

(2011) 05 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No"s. 14827 and 14829-A of 1990 (O and M)

Sarbjit Singh

APPELLANT

Vs

Presiding Officer, Labour Court, Amritsar and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2011) 131 FLR 708 : (2011) 163 PLR 778

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The challenge to the orders of termination of services of petitioners were on the basis that they were not termination simplicities but were in the nature of punishment. The petitioners in both the cases were probationers, who during the probation period doing services as Conductors in Punjab Roadways, were terminated from service. They obtained information that prior to the termination orders, there had been a marking of a report of the ticket checking staff that they had been guilty of some malpractices and the endorsement on the report showed the motivation of the Management for terminating the services.

2. The petitioners sought a reference to the Labour Court that termination was done without any enquiry and consequently, invalid and violative of Section 25-F of the Industrial Disputes Act. The references were rejected and the Labour Court held that both the petitioners were on probation however for two years, their services could be terminated at any time if the work and conduct was not unsatisfactory. No stigma was cast upon them and when they were removed from service after a report was made against them by the checking staff, the employer was naturally compelled to dispense with the services and that no benefit could be given to the workmen. The learned counsel for the workmen in

their cases relies on judgment of the Hon''ble Supreme Court in Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, and Anoop Jaiswal Vs. Government of India and Another, to contend that even the order of discharge of probationer would amount to retrenchment in certain circumstances. In the former case, the Hon''ble Supreme Court held that a retrenchment as defined u/s 2(oo) would cover every case of termination of services except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. In the latter case, the Hon''ble Supreme Court held while dealing with Article 311(2) of the Constitution that the order of discharge that merely camouflaged for an order of dismissal for misconduct is bound to be interfered if reasonable opportunity to defend is not given.

3. The learned counsel also relies on the judgment of this Court in Haryana Harijan Kalyan Nigam Limited and another v. H.K. Juneja, Ex-District Manager 1991 (1) RSJ 723 that followed the decision of the Hon''ble Supreme Court in Anoop Jaiswal to say that even a probationer is entitled to complain that the order of termination founded on the allegation of dishonesty is bound to be interfered with.

4. I would not find any reason to dwell at length on the issue of the probationer's rights any more than setting out the fundamental precept that a probationer is not entitled to any fixed tenure of service to require procedural protection against termination of service. The benchmark for continuance is good conduct and performance and if the Management declines to extend the probation period and put an end to the service, such a person cannot have a complaint that the order could not have been passed or that the order is spirited by other motivations. A probationer, whose services are good and whose conduct cannot be complained of, will not come by a situation of termination of the probation period. If a termination itself takes place to a probationer be necessary corollary a situation of the Management finding that he is not fit to obtain regularization. A 5-Member Bench of the Hon''ble Supreme Court explained the judgment in Jagdish Mitter Vs. The Union of India (UOI), that dealt with the situation of the discharge of a temporary civil servant on touchstone of Article 311(2) of the Constitution. The relevant portion is reproduced as under:

...This simple position is sometimes complicated by the fact that even while exercising its power to terminate the services of a temporary servant under the contract or the relevant rule, the authority may in fairness enquire whether the temporary servant should be continued in service or not. It is obvious that temporary servants or probationers are generally discharged because they are not found to be competent or suitable for the post they hold. In other words, if a temporary servant or a probationer is found to be satisfactory in his work, efficient, and otherwise eligible, it is unlikely that his services would be terminated, and so, before discharging a temporary servant, the authority may have to examine the question "about the suitability of the said servant to be

continued and acting bona fide in that behalf, the authority may also give a chance to the servant to explain, if any complaints are made against him, or his competence or suitability is disputed on some grounds arising from the discharge of his work; but such an enquiry would be held only for the purpose of deciding whether the temporary servant should be continued or not. There is no element of punitive proceedings in such an enquiry; the idea in holding such an enquiry is not to punish the temporary servant but just to decide whether he deserves to be continued in service or not. If as a result of such an enquiry, the authority comes to the conclusion that the temporary servant is not suitable to be continued, it may pass a simple order of discharge by virtue of the powers conferred on it by the contract or the relevant rule; in such a case, it would not be open to the temporary servant to invoke the protection of Article 311 for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and the temporary servant discharged.

The Hon''ble Supreme Court held that if the order made a reference that a person was undesirable to be retained in service, it was really one of dismissal and compliance of Article 311(2) was necessary. A 3-Member Bench of the Hon''ble Supreme Court held in *Bishan Lal Gupta Vs. The State of Haryana and Others*, as follows:-

...There is no rule that anything more was needed if the intention was not to hold a fuller departmental trial to punish but a summary enquiry to determine only the suitability to continue the petitioner in service. It may be that, if the petitioner had acquired a right to the post and was not a mere probationer he could have technically claimed a formal fuller process of hearing before he could be punished for the fault. But in the present case the petitioner had no right to continue in service and could only claim a hearing which was reasonably sufficient and appropriate for determining whether there were adequate reasons to continue him in service even if he could not be removed by way of punishment without a fuller enquiry. The only result of what happened was an innocuous order of termination of service without stating any grounds for termination. If this in itself involved some reflection upon the petitioners capabilities, it cannot be helped.

5. A typical situation is one covered by the two cases are brought through the decision of the Hon''ble Supreme Court in *Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain*, , which reads as follows:-

In the instant case, the respondent was appointed as a Conductor purely on ad hoc basis for two years. He was governed by the Standing Orders of the Rajasthan State Road Transport Corporation, Workshop Employees and also by the terms of appointment....

The respondent was a temporary employee of the appellant Corporation on probation for a period of two years. His services were terminated by an order of

termination simplifier The order was innocuous and without any stigma or evil consequences visiting him. Therefore, there was no requirement under the law to hold any enquiry before terminating the services....

6. This judgment really point out to the fact that a probationer is not entitled to demand that reasons are given for his termination and if he collects such information which is not brought in the order of termination itself but by the official noting preceding such termination, such persons cannot use those noting and constituting a slur or a stigma to demand an enquiry. The termination effected must be seen for the context of how the orders themselves read. If they make no insinuation against the workman and however, they are terminated during the period of termination, no further enquiry could ever be necessary. A situation where a probationer could complain that the act was arbitrary or was for consideration which was not legal or that they were mala fide are completely different situations. No such allegations or basis is made by the petitioners. The awards are confirmed and the writ petitions are dismissed.