
(2013) 03 DEL CK 0256
In the Delhi High Court
Case No : WP (C) No. 3648 of 1992

Sh. S.K. Sharma		APPELLANT
	Vs	
School of Planning and Architecture and Others		RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2013) 137 DRJ 195

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : G.D. Gupta with Mr. S.K. Gupta and Mr. Vikram Singh, for the Appellant; R.K. Singh with Ms. Deepa Rai, for the Respondent

Judgement

Valmiki J Mehta, J.—By this writ petition, filed under Article 226 of the Constitution of India, petitioner-Sh. S.K. Sharma challenges the order dated 25.9.1992 of the respondent No. 1 School of Planning and Architecture terminating the services of the petitioner during the period of probation. The facts of the case are that the petitioner was appointed by the respondent No. 1 as a Senior Librarian vide appointment letter dated 12th March, 1991. The letter of appointment dated 12.3.1991 specifically provided that the petitioner will be on a probation period of one year which may be extended at the discretion of the appointing authority, and, during the period of probation (including extended period) his services were liable to be terminated without notice and without any cause being assigned. The petitioner's probation period was extended vide memorandum of the respondent No. 1 dated 9th/21st July 1992 for one year. This memorandum mentioned that the work and conduct of the petitioner during the probation period were not found satisfactory. The petitioner was thereafter terminated from services during the period of probation vide non-stigmatic order dated 25.9.1992 and which reads as under:-

Prof. V.P. Raori

Director

OFFICE ORDER

Shri S.K. Sharma is on extended period of probation. However, in pursuance of para 2 of his appointment Order vide Memorandum No. F.250/SKS/SPA(Estt.) dated 12.3.1991 which reads as follows:

Shri S.K. Sharma will be on probation for a period of one year which may be extended at the discretion of the appointing authority. During the period of probation, including extended period, if any, his services are liable to be terminated without notice and without any cause assigned.

The services of Shri S.K. Sharma who is in extended period of probation are hereby terminated with immediate effect. On receipt of this letter Shri S.K. Sharma shall stand relieved.

Though there is no specific provision in the Rules or in the terms and conditions of his appointment to give him any notice pay, the School has decided to give him one month notice pay.

(V.P. Raori)

Director

Shri S.K. Sharma

Senior Librarian

2. The petitioner has challenged this order of termination on three grounds as argued before me:-

i) Firstly, it is argued that the relevant service rules of the respondent No. 1 did not contemplate extension of period of probation beyond one year and since in the present case petitioner had already completed one year period of probation on 11.3.1992, he is taken to have been confirmed in the post and cannot be said to be on probation. Reliance is placed upon Rule 2.4 of the Staff Service Regulations of the respondent No. 1 and which reads as under:-

2.4 All appointments to non-teaching posts/ordinarily/shall be made on probation for a period of one year after which period, the appointee, if confirmed, shall continue to hold his office till he attains the age of 60 years.

ii) Secondly, it is argued that the petitioner's services were terminated by the Director of the respondent No. 1, whereas the power to terminate services of employees of the respondent No. 1 is vested only with the Board of Governors, and therefore, the termination of the petitioner is bad.

iii) Thirdly and finally, it is argued that the termination of services of the petitioner is actually to be taken as an order for dismissal from services amounting to a penalty, and the order of termination though in form is a simple

order of termination during the period of probation, however, the termination in fact amounted to a penalty order inasmuch as the petitioner was found to have been guilty of assaulting one Sh. Nand Kishore, a peon in the library of the School. It is argued that such termination, without a detailed enquiry in which principle of audi alteram partem is applicable, is accordingly illegal. Reliance in this regard is placed upon the judgments of the Supreme Court in the cases of Samsher Singh Vs. State of Punjab and Another, and Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, . The law which is relied upon in this regard on behalf of the petitioner is contained in paras 19 and 21 of the judgment in the case of Dipti Prakash Banerjee (supra) and which paras read as under:-

"19. As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. In this area, as pointed out by Shah, J. (as he then was) in Madan Gopal v. State of Punjab there is no difference between cases where services of a temporary employee are terminated and where a probationer is discharged. This very question was gone into recently in Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd. and reference was made to the development of the law from time to time starting from Parshotam Lal Dhingra v. Union of India to the concept of "purpose of enquiry" introduced by Shah, J. (as he then was) in State of Orissa v. Ram Narayan Das and to the seven-Judge Bench decision in Samsher Singh vs. State of Punjab and to post-Samsher Singh case-law. This Court had occasion to make a detailed examination of what is the "motive" and what is the "foundation" on which the innocuous order is based.

...

21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

3. In response to ground (A), counsel for the respondent No. 1 has argued that the Staff Regulations Rule 2.4 does not restrict the period of probation only to one year and therefore, it is not permissible for the petitioner to argue that the probation period could not be extended.

4. Secondly, it is argued that the stand on behalf of the petitioner that the

petitioner can only be terminated by the Board of Governors and not by the Director of the respondent No. 1, is a fallacious argument, inasmuch as, there is no longer operative a Board of Governors of the respondent No. 1 and the respondent No. 1 being governed by its Rules and Regulations is governed by four councils being the General Council, Executive Council, Academic Council and Financial Committee or such other authorities as may be declared as such. It is argued that the entire powers of administration, and which included the power to terminate services of the employees, vests in the Execution Council in terms of Rule 11(i) and which reads as under:-

It is further argued that the Executive Council can delegate its powers to the Director of the respondent No. 1, and the Director was accordingly delegated the powers of the Executive Council vide the resolution of the Executive Council of the respondent No. 1 dated 8.5.1980 and para (C) thereof is relevant and which reads as under:

C. Resolution No. 9 be amended to read as under:-

Resolved that the Chairman, Executive Council shall have the powers for the management of affairs and funds of the School and shall have the authority to exercise all the powers and functions of the Executive Council provided always that he shall have no greater power in the matter of expenditure from funds of the School than the Executive Council possesses. The action taken by the Chairman under powers delegated shall be reported at the next meeting of the Executive Council. It was further resolved that this power be exercised only in cases of exigencies and emergencies.

It is therefore argued that the Chairman being the Directors of the respondent No. 1 was fully authorized to issue the termination order dated 25.9.1992 in the present case.

5. Thirdly and finally, it is argued that the judgments relied upon on behalf of the petitioner have no bearing to the facts of the present case for various reasons including the fact that in the present case, the petitioner was guilty of incorrect behavior on various occasions during the first year of probation and also in the extended period of probation, and which finally ended with the incident of the petitioner assaulting Sh. Nand Kishore, and therefore, it cannot be said that the assault on Sh. Nand Kishore was a foundation for terminating the services of the petitioner as is required by the judgments relied upon on behalf of the petitioner.

6. In my opinion, the writ petition has no merit and is liable to be dismissed and is accordingly dismissed for the reasons as detailed hereinafter.

7. The Staff Regulation Rule 2.4 stated above uses two important expressions. The first expression to be noted is "ordinarily", and the second expression to be noted is "if confirmed". These two expressions, taken with the fact that there is no specific bar in the rule for extending the period of probation, in my opinion, this shows that it cannot be the legal and factual position in the present case

that the petitioner stood automatically confirmed on expiry of the period of one year of the original appointment dated 12.3.1991. In fact, and as already stated above, the appointment letter dated 12.3.1991 itself stated that the probation could be extended at the discretion of the appointing authority and during the period of probation (including the extended period of probation), the services of the petitioner could be terminated without notice and without any cause assigned. I may state that the appointment of the petitioner is not an appointment under the Central Government governed by the CCS Rules or Article 311 of the Constitution of India. The petitioner is only governed by the relevant Regulations of the respondent No. 1 and by the appointment letter dated 12.3.1991. Once the regulations require an order of confirmation to be passed, there is no deemed confirmation or automatic confirmation after the end of the probation period vide *Khazia Mohammed Muzammil Vs. The State of Karnataka and Another*, It is not disputed that no confirmation order of regulating the services of the petitioner was ever passed. In fact, the petitioner had requested vide letter dated 3.8.1992 for confirmation of his services, but the services were not confirmed in terms of the office memorandum dated 23.9.1992. Both these documents being relevant are reproduced below:-

Letter Dated 3.8.1992

To

The Director

School of Planning & Architecture

New Delhi.

Sir,

This is with reference of your office Memorandum No. F-250/SKS/SPA/Estt. dt. 21.7.92. Thereby conveying me extension of probation period for a period of one year.

In this connection I would like to place before the authorities the following facts:

1. In accordance to appointment letter issued to me wide even number dt. 12.3.91. The period of probation prescribed was one year from the date of joining.
2. The prescribed period of probation ended on 30th April, 1992 and the same was successfully completed by me.
3. As no communication was received by me during the period of probation from 1.5.91 to 30.4.92 about any shortcoming in performance of my duties.
4. As technically and administratively I have completed the period of probation successfully on 30.4.92, extension of probation after lapse of two months and 21 days seems to be issued under circumstance best known to the issuing authorities without valid reasons.

In accordance with civil services regulations, Staff Service rules and others, rules related to service matters. The period of any probationer can be extended only during the validity of the original probation.

Hence, extension of probation period after two months and 21 days is not correct and enforceable.

I hereby request you to kindly issue a revise orders confirming successful completion of probation period on 30.4.92.

Thanking you,

Yours faithfully,

(S.K. SHARMA)

Sr. Librarian

Dated: 3.8.1992

Memorandum dated 23.9.1992

V.P. Raori

Director

Ref. No. R-102/92-SPA

23rd September, 1992

OFFICE MEMORANDUM

Shri S.K. Sharma, Senior Librarian in the School is hereby informed that his request dated 3.8.1992 has been considered and examined carefully and it is felt that his request for successful completion of probation period cannot be acceded to by the School. It has been decided that the probation period for the time being will remain extended by one year ending 30th April, 1993.

(V.P. Raori)

Director

Shri S.K. Sharma

Senior Librarian

8. In view of the above it is quite clear that the following conclusions can safely emerge:-

a) Regulation 2.4 does not provide any maximum period of probation, much less of one year only.

b) The appointment letter qua the petitioner dated 12.3.1991 specifically stated that the period of probation can be extended.

c) The petitioner was never confirmed to his post in terms of the expression "if confirmed" existing in Staff Regulation 2.4 read with the letter of the petitioner dated 3.8.1992 and the memorandum of the respondent No. 1 dated 23.9.1992, both of which have been reproduced above.

9. Accordingly, it is held that the first argument raised on behalf of the petitioner is misconceived that the petitioner stood automatically confirmed after the period of one year of probation.

10. So far as the second argument is concerned, the same is equally meritless for the reasons that the relevant Rule 11(i) of the Articles of Association of the respondent No. 1 specifically gives the power to the Executive Council on all matters of the administration and which will obviously include the aspects with respect to services of the employees of the respondent No. 1. Also, the said Rule 11(i) also states that Executive Council shall have the responsibility for control of the affairs of the School and which expression is wide enough to include all aspects of administration/affairs of the respondent No. 1-Organisation including the aspect with respect to the appointment and termination of services of employees. The power of Executive Council could have been delegated further to the Director of the respondent No. 1 and which becomes clear from Rule 14 of the Articles of Association and which reads as under:

11. The respondent No. 4 in terms of the aforesaid Rules 11 and 14 has filed on record the resolution of the Executive Council of the respondent No. 1 dated 8.5.1980 and which specifically delegated the powers of the Executive Council to the Chairman viz. the Director of the respondent No. 1. That the Chairman is the Director of the respondent No. 1 becomes clear from Rule 9(a) of the Rules and which reads as under:-

12. In view of the above, the position which emerges is that the powers of appointment and termination of employees vest with the Executive Council, subject to the relevant Staff Regulations. The Executive Council had competence to delegate its powers to Chairman/Director of the school and which was in fact done in terms of the minutes dated 8.5.1980. Therefore, I do not agree with the argument urged on behalf of the petitioner that the petitioner has not been terminated by the authority which was authorized to terminate the services of the petitioner.

13. That leaves us with the last argument with respect to the termination of the petitioner being actually in the nature of the penalty order and hence falling foul of the ratio of the judgments in the cases of Samsher Singh (supra) and Dipti Prakash Banerjee (supra). In order to understand the lack of merit in this argument, it will be necessary at this stage to refer to averments which have been made in the counter affidavit to show that the incident with regard to Sh. Nand Kishore was only one of the reasons/motives, and not the only reason for terminating the petitioner during the probation period. The relevant averments in the counter affidavit read as under:-

1. The petitioner was working with the School of Planning and Architecture, (deemed to be a University) New Delhi, in the capacity of Senior Librarian, on probation, and his services were terminated vide order dated September 25, 1992 as his conduct and work was not found satisfactory. The Petitioner was, time and again, advised to mend his ways, but to no avail. The petitioner was also conveyed the contents of his annual confidential report wherein it is clearly noted that the conduct of the Petitioner was not satisfactory. A copy of the said annual confidential report dated 29 May, 1992 is annexed herewith as Annexure "R-1". The office memo dated 9th/21st July, 1992 vide which the petitioner was conveyed the adverse remarks in the said ACR is annexed herewith as Annexure R-1A".

That, earlier, a joint representation by the members of the Library Staff, complaining against the conduct and work of the Petitioner, was submitted to the School authorities on 24.4.1992. A fact finding committee comprising Professor T.M. Vinod Kumar and Shri Virender Paul was set up vide office order dated 1.5.1992 to look into the charges against the Petitioner. The Petitioner was all along aware of the fact finding committee. The petitioner baldly rebutted the charges against him vide a hand written letter dated 21.6.1992, a copy of which is annexed herewith as Annexure "R-2". The fact finding committee submitted its report on 22.6.1992 coming to the conclusion that the charges against the Petitioner were substantiated on the basis of evidence brought before it. On the basis of the report of the said fact finding committee it was decided by the competent authority that the probation period of the Petitioner be extended by one year. Accordingly, vide an Office Memorandum dated 9/21 July, 1992 (copy of which has been annexed as Annexure "P" with the petition) the probation period of the Petitioner was extended by one year. The said office memorandum clearly states that the period of probation of the Petitioner stood extended on account of the unsatisfactory work and conduct of the Petitioner. Again, by office memorandum dated 9th/21st July, 1992 the Petitioner was given another opportunity to explain the charges made against him. (The said document is annexure "N" with the petition). The Petitioner once again baldly denied the charges vide his letter dated 29.7.1992 (which appears as annexure "O" with the petition). It is clear that the petitioner was asked to explain the charges against him not once but on two occasions. Both times, i.e., in his hand written letter dated 21.6.1992 and his letter dated 29.7.1992 the petitioner chose to baldly deny the said charges.

That not satisfied with the work and conduct of the petitioner, the probation period of the Petitioner was extended by one year i.e., upto 30th April 1993 by office memorandum dated 21.7.1992. It is worth mentioning that no other action, save extension of the Petitioner's probation period was consequent and attendant upon the report of the fact finding committee dated 22.6.1992. The Petitioner has obliquely tried to convey in his petition that the order of termination of service was a consequence of the finding of the fact finding committee. This position is false and denied. It is once again reiterated that the

only action taken against the Petitioner on the basis of the fact finding committee report dated 22.6.1992 was that the probation period of the Petitioner was extended with the idea of giving the Petitioner another chance to mend his ways. However, the Petitioner proved recalcitrant. On August 29, 1992, the Petitioner physically assaulted one Mr. Nand Kishore, a peon, in the Library of the School. A copy of the complaint submitted by Mr. Nand Kishore is annexed herewith as Annexure "R-3". This incident was looked into and statement of witnesses recorded. It was established that the Petitioner had, in fact, physically beaten up Mr. Nand Kishore. Even otherwise, the conduct of the Petitioner continued to be unsatisfactory. On 14th September, 1992, the Library Advisory Committee comprising Prof. T.M. Vinod Kumar, Prof. Malay Chatterjee, Mr. Satish Khanna, Mr. Virender Paul and Mr. K.V. Tiwari vide a letter of the same date recommended that the Petitioner's continuance in the School would not be in the interest of the School. The said letter is annexed herewith as Annexure "R-4". In view of this recommendation the services of the Petitioner who was on extended probation, were terminated vide a office memo dated September 25, 1992. It is worth emphasizing that the letter of termination of the Petitioner's service is an order simplicitor and casts no stigma on the Petitioner. In fact, the School authorities took extreme care and exercised abundant caution in wording the order of termination in a manner which would not be prejudicial to the Petitioner's future career. The Respondent No. 1 issued two letters dated September 25, 1992. (Annexed with the petitioner as Annexure "T") the first of these two letters, a memorandum No. O.M. No. 250/SKS/92/SPA(Estt), is a covering letter informing the petitioner personally of the reasons for the termination of his services. The second document is an office order which simply conveys the fact of termination of the Petitioner's service with immediate effect. Thus, the reason for termination and the order of the termination were conveyed separately to the Petitioner. This was done keeping in mind that the Petitioner's professional future and career may not be prejudiced. It is thus clear that as the Petitioner was a probationer, the authorities were required to do nothing more than issue a simple letter terminating his services. No right of the Petitioner has thus been violated.

(underlining added)

14. Alongwith the aforesaid averments made in the counter affidavit, we can also refer to the relevant ACR prepared for the petitioner and which contained adverse remarks requiring improvement of the petitioner, and only thereafter he was to be confirmed. The petitioner was put to due notice of the adverse entries made against him in the ACR. Further, the Library Committee by its letter dated 14.9.1992 informed the Director of the respondent No. 1 with respect to the lack of satisfactory conduct of the petitioner in the performance of his duties, and which letter reads as under:

14th September, 1992

The Director

School of Planning and Architecture,
New Delhi-110002

Dear Prof. Raori,

We, the undersigned members of the Library Committee, have been closely monitoring the performance of Shri S.K. Sharma, Senior Librarian, for over one year. He has been given several opportunities to improve his performance by the Chairman of our Committee. The most recent such meeting was held today from 1.30 p.m. to 3.00 p.m. His performance has in fact gone from a bad to worse. Subsequent to the submission of the Enquiry Committee he assaulted Shri Nand Kishore in the Library.

In continuation of our Report dated 22nd June, 1992, we have regretful come to the conclusion that his continuance in the School will be detrimental to the well-being of our Libraries and their staff.

Yours sincerely,

(T.M. VINOD KUMAR)

(MALAY CHATTERJEE)

(SATISH KHANNA)

(VIRENDRA PAUL)

(K.V. TEWANI)

15. A resume of the above facts shows that the petitioner was found wanting on various occasions during his probation period. This lack of due conduct of the petitioner was repeatedly brought to the petitioner's notice, which however, was of no avail. The unsatisfactory work and conduct of the petitioner is not only with respect to one incident but to many incidents, and which have been adverted to by the Library Committee in its letter dated 14.9.1992. Also, and as stated above, the lack of satisfactory performance of the petitioner was an aspect included in his ACR and brought to the notice of the petitioner. In the facts of the present case where there are series of acts and lack of satisfactory conduct during the probationer period, and it is not as if that the incident of assault on Sh. Nand Kishore was the only incident for terminating the probationer services of the petitioner, therefore, in my opinion, it cannot be said that the impugned order dated 25.9.1992 terminating the services of the petitioner amounts to in substance a dismissal order on the basis of the incident involving Sh. Nand Kishore. As already stated above, it is an undisputed position that the order is not stigmatic.

16. I may note that even assuming some enquiry was conducted against the petitioner, the enquiry proceedings are only preliminary enquiry proceedings and it was not a full-fledged enquiry as required of a departmental enquiry/full scale formal enquiry pursuant to which an order is passed by disciplinary authority.

Merely because the petitioner is called upon to reply to the charges or some witnesses have been examined or statements recorded will not mean that the enquiry against the petitioner was a full-fledged enquiry like a departmental enquiry/full scale disciplinary enquiry. The Supreme Court in the judgment reported as *Kendriya Vidyalaya Sangathan Vs. Arunkumar Madhavrao Sinddhave and Another*, has held that where the enquiry is not a formal departmental enquiry/full scale formal disciplinary enquiry and where non observance of prescribed Rules or procedure or principles of natural justice could have the result of vitiating the whole enquiry, then, the mere fact that an employee was allowed to participate in such preliminary enquiry or some queries were put to certain persons would not alter the nature of the enquiry, which continued to be only a preliminary enquiry. In the present case also, in addition to what has been stated above of the petitioner being guilty of various acts unbecoming of a conduct of an employee during the probationer period, additionally and independently it can also be held in the facts of the present case that the enquiry against the petitioner was only in the nature of preliminary enquiry and which cannot be equated to a full-fledged disciplinary enquiry/full scale formal enquiry. Therefore, if there is an order of terminating the services of the petitioner by non-stigmatic order, the same is only an innocuous termination in terms of the appointment letter and hence valid because the services cannot be said to have been terminated by way of punishment in accordance with the Supreme Court judgment in the case of *Kendriya Vidyalaya Sangathan (supra)*. Similar are the observations of the Supreme Court in the judgment reported as *Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr*, which holds that the order of terminating the services of a probationer cannot be said to be a penalty order unless the order is an order which is such as would have to be and is passed by a disciplinary authority on the basis of the incident alleged resulting in the penalty being imposed.

17. Finally I must refer to the judgment of the Supreme Court in the case of *Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another*, and which judgment holds that in fact the termination order of a probationer's services if it states that the services were not satisfactory, yet, such observations cannot be termed as a stigmatic order for being challenged by the probationer. It is further provided in this judgment that principle of *audi alteram partem* is not applicable requiring hearing to the petitioner with respect to the non-stigmatic termination. In view of the above, there is no merit in the petition, which is accordingly dismissed leaving the parties to bear their own costs.