
(1983) 02 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 455 of 1979 (R)

S.C. Das, Chairman, H.S.E.C. Cooperatives Stores	APPELLANT
Vs	
State of Bihar	RESPONDENT

Date of Decision : 15-02-1983

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 26, 26(1)

Citation : (1983) 02 PAT CK 0013

Hon'ble Judges : M.M. Prasad, J;H.L. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

H.L. Agrawal and M.M. Prasad, JJ.—This writ application is directed against an order of the Presiding Officer, Labour Court, Ranchi respondent No. 2, dated 5-5-1979, contained in Annexure 12, setting aside the order of termination of the services of respondent No. 3 and reinstating him to his post of Sales Manager of the petitioner Consumers Co-operative Society, with full back wages.

2. Respondent No. 3 was appointed as the Sales Manager under an appointment letter dated 3-11-1973 (Annexure-1). It would be better to quote the relevant stipulations stating the terms of the appointment as they are relevant for the questions agitated for our decision. The letter states that the post was offered "on a purely temporary basis...with effect from 1st September, 1973", on the terms and conditions that:

(i) The appointment initially was for a period of three months only.

(ii) The services were terminable at any time without assigning any reason, after giving one month's notice or on payment of one month's salary in lieu thereof.

3. It appears from the perusal of the impugned order of the Labour Court as well as the statements made in the writ application and in the counter-affidavit filed on behalf of the respondent No. 3, that some enquiry was also conducted by the

employer in relation to certain irregularities and shortages in the cash balance under his charge. But the order of termination-Annexure-8 which was ultimately served upon him on 17-4-1974 only stated that "your services are being terminated with immediate effect and in lieu of one month's notice, one month's pay of Rs. 175 is being paid to you in cash." Reference to Clause (ii) of the letter of appointment was also made in this letter obviously meaning that the termination was based on the terms of the appointment letter.

4. Respondent No. 3, however, took the matter to the Labour Court by an application u/s 26 of the Bihar Shops and Establishment Act, 1953 (for short the Act") challenging the order inter alia on the ground that the enquiry held by the employer was conducted in a most perfunctory manner and without following the principle of natural justice. In the reply filed by the petitioners before the Labour Court (Annexure-10), they took a clear stand that the services of the respondent No. 3 were terminated in pursuance of the service conditions without taking "any serious view against the applicant on the basis of the report,"

5. In spite of this clear stand on the part of the petitioners, the Labour Court took the view that the services of the respondent No. 3 were terminated on the basis of the enquiry report of misconduct, and committing this initial error, it proceeded to probe into the question as to whether the enquiry was properly conducted and ultimately came to the conclusion that the enquiry was not fair and, accordingly passed an order of reinstatement as indicated above,

6. Section 26(1) of the Act lays down that "...no employer shall dismiss, discharge or otherwise terminate the employment of any employee who has been in his employment continuously for a period of not less than six months, except for a reasonable cause and after giving such employee at least one month's notice or one month's wages in lieu of such notice,"

7. Mr. Shambhu Prasad, learned Counsel, for the petitioners contended that the obligation of the employer to dismiss, discharge or otherwise terminate the employment of an employee, except for a reasonable cause, would not operate against the respondent inasmuch as the rights and obligations of the parties would be governed by the service conditions mentioned in the letter of appointment. In other words, his argument was that it was open to the parties to contract outside the mischief of the provisions of Sub-section (1) of Section 26 of the Act. Reliance was placed on a Bench decision of this Court in the case of Jagdish Vastalaya and Others Vs. State of Bihar and Others, wherein in a very clear term, it was observed that:

Section 26(1) does not apply to the case where there is termination of the contract of employment by the employer by virtue of an express or implied term in the contract itself.

We respectfully find ourselves in agreement with the view expressed in this decision.

8. Mr. Srivastava appearing on behalf of respondent No. 3 however, attempted to bring his case outside the ambit of the above decision and referred to the case of *Crompton Greaves Ltd. v. The Presiding Officer and Anr.* 1975 Lab I.C 1101. where provisions analogous to Section 26 of the Act contained in Section 40 of the Andhra Pradesh Shops and Establishment Act, (15 of 1966) were considered and it was held that an employee could be dismissed only for a reasonable cause. The Andhra Pradesh case, however, can be distinguished for the simple reason that Section 58 of that Act expressly prohibits an agreement of service where under an employee is made to relinquish any right conferred by the Act and such agreement shall be null and void. It was on account of this provision that the dismissal without any reason was held to be bad. Under the Bihar Act, the Legislature has although provided a safeguard for an employee that he cannot be discharged or dismissed without any reasonable cause, it does not create any such restriction as in the Andhra Pradesh Act for an employer to lay down any service condition contrary to the said provision. The employer and the employee were therefore free to enter into an agreement regulating the service conditions. The letter of appointment clearly stipulates that the service of the employee can be terminated without assigning any reason on giving one month's notice or one month's wages in lieu thereof. The termination of the service was as per the terms of the appointment as such was not disputed before us, but Mr. Srivastava argued that the basis of the termination was the enquiry in the matter of alleged shortage and, therefore, the Labour Court was justified in going into the question of the propriety of the enquiry.

9. We are aforesaid, this argument is erroneous and not available to the employee. We have already indicated that although some kind of ex parte enquiry was conducted, which might have been only a fact-finding enquiry by the employer. It was observed in the case of *Motipur Sugar Factory (Private) Ltd. v. Rikhdeo Prasad and Anr.* 1976 Lab. I.C 335. that loss of confidence in the employee is always the basis for his dismissal. If the petitioners made certain enquiry for their own satisfaction but did not charge respondent No. 3 for any misconduct on that account and passed an innocuous order of termination simpliciter then in our opinion, it was not open to the Labour Court to tear the veil and enter into the (question as to whether the enquiry was properly conducted or not. In our considered opinion, it is always open to an employer to pass an order of dismissal on the ground of misconduct or to pass an order of termination simpliciter, if he does not want to attach any stigma although he might have proceeded earlier to hold some kind of enquiry. Such an order can be challenged, if at all only on the ground of mala fide or such other protection which may be available to a temporary government servant.

10. We are, therefore, of the view that the Labour Court was not justified in going into the question of the property of the enquiry as to whether it was properly held or not, to find out the misconduct of the employee.

11. For the reason stated above, this application must succeed. It is accordingly

allowed and the order of Labour Court (Annexure-12) is quashed, but in the circumstances of the case, without any order as to costs.