

(1960) 01 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 182 of 1959

Shivnarayan

APPELLANT

Vs

Vice Chancellor, University of Sagar and Another

RESPONDENT

Date of Decision : 18-01-1960

Acts Referred:

Saugar University Act, 1946 — Section 14(4), 49, 49(1), 49(2)

Citation : AIR 1960 MP 208 : (1960) 1 FLR 147 : (1960) ILR (MP) 37 : (1960) JLJ 397 : (1960) 5 MPLJ 515

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; S.C. Dube and B.L. Seth, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

By this application under Articles 226 and 227 of the Constitution of India, the petitioner Shivnarayan moves for a writ of certiorari to quash an order dated the 20th August 1959 of the Vice-Chancellor of the opponent University terminating his services with effect from the 25th August 1959. The petitioner also prays that a direction in the nature of mandamus be issued to the opponent University for his reinstatement in service.

The facts are that the applicant was appointed as a lecturer in Hindi against a permanent vacancy on the 26th August 1957. He was placed on a probation of two years from 26th August 1957. On 19th August 1959, the Head of the Hindi Department made a report to the Vice-Chancellor that the petitioner's work was not satisfactory and that his services should be terminated forthwith. On this report the Vice-Chancellor made an order on 20th August 1959 terminating the applicant's services from the 25th August 1959.

The order terminating the applicant's services mentioned that the applicant had

shown inability to teach, particularly higher classes; that he had failed to handle efficiently the work of the Bun-del Khandi section of the department to which he was attached; and that he had shown lack of "general intellectual interest." The petitioner challenges the validity of the termination order on the ground that no notice or charge-sheet was given to him before the order D/- 20-8-1959 was made and he was not given any opportunity to meet the imputation against his efficiency; that the Vice-Chancellor had no power to terminate his services; and that in any case his services could not be ended without a prior notice of three months.

The reply of the opponent University is that as the petitioner was on a probation of two years and as his work was not found to be satisfactory by the Head of the Hindi Department, his services could be terminated at any time before the period of probation expired; that the Vice-Chancellor acted u/s 14(4) of the University of Saugar Act, 1946, in passing the order terminating the petitioner's services; that Clause (9) of the agreement of service entered into between the petitioner and the University, under which the petitioner claimed that he was entitled to three months' notice before the termination of his service, was not applicable to the petitioner as he had not been confirmed; and that the said clause applied only to the termination of the executant's services after confirmation.

Shri Dharmadhikari, learned counsel for the petitioner, did not dispute that ordinarily a probationer's services could be terminated at any time before the expiry of the period of probation. He, however, urged that in the circumstances in which the applicant's services were terminated, the termination amounted to punishment, and, therefore, on the principles of natural justice the applicant should have been given a chance to controvert and explain the grounds on which his services were terminated.

It was said that the Head of the Department, on whose report the Vice-Chancellor made the order of termination, had himself given a good certificate to the petitioner on the 18th August 1959; that the case of the petitioner's confirmation was actually put up before the Executive Council of the University on the 12th August 1959, but the consideration of the matter was postponed for some reason; that, therefore, the Vice-Chancellor had no power to terminate the applicant's services before the decision of the Executive Council and thus forestall the decision on the question whether the applicant should or should not be confirmed; that the termination of the petitioner's services on the ground that he was lacking in ability or that he exhibited lack of general intellectual interest carried with it an imputation against his efficiency, conduct and capacity which could be controverted or explained by him; that these grounds amounted to his outright condemnation for holding any post in any University; and that in these circumstances, the termination of his services amounted to punishment.

Learned counsel relied on *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and on *Gopi Kishore Prasad Vs. State of Bihar*, which has been recently upheld by the Supreme Court in *The State of Bihar Vs. Gopi Kishore Prasad*,). It was also

argued that the Vice-Chancellor had no power to terminate the applicant's services, and that under the contract of his service the applicant was entitled to three months' notice before his services could be put an end to.

In our opinion, there is no force in any of the contentions advanced by the learned counsel for the applicant. It is now well settled that the appointment to a permanent post in Government service either on probation or on officiating basis is of transitory character and that an implied term of any such appointment is that it is terminable at any time. The probationary period of service is intended to be a period for testing the capacity, conduct and character of the appointee in order to determine his suitability for the post.

It is common experience that a person who has done exceptionally well in examinations, or even those who by education and experience have potential capacity to perform satisfactorily the duties of an appointment, are found wanting during the probationary period and do not come up to the fitness and capacity that is required for the efficient discharge of duties of the particular post to which he has been appointed. The object of probationary period is to give time to the appointing authority to decide finally about the merit and fitness of the candidate before confirmation, after which the termination of his services is made subject to certain restrictions.

The termination of a probationer's services before the expiry of the period of probation is but a graceful method of terminating the employment of an unsatisfactory appointee. In such a case, the appointing authority is not required to give any reasons for the termination of the probationer's services. It is entirely in the judgment and discretion of the appointing authority to determine whether the probationer is or is not fit for permanent employment.

This principle has been laid down by the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . At p. 42 it has been pointed out by the Supreme Court that a "servant on probation" means that a servant so appointed has been taken on trial, and that if the period of probation is unspecified, his services may be ended by a notice if the servant is found unsuitable. It was further said, in that case (at page 48):

"Thus where a person is appointed to a permanent post in a Government service on probation, the termination of his service during or at the end of the period of probation will not ordinarily and by itself be a punishment, for the Government servant so appointed has no right to continue to hold such a post any more than the servant employed on probation by a private employer is entitled to do. Such a termination does not operate as a forfeiture of any right of the servant to hold the post, for he has no such right and obviously cannot be a dismissal, removal or reduction in rank by way of punishment."

The decision in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, came up for consideration before the Supreme Court in C.A. No. 488 of 1957, Dated 15-11-1959: (*The State of Bihar Vs. Gopi Kishore Prasad*, . In that case, the

effect of the observations of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, on the question of the termination of service or discharge of a probationary public servant was stated thus:

Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant or removing him from service.

The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

But, if, instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311(2) of the Constitution.

In the last mentioned case, if the probationer is discharged on any one of these grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to a removal from service within the meaning of Article 311(2) of the Constitution and will, therefore, be liable to be struck down.

But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding on account of his misconduct, or inefficiency, or some such cause."

It is thus plain from these observations of the Supreme Court that the probationer's service can be terminated at any time before the expiry of the period of probation without holding any enquiry and on the ground of his unfitness for service, and that such a removal cannot give the probationer any cause of action. It is only if the appointing authority wants to have an objective determination about the probationer's misconduct or inefficiency and chooses to hold an enquiry into the probationer's misconduct or inefficiency or for some other similar reason that it is necessary to hold a proper enquiry and to give a reasonable opportunity to the probationer to show cause against his discharge. It is at the option of the appointing authority whether to hold or not an enquiry. The probationer cannot insist that the appointing authority should hold an enquiry and give him an opportunity to controvert the grounds on which his services are intended to be terminated.

Now, here, the Sagar University authorities did not choose to hold any enquiry

into the grounds on which the applicant's services were terminated. The applicant cannot, therefore, say that he was entitled to an opportunity to be heard and allowed to show cause against the action taken in regard to him. We do not read the grounds on which the applicant's services were terminated as amounting to an outright condemnation of his capacity or ability for holding any post anywhere. The grounds only mean that the applicant has not been able to come up to the expectations of the Sagar University authorities in the "services" and their standard of work which were expected from him while holding the post of a lecturer in Hindi. They cannot be taken to mean that the petitioner has not the potential capacity or intellect to perform satisfactorily the duties of a post that may be offered to him by any other University or body.

Learned counsel for the applicant said that the circumstances that Professor Bajpai, Head of the Department of Hindi, on whose letter of the 19th August 1959 the Vice-Chancellor passed the order that he did, had himself given a very favour-able certificate to the petitioner on 18-8-1959, that by parsing the order of termination on 20-8-1959, when the matter of the petitioner's confirmation was pending before the Executive Council, the Vice-Chancellor forestalled the decision of the Executive Council, and that immediately after the applicant's services were terminated another person was appointed forthwith to the vacant post, all indicated that the action of the University authorities in putting an end to his services was mala fide.

It is no doubt true that the certificate given by Prof. Bajpai to the applicant on 18-8-1959 and the report made by him to the Vice-Chancellor on 19-8-1959 contained a conflicting estimate of the petitioner's capacity and inability. In a letter addressed to the Vice-Chancellor on 22-8-1959 Prof. Bajpai sought to explain the grant of a certificate to the applicant on 18-8-1959 by saying that the applicant repeatedly pestered him for a certificate so as to enable him to apply for an appointment elsewhere and, therefore, he decided to make him "a little concession" by renewing an old certificate which he had given to the applicant with some alterations.

Whatever may be the persuasions and reasons which prevailed on Prof. Bajpai to give a certificate to the applicant and at the same time to make an adverse report against his work, the question whether in these circumstances the Vice-Chancellor should or should not have attached any value to the opinion of Prof. Bajpai was one resting entirely in the wisdom and discretion of the Vice-Chancellor. If the question of the evaluation of the petitioner's fitness for the appointment is one which the appointing authority alone can decide and if the method by which it has determined the fitness of the applicant is also in its discretion, then this Court cannot substitute its own opinion about the value that should have been given to Prof. Bajpai's opinion and about the estimate that should have been formed by the University authorities as regards the petitioner's fitness for that of the University authorities to whose judgment the matter was entrusted by the law.

The petitioner cannot have any cause of action even if it is assumed that the University authorities acted mala fide in terminating his services. The opponents were not required to state any grounds for terminating the applicant's services before the period of probation. That being so, if they did state some grounds the fact that the grounds appear to be plausible but are specious does not render illegal the termination of the applicant's service. Indeed if the action of the university authorities was mala fide, that would only go to show that the grounds stated by the opponents for terminating the applicant's services did not really constitute any real condemnation of his capacity, intellect or ability.

The contention that the Vice-Chancellor had no power to pass an order terminating the applicant's services and that the competent authority was the Executive Council alone cannot be accepted. u/s 14(4) of the University of Saugar Act, 1946, the Vice-Chancellor is empowered to take immediate action in any emergency without reference to the Executive Council. That sub-section provides :

"The Vice-Chancellor may, in any emergency which in his opinion requires that immediate action should be taken, take such action as he deems necessary, and shall at the earliest opportunity report his action to the authority which in the ordinary course would have dealt with the matter."

According to this provision, it is the Vice-Chancellor and the Vice-Chancellor alone who is concerned, and the intention of the framers of the Act is to leave the Vice-Chancellor the power to decide whether any emergency exists which calls for immediate action. The Court cannot enquire into the existence of emergency or the propriety of the action taken by the Vice-Chancellor without reference to the Executive Council. In this connection the observations made by the Supreme Court in *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, as to the limits of the power of the High Court to interfere in the decisions of an incorporated body like a University are pertinent.

That was a case in which the Syndicate of the Utkal University resolved that there had been leakage of questions in anatomy, that the results in anatomy examination held in 1951 be cancelled, and that another examination be held. The validity of this resolution was challenged in the Orissa High Court by an application under Article 226 of the Constitution mainly on the ground that the meeting of the Syndicate had not been called in accordance with law and that the resolution was also not validly passed.

The High Court examined the facts for itself and concluded that even if the evidence was sufficient to indicate the possibility of some leakage there was no justification for the Syndicate to pass such a drastic resolution in the absence of proof of the quantum and amplitude of the leakage. The High Court, therefore, issued a mandamus directing the Syndicate to take steps for the publication of the results. The Supreme Court observed:

"We are not prepared to perpetrate the error into which the learned High Court

Judges permitted themselves to be led and examine the facts for ourselves as a Court of appeal but in view of the strictures the High Court has made on the Vice-Chancellor and the Syndicate we are compelled to observe that we do not feel they are justified. The question was one of urgency and the Vice-Chancellor and the members of the Syndicate were well within their rights in exercising their discretion in the way they did. It may be that the matter could have been handled in some other way, as, for example, in the manner the learned Judge indicates, but it is not the function of Courts of law to substitute their wisdom and discretion for that of the persons to whose judgment the matter in question is entrusted by the law."

In view of these observations, it is not open to us to examine whether any emergency existed and whether the Vice-Chancellor was justified in making an order on his own terminating the petitioner's services.

Finally it was submitted that under Clause 9 of the contract of service the applicant was entitled to three months' notice before his services could be terminated. We do not think that the clause has any applicability when the services of the probationer are terminated before the expiry of the period of probation. The matter of probation is dealt with by Clause 2 of the agreement. Clause 8 deals with the grounds on which the services of the executant of the contract can be terminated after confirmation.

Then follows Clause 9 which says that except when the termination of service has taken place under Clause 8(a), neither the executant nor the University shall terminate the agreement when entitled to terminate it except by giving three months' notice in writing or by paying to the executant a sum equivalent to three months' salary. Having regard to the wording of Clause 9 and its juxtaposition, it is clear to us that it is only concerned with the termination of the services of the executant after confirmation. Indeed, in the very nature of the probationary period itself, when the period of probation is specified there can be no question of any notice being given for termination of service before the probationary period.

The Supreme Court itself has pointed out in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, (supra) that when a servant is placed on probation without any specification of any period, then under the ordinary law of master and servant the employment on probation comes to an end if during or at the end of the probation the servant so appointed or trial is found unsuitable and his service is terminated by a notice. This observation makes it clear that no notice is necessary when the period of probation is specifically fixed. Even if it is assumed that Clause 9 of the contract applied to the petitioner and, therefore, he was entitled to three months' notice, the order terminating his services does not become illegal because of the omission to give 3 months' notice.

In that case the petitioner could at the most claim three months' salary. For this relief he has the remedy of a civil suit. He could have also approached the

University authorities u/s 49 of the Act. It was said that under Sub-section (2) of Section 49 a civil suit for the amount of three months' salary would not have been competent. We do not agree. Section 49(2) is as under:

"The decision of the tribunal shall be final, and no suit shall lie in any civil court in respect of the matters decided by the tribunal."

The bar mentioned in Sub-section (2) would apply only if the matter in dispute is referred to arbitration as contemplated by Sub-section (1) of Section 49 and only in respect of that matter which has been decided by the tribunal. Here neither the petitioner nor the University invoked the aid of Section 49(1). That being so, Section 49(2) does not stand in the way of the petitioner's filing a suit for the recovery of three months' salary if he is so inclined.

For all these reasons, we are of the view that this petition must be and is dismissed. In the circumstances of the case we make no order as to costs. The outstanding amount of security be refunded to the petitioner.