct negligence, inefficiency might be the motive or the inducing factor which influenced the employer to terminate the services of the employee a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service, termination of service could not be termed as penalty or punishment.

22. In the present case, even misconduct, negligence, or inefficiency is not found at all on the part of the petitioner, therefore, from this point of view also, the impugned order of termination Annex. 9 cannot be termed as punitive in nature.

23. Thus, it is held that the termination of services of the petitioner, who was probationer, through impugned order Annex. 9 dated 3.2.2002 was simpliciter termination because his services were terminated as per the terms and conditions of the appointment order itself, on the ground that his services were not required any more by the respondents and furthermore, it was not founded on misconduct, negligence or inefficiency on the part of the petitioner.

24. When this being the position, the impugned termination order dated 3.5.2002 (Annex. 9) cannot be challenged.

25. No doubt warning was issued to the petitioner through Annex. 8, but mere fact that warning was issued against the petitioner would not ipso facto mean that the impugned termination order was by way of punishment. The Hon"ble Supreme Court in Krishnadevaraya Education Trust and Another Vs. L.A. Balakrishna, has observed that even if the services of the probationer were not satisfactory and there was statement like that, that would not ipso facto mean that termination of services of the probationer was by way of punishment.

26. Thus, the counselling letter Annex. 8 by which warning was given to the petitioner, would not change the nature of impugned termination order from simpliciter termination to by way of punishment in the present case.

27. Since there was only one simple warning given to the petitioner through Annex. 8, therefore, to say that before terminating the services of the petitioner, the respondents should have conducted disciplinary proceedings against the petitioner, cannot be accepted.

28. No doubt a certificate Annex. 6 was issued in favour of the, petitioner showing that his performance was found satisfactory by the respondents, but that certificate would not give any help to the petitioner as his services were terminated on the ground that his services were no more required by the respondents and not on the basis that his performance was not found

satisfactory.

29. Since the termination of services of the petitioner was simpliciter termination and his services were terminated during the period of probation as per the terms and conditions of the appointment order itself on the ground that his services were not required any more by the respondents and impugned termination order does not put any stigma on the petitioner affecting his future career, therefore, in these circumstances, no question of giving personal hearing to the petitioner arises.

30. It may be stated here that an employee after the expiry of period of probation does not get automatically confirmed unless the Rules specifically so provided and in such a case, even termination, after the expiry of period of probation, cannot be said to be improper. From this point of view also, if the period of probation of the petitioner expired on 2.5.2002, but through impugned termination order Annex. 9 dated 3.5.2002, his services were terminated with effect from 30.6.2002 after giving notice, it would not make any difference.

31. Thus, in view of the discussion made above, all the submissions raised by the learned counsel appearing for the petitioner fail and stand rejected.

32. The learned counsel appearing for the petitioner has placed reliance on the decision of the Hon''ble Supreme Court in the case of V.P. Ahuja (supra). However, that ruling would not be helpful to the petitioner as in that case, the services of the petitioner of that case were terminated on ground of unsatisfactory work and termination order was found stigmatic and not simpliciter termination, while the position in the present case is otherwise as the termination of services of the petitioner in the present case was found simpliciter termination and it does not put any stigma on the petitioner.

33. Similarly, rulings of this Gourt in Rajesh Vats v. Sainik School and Ors. 2001 WLCUC 463 and Mohammad Hassan v. State of Raj. and Ors., S.B. Civil Writ Petition No. 4318/2001 decided on 14.8.25002) would not be helpful to the petitioner as in these cases, the termination orders were found stigmatic, while the position in the present case is otherwise.

34. For the reasons stated above, there is no merit in this writ petition and thus, the same is liable to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.