
(2006) 12 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 3820 of 2006

Sharda

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Penal Code, 1860 (IPC) — Section 418, 420, 468, 471

Citation : (2006) 12 BOM CK 0031

Hon'ble Judges : R.M. Borde, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : Rajendra Deshmukh, for the Appellant; K.B. Chaudhari, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

Naresh H. Patil, J.—Heard.

2. Rule. Rule is made returnable forthwith. By consent of the parties, the matter is taken up for final hearing.

3. The petitioner contends that she came to be appointed as lady police constable as per the order dated 2-7-1994 issued by the Superintendent of Police, Aurangabad (Rural)-Respondent No. 2. The petitioner served in the said capacity till her services came to be terminated by respondent No. 2 by an order dated 20-7-1996. Against the order of termination, the petitioner approached the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad, by filing Original Application No. 930 of 1996. The respondent No. 2 filed affidavit-in-reply to the original application in which it was contended in paragraph Nos. 11 and 12 :

11. An enquiry in the matter was made by the Dy. Supdt. of Police (HQ) Aurangabad (Rural) and he submitted enquiry report vide his No. 45/96 dtd. 2-4-1996. In the enquiry it was revealed that the certificate of P.A.P. produced by

the petitioner was false. Hence an offence at Police Stn. CIDCO, Aurangabad has been registered against the petitioner vide CR No. 1-166/96 under sections 420, 468, 471 of IPC on dtd.20-7-1996. 12. Hence, the services of the petitioner were terminated vide this office Order No. Astha/LPC/1216/96/3971 dtd. 20-7-1996. without giving any notice as per the terms and conditions of her appointment as Ladies Police Constable."

4. An offence came to be registered against the petitioner at CIDCO Police Station at Cr. No. I 166/96 for an offence punishable under sections 420, 468, 471, IPC on 20-7-1996. It was alleged that the petitioner had obtained a false certificate as "Project Affected Person" from the Collector/District Rehabilitation Officer, Ahmednagar. The petitioner was charge-sheeted for the said offence in Regular Criminal Case No. 22 of 1997 by the IX Jt. J.M.F.C, Aurangabad. By judgment and order dated 16-9-1998, the DC Jt. I.M.F.C., Aurangabad acquitted the petitioner for the offence punishable under sections 418, 468, 471 of I.P.C. The petitioner thereafter filed Misc. Application No. 33 of 1999 in O.A. No. 930 of 1996 before the tribunal seeking interim relief. By an order dated 12-4-1999 the tribunal granted interim relief directing the respondents therein to reinstate the petitioner on the post of Lady Police Constable before 10-6-1999. It was further directed to communicate compliance of the said order before 10-6-1999. The said application came to be disposed of by the said order.

5. Under the interim orders passed by the tribunal, the petitioner was reinstated by an order dated 5-6-1999 by the Superintendent of Police, Aurangabad (Rural) subject to decision of the Original Application pending before the Administrative Tribunal. By an order dated 4th April, 2006, the Administrative Tribunal dismissed the appeal of the petitioner. The petitioner has impugned the order passed by the tribunal in this petition under Articles 226 and 227 of the Constitution of India.

6. In response to the notice issued by this Court, the respondent No. 2 filed affidavit-in-reply. It was contended by the Dy. Superintendent of Police (Home), Aurangabad that after the petitioner was selected, her certificate of "Project Affected Person" produced by the petitioner was sent for verification to the District Rehabilitation Officer, Ahmednagar by communication dated 20-8-1994. In reply to the said communication, the District Rehabilitation Officer, Ahmednagar informed by letter dated 24-8-1994 that the certificate of "Project Affected Person" produced by the petitioner was issued by the said office. On 21-1-1996 an anonymous application was received by the office of the deponent that the petitioner had secured employment by submitting a false certificate of "Project Affected Person". To verify the allegations made against the petitioner, one Junior Grade Clerk was sent to the office of the District Rehabilitation Officer, Ahmednagar along with letter dated 10-7-1996. After verification, the Collector/Deputy Director Rehabilitation (Land), Ahmednagar by his office letter dated 15-7-1996 informed that the certificate of Project Affected Person bearing Registration No. SR/24/96 dated 8-4-1990 was not issued by Collector/Deputy

Director Rehabilitation (Land), Ahmednagar. The said officer denied to have sent the communication dated 24-8-1994 to the office of the Superintendent of Police, Aurangabad wherein it was stated that the certificate of Project Affected Person was issued in favour of the petitioner. The deponent further stated that an enquiry in the matter was conducted by the Dy. Superintendent of Police, Aurangabad (Rural) and report dated 2-4-1996 was submitted. On the basis of the said report, offence was registered against the petitioner with the Police Station, CIDCO, Aurangabad and charge sheet No. 14/97 dated 10-2-1997 was filed in the Court.

7. The learned Counsel Shri Deshmukh appearing for the petitioner submitted that according to the respondent No. 2, the alleged misconduct of the petitioner was the foundation of the termination order. However, the termination order does not refer to such a foundation or reasons for the termination. In view of the contentions raised by the respondent No. 2 in the affidavit-in-reply filed before the M.A.T., it could very well be ascertained that the petitioner's services were terminated on the foundation of the misconduct which was enquired into by the respondent No. 2. Therefore, in the submission of the learned Counsel, in absence of adherence to the principles of natural justice, the termination order which the respondent No. 2 has passed, would be stigmatic and punitive in nature. It has been contended in the reply filed by the respondents before the Administrative Tribunal that the certificate of the petitioner being a Project Affected Person, was considered as false and a criminal case was lodged against the petitioner for which she faced prosecution. The learned Counsel submitted that the petitioner was acquitted in the criminal case and later on the administrative tribunal directed reappointment/reinstatement of the petitioner in the services which order was complied by the respondent No. 2. The petitioner is in service on the basis of the said order till this date. In this manner, the petitioner was in service from 1994 for a considerable period and from the year, 1999, continuously till this date. The learned counsel for the petitioner placed reliance on the following reported judgments to support his contentions:

(i) In the case of Basudeo Tiwary Vs. Sido Kanhu University and Others, , the Apex Court considered the provisions of Bihar Universities Act, 1951 in relation to exercise of power u/s 35(3) of the said Act, which reads as follows:

35(3) Any appointment or promotion made contrary to the provisions of the Act, Statutes, Rules or Regulations or in any irregular or unauthorised manner shall be terminated at any time without notice.

In the fact of the said case, the Apex Court observed : "To arrive at such a finding necessarily enquiry notice will have to be held and in holding such an enquiry the person whose appointment is under enquiry will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in

Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, .

(ii) In the case of Chandra Prakash Shahi vs. State of U.P. and others, AIR 2000 SC 1706, the Apex Court observed :

The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an enquiry is held and it is on the basis of that enquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive",

(iii) In the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, , the Apex Court observed :

21. 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 (c) which culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.

(iv) In the case of Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, , the Apex Court observed in paragraph 34:

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee - even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.

8. The learned Addl. Government Pleader Shri Chaudhari appearing for the respondents supported the impugned order passed by the respondent No. 2. In his submissions, full fledged enquiry was not conducted to ascertain the misconduct of the petitioner. The impugned order was not founded on the misconduct of the petitioner but, there was cloud on the authenticity of the certificate which was the basis for securing employment, by the petitioner. It was thought fit to enter into scrutiny of the certificate by holding preliminary enquiry into the authenticity of the said certificate. Therefore, the respondent No. 2 deputed a responsible officer and after conducting preliminary scrutiny/enquiry, it was brought to the notice of the employer that the certificate, which was the basis for securing the employment, was not genuine. Instead of passing termination order with reference to such an enquiry, the petitioner was simply discharged from service. The petitioner's services were temporary in nature. The appointment order itself speaks that the services of the petitioner were temporary in nature and the petitioner could be terminated by the employer without giving any notice. In support of his contentions, the learned Addl. G.P. Shri Chaudhari placed reliance on the following reported judgments :

(a) In the case of *Hukam Chand Khundia Vs. Chandigarh Administration and Another*, , in the given facts of the case, the Apex Court opined that since the petitioner was holding a temporary service and was on probation, an order of termination simpliciter has been passed without attaching any stigma against him. As the service record was found unsatisfactory, the termination order could not be held arbitrary and capricious.

(b) In the case of *Abhujit Gupta Vs. S.N.B. National center, Basic Sciences and Others*, ,the Apex Court observed in paragraph 14:

"14. The real test to be applied in a situation where an employee is removed by an innocuous order of termination is : Is he discharged as unsuitable or is he punished for his misconduct? In *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, this Court was considering a challenge to a compulsory retirement and formulated a practical test to answer the question posed above. This Court (vide para 17) observed that if the order of compulsory retirement from the service casts a stigma in the sense that it contains a statement casting aspersion on his conduct or his character, then it can be treated as an order of punishment but not if it merely amounts to highlighting the unsuitability of the employee. As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service."

(c) In the case of *State of Punjab and others vs. Balbir Singh*, AIR 2004 (5) SCW 5248, the Apex Court observed in para 13 :

"13. The nature of enquiry was preliminary and not a full scale formal enquiry so

as to lead to the inference that the object of the enquiry is to determine the guilt of the respondent. The basis of the discharge in the present case was not the misconduct on the part of the respondent, his services were terminated under Rule 12.21 of the Punjab Police Rules, 1934 considering the standards of discipline expected from police personnel."

The Apex Court further observed in paragraph 6 of the said judgment:

"6..... In all these cases, the allegations against the employee merely raised a cloud on his conduct and as pointed by Krishna Iyer, J., in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the motive."

9. We have considered the submissions advanced by the learned Counsel for the respective parties and perused the judgments cited supra. In the recent reported judgment in the case Abhijit Gupta vs. S.N.B. National Centre, Basic Sciences and others (supra), the observations of the Apex Court in paragraph 10 of the judgment reads thus:

"10. In the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, this Court considered what should be the best to determine whether a letter of termination of service was termination simpliciter or stigmatic termination. After referring to a number of authorities including the judgment in Parshotam Lal Dhingra Vs. Union of India (UOI), and Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, the Court observed (vide SCC p.527, para 19):

"The Courts continue to struggle with semantically indistinguishable concepts like "motive" and "foundation"; and terminations founded on a probationer's misconduct have been held to be illegal while terminations motivated by the probationer's misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents." (Emphasis supplied).

10. The Court formulated the judicial test to determine as to on which side of the fence the case lay. We may refer to the observations of the Apex Court, in para 21 of the judgment in Dipti Prakash Banerjee's case (supra), which reads :

"1. 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. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

11. We may refer to the case of Shailaja Shivajirao v. President, Honble Khasdar U.G.S. Sanstha and Ors., (2002) 2 LLJ 813SC wherein the Apex Court placed reliance on Pavanendra Narayan Verma's case (supra) and observed :

"2.....In that case also, an enquiry had been held prior to the order of termination. On examining the entire gamut of case-law right from Parshotam Lal Dhingra Vs. Union of India (UOI), the Court came to the conclusion that a mere holding of an enquiry does not ipso facto make the order of termination penal in nature, once the employer wishes not to continue the enquiry in exercise of his right in accordance with the terms of appointment. The Court held that the enquiry held prior to the order of termination cannot turn an otherwise innocuous order into one of punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee concerned."

12. In a recent judgment in case of Kendriya Vidyalaya Sangathan vs. Arunkumar Madhavrao Sinddhave and anr., AIR 2006 SCW 5744, the Apex Court, referring to the case of State of Punjab vs. Sukhwinder Singh, observed in paragraph 13 :

"13. In State of Punjab and Others Vs. Sukhwinder Singh, , a Bench of three learned Judges to which one of us was a party, after referring to several earlier decisions of this Court including those referred to above, laid down the principle as under in para 19 of the report :

"19. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not, makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact-finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. The decision to discharge a probationer during the period of probation or the order to terminate the service of a temporary employee is taken by the appointing authority or administrative heads of various departments, who are not judicially trained people. The superior authorities of the departments

have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. As mentioned earlier a probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated, which would be wholly wrong."

13. We find that in the facts of the present case, there was a cloud on the genuineness of the certificate of "project affected person" which was produced by the petitioner while securing service as Police Constable. It is true, initially it was reported to the respondent No. 2 by the District Rehabilitation Officer that such a certificate was issued in favour of the petitioner but, later on, the respondent No. 2 deputed a responsible officer to the office of the Collector/District Rehabilitation Officer, Ahmednagar on receipt of anonymous complaint and it was revealed that the certificate of "project affected person" which was secured by the petitioner was not issued by the said office on 8th April, 1990. It was stated that no such certificate was issued by the said office. At the same time, it was communicated that the earlier communication made to the respondent No. 2 stating that the certificate was issued by the concerned office, was also not issued by the said office. This preliminary enquiry was necessary for the respondent No. 2 to ascertain as to whether the petitioner's certificate was genuine and whether the petitioner should be continued in service on the basis of the said certificate.

14. Considering the facts of the present case and the nature of the scrutiny which could be termed as a preliminary enquiry conducted by the respondent No. 2 to verify the genuineness of the certificate, we do not find that there was a full-scale formal enquiry into the allegations involving moral turpitude or misconduct of the petitioner. We do not notice that the respondent No. 2 arrived at a finding of guilt against the petitioner. In absence of these factors being present in the case of the petitioner, there is no justifiable reason for us to hold that the impugned order was punitive in nature or stigmatic one.

15. The administrative tribunal considered the issue in its proper perspective and observed that misconduct on behalf of the petitioner was not the inducing factor for termination of the petitioner. It was further observed by the tribunal that the preliminary enquiry was not done with the object of finding out any misconduct but it was done with a view to verify the antecedents and character of the petitioner as well as for verification of the project affected person certificate. The tribunal further observed that the termination was not founded on the misconduct but for production of false certificate for securing the job.

16. The learned counsel for the petitioner submits that the acquittal of the

petitioner in the criminal case strengthens the submission that the petitioner was innocent and the allegations against her of producing the false certificate were baseless. The impugned order of termination was passed on 20-7-1996 whereas, the trial Court acquitted the petitioner on 16-9-1998. Even otherwise, the petitioner's acquittal in the criminal case would not affect the merits of the matter in ascertaining whether the impugned order of termination was stigmatic or punitive in nature. The fact that the petitioner was acquitted by the criminal court would not enhance the case of the petitioner. We have perused the order of acquittal passed by the trial Court and we could ascertain the quality of evidence brought before the trial Court by the State. At the same time, we refrain ourselves from saying anything about the merits of the said case. It cannot be forgotten that the petitioner's appointment was temporary in nature and there is no dispute on the fact that the petitioner secured service on the basis of certificate of her being a "project affected person". It was made clear through the appointment order itself that her services were liable to be terminated without any notice. This itself demonstrates that the nature of service of the petitioner was temporary.

17. Considering the ratio laid down by the Apex Court in the judgments cited *supra*, the facts of the present case and the manner in which the termination order was worded, we do not find that a formal full-scale enquiry was made, for which the petitioner was required to be given notice and heard. The impugned order, read as it is, is not stigmatic or punitive in nature. It is a simple discharge from service of a temporary employee. We, therefore, do not find any substance in the contentions raised by the petitioner.

18. The learned counsel for the petitioner placed reliance on Rule 3 and 4 of the Bombay Police (Punishments and Appeals) Rules, 1956. The learned Counsel admitted that this issue was not raised before the administrative tribunal but still, it could be raised before this Court in the petition filed under Article 226 of the Constitution of India. We have perused the said rules. We find that the petitioner was appointed to hold the post temporarily and considering the nature of the appointment, the petitioner is not entitled to seek benefit of the Rules 3 and 4.

19. We do not find the reasonings adopted by the Maharashtra Administrative Tribunal to be perverse or against the record. We do not notice any error of law committed by the tribunal. The petition fails and is dismissed, accordingly. Rule stands discharged with no order as to costs.