
(2015) 02 JH CK 0108
In the Jharkhand High Court
Case No : Writ Petition(S) No. 5415 of 2006

Shraban Kumar Keshri

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Citation : (2015) 2 AJR 297

Hon'ble Judges : Sujit Narayan Prasad, J.

Bench : Single Bench

Advocate : Satish Bakshi and Nipun Bakshi, for the Appellant; S.K. Ughal and T. Kabiraj, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Sujit Narayan Prasad, J.—The petitioner has challenged the order dated 17.8.2004 issued under the signature of Secretary, Damodar Valley Corporation by which the petitioner has been terminated with immediate effect under Regulation 12 of Damodar Valley Corporation Service Regulations.

2. Heard the parties and perused the documents on record.

3. The brief facts of the case of the petitioner is that the petitioner in pursuance of an advertisement, had made an application for being appointed as Medical Officer. The petitioner being found successful in the competitive examination has been issued appointment letter on 21.8.2001. In terms thereof the petitioner joined the post and started discharging his duty.

4. The petitioner was initially appointed on probation for a period of one year subject to confirmation and while he was discharging his duty, all of a sudden vide order dated 17.8.2004 he has been terminated from service with immediate effect under the provision of Regulation 12 of Damodar Valley Corporation Service Regulations. Hence, the petitioner has approached this Court challenging the order dated 17.8.2004.

5. Counsel for the petitioner has assailed the impugned order on the ground that:
- "(i) Although the order dated 17.8.2004 is not a discharge simplicitor, rather on the ground of certain misconduct as has been brought on record by the respondents in the counter-affidavit.
- (ii) Even a probationary employee is entitled to be given at least a show-cause notice, but no show-cause notice has been given.
- (iii) There is condition in the appointment offer i.e. temporary, likely to continue, subject to termination by giving three months" notice/one month"s notice or three months pay/one month"s pay on either side in lieu thereof."
6. Counsel for the petitioner has submitted that in the criminal case instituted against the petitioner, he has been convicted by the trial court against which he has preferred appeal before this Court in Cr. Appeal No. 753 of 2010 in which the order of sentence has been kept in abeyance.
7. On the other hand, counsel for the respondents has submitted that since the petitioner was on probation and as such there was no occasion to issue show-cause notice.
8. The statements made in the counter affidavit at various paragraphs regarding the service and conduct of the petitioner and the respondents found it proper to terminate the petitioner immediately from service.
9. Having heard counsel for the parties at length, the facts which is not in dispute is that the petitioner was appointed on 21.8.2001. The period of probation was of one year and on successful completion of probationary period, the service was to be confirmed.
10. The nature of appointment of the petitioner was temporary, likely to continue, subject to termination by giving three months" notice/one month"s notice or three months pay/one month"s pay on either side in lieu thereof.
11. The petitioner was appointed in pursuance of an advertisement after being successful in the selection test and he was discharging duty regularly. The impugned order dated 17.8.2004 has been passed in exercise of power conferred under Regulation 12 of Damodar Valley Corporation Service Regulations.
12. Regulation 12 of Damodar Valley Corporation Service Regulations has been quoted by the respondents in the counter-affidavit which speaks as follows:--
- "Regulation 12 : Unless otherwise provided in any individual contract of appointments except officiating appointments shall be on probation for such period as may be determined by the Corporation, during which time, the services of any employee can be terminated without notice." 13. From perusal of Regulation 12, the provision has been made that any individual contract of appointments except officiating appointments shall be on probation for such period as may be determined by the Corporation, during which time, the services

of any employee can be terminated without notice.

14. Submission of learned counsel for the respondents that in view of the provision as contained in Regulation-12 there is no requirement to issue show-cause notice and as such order dated 17.8.2004 has been issued terminating the petitioner with immediate effect, cannot be accepted because of the reason that the petitioner was appointed against the substantive post under probation of one year period subject to performance of satisfactory service. From perusal of the order dated 17.8.2004 it reflects that the order of termination has been passed not on the ground of misconduct, but from perusal of counter-affidavit filed by the respondents have filed a detailed counter affidavit wherein at paragraphs-10, 13 and 14 they have stated which are being reproduced herein below:--

"10. That none of the points of law as formulated by the petitioner in para-2 of the writ application are tenable in law or on facts. It is stated that the order dated 17.8.2004 was passed under Regulation 12 of the Damodar Valley Corporation Service Regulation only with a view to dispose of the services of the petitioner since he was not found suitable even after working for a long time in Damodar Valley Corporation. Moreover, the petitioner involved himself in committing a heinous crime. Under Regulation 12 of the Damodar Valley Corporation Service Regulation, there is no provision to give any opportunity of hearing unless the services of an employee is confirmed and as such the order dated 17.8.2004 is legal and justified. The respondents are not legally bound to issue any show-cause notice, if the service of the petitioner is terminated under Regulation 12 of the Damodar Valley Corporation Service Regulation and there is no need to conduct any departmental proceeding against the petitioner under the said regulation.

13. That in reply to para 19 of the writ application it is stated that it has already been stated above that the petitioner remained absent with effect from 1.2.2004 without any information/intimation in writing to his controlling officer, moreover, the petitioner did not intimate the local police or his controlling authority about the suicide committed by the wife of the petitioner by hanging herself. The petitioner also suppressed that a case was lodged by his father-in-law and the petitioner suppressed the death of his wife before the police and gave a false information that his wife was under the treatment at D.V.C., Panchet Hospital.

14. That in reply to the statements made in para 22 and 23 of the writ application, it is stated that the petitioner was absconding with effect from 1.2.2004 to 15.7.2004 and was "Wanted" by Chirkunda Police Station because of a criminal case lodged against the petitioner due to suicide/hanging of his wife. It is stated that absconding for such a long time i.e. from 1.2.2004 to 15.7.2004 by an officer constitutes a gross misconduct during the probation period and as such his services were liable to be dealt in accordance with Regulation 12 of the Damodar Valley Corporation Service Regulation. The petitioner remained in jail custody with effect from 15.7.2004 to 5.5.2006, which indicates that the crime committed by the petitioner was heinous in nature and there was no reason to

continue the petitioner in service or confirm the services of the petitioner in Damodar Valley Corporation from probation."

15. Thus, the respondents have passed the order of termination on the ground of certain serious misconduct.

16. Regulation-12 of the Damodar Valley Corporation Service Regulation says that in case of probation, there is no requirement of issuing any show-cause notice.

17. There is no dispute that if the discharge will be simplicitor and not based upon any misconduct or irregularity, Regulation-12 will be applicable and in that circumstance there was no occasion to issue notice to the employee concerned.

18. But when the respondents have taken a decision to terminate the services of an employee holding the substantive post although on probation on the ground of serious misconduct, the said employee certainly will be entitled to be heard before passing any adverse order against him.

19. Rule is well settled as has been held by Hon"ble Supreme Court in the case of State Bank of India and Others Vs. Palak Modi and Another etc., wherein at paragraphs-25 and 36 it has been held which is reproduced herein below:--

"25. The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

36. There is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehaviour or misdemeanour. In a given case, the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct"

20. From perusal of the judgment of Hon"ble Supreme Court as quoted herein

above, there is no dispute that a probationer has no right to hold the post and his service shall be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive.

21. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

22. Subsequently at paragraph-36 it has been held that the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct.

23. The case of the petitioner is covered with the case as held by the Hon''ble Supreme Court in the case of SBI v. Palak Modi (supra).

24. Submission of counsel for the respondents that there is no misconduct reflecting from the impugned order and as such contention of learned counsel for the petitioner cannot be said to be justifiable but this contention of learned counsel for the respondents cannot be accepted in view of the specific stand taken by the Damodar Valley Corporation wherein the stand has been taken that the petitioner has been terminated on the ground of severe misconduct as has been stated in paragraphs-10, 13 and 14 of the counter-affidavit.

25. Applying ratio of Hon''ble Supreme Court in which judgment referred herein above I find that the impugned order suffers from infirmity and as such is not sustainable in the eyes of law and is hereby quashed.

26. So far as the initiation of criminal case is concerned, the petitioner has already been acquitted by the trial court after the judgment pronounced by the trial court on conviction on 27.6.2010.

27. Hence, he has fairly submitted that after 27.6.2010 he is certainly entitled for consideration for reinstatement in service.

28. I find substance in the argument advanced by learned counsel for the petitioner and hence, the matter is remitted to the respondents to pass a fresh order in accordance with law after providing principle of natural justice.

29. This writ petition stands disposed of.