

(2002) 04 DEL CK 0059
In the Delhi High Court
Case No : CW No. 2237 of 2001

Shri Davender Arora

APPELLANT

Vs

The Management of Albert and David Limited and Another

RESPONDENT

Date of Decision : 08-04-2002

Acts Referred:

Citation : (2002) 97 DLT 429

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : S.K. Luthra, for the Appellant; T.C. Gupta and Ram Krishan Advs.,
for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Rule.

With the consent of the parties, writ petition was taken up for disposal and counsel for parties heard.

2. The petitioner who had joined respondent No. 1 M/s Albert & David Limited, as a medical representative on 1.9.1993, is aggrieved by the termination of his services. The petitioner was appointed as Medical Representative on probation with respondent No. 1. Annexure P. 1 gives the terms and the emoluments of the petitioners. The appointment letter dated 1.9.1993 is at page 20 of the paper book. The appointment was on probation for a period of 12 months with a stipend of Rs. 1200/- per month. A salient term of the appointment letter was as under :

"If your services during the probationary period are found satisfactory you will be confirmed in writing and till you are confirmed, you will remain as a probationer. If during the probationary period your performance was found unsatisfactory, your services can be terminated without assigning any reasons thereof."

In the event, the petitioner's services were terminated by the respondent vide

letter of 19.7.1994, which appears as Annexure P. 2 to the petition. The letter is a short one and the relevant portion may be useful reproduced:

"Your performance as a Medical Representative has not been found up to our expectation. Consequently it has been decided that your services should be dispensed with from immediate effect."

3. The petitioner was aggrieved by this termination and raised a dispute. A reference was made by the appropriate Government to the labour court in the following terms:

"Whether the termination of services of Shri Davender Arora by the management is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect."

4. Evidence was led by the parties before the Labour Court. The Labour Court vide its award dated 1.10.1999, held that the termination of the services of Davender Arora by the management was not illegal and he was not entitled to any relief.

5. Mr. S.K. Luthra, learned counsel for the petitioner, has assailed the impugned award in the writ petition. Mr. Luthra urges that though the labour court rightly reached a finding that the petitioner was a workman. However, it grievously erred in holding that the termination of the petitioner was legal and valid. Mr. Luthra submits that the termination was in violation of Section 25(f) of the Industrial Disputes Act. Besides he could also not come within the exception provided in Section 2(oo)(bb) of the Industrial Disputes Act. Learned counsel while assailing the Award, submits that the termination was in substance and infact a punitive termination. The termination was arbitrary, illegal and unreasonable. The petitioner was not informed or forewarned of any shortcomings or deficiencies in his work or given any chance to correct or rectify any alleged shortcoming or deficiency. The termination had been done without conducting any enquiry and thus was in violation of principles of natural justice. The unfairness of termination, it is urged, is evident inasmuch as per appointment letter, on the one hand, petitioner was obliged to work for the full period of 3 years on the payment of Rs. 4000/- per month, while his services had been terminated without any enquiry.

6. Learned counsel for the petitioner also relies on the decision of the Supreme Court in V.P. Ahuja Vs. State of Punjab and Others, in support of his contention that the termination of a probationer, if is punitive and stigmatic in character can be set aside.

7. Mr. T.C. Gupta with Mr. Ram Krishan, on behalf of the respondents have opposed the writ petition. Learned counsel for the respondents have drawn my attention to the termination letter, which appears at page 24, Annexure P.2, which simply records that the performance of the petitioner as a Medical Representative has not been found satisfactory to the expectation of the

respondents and that it has been decided to dispense with the services with immediate effect. Learned counsel for the respondents very fairly submits that even if the petitioner is accepted to be a workman, his case would not be covered within Section 2(oo) and would not come within the ambit of Section 2(oo)(bb) in as much as the termination is in accordance with the provisions of the appointment letter. He submits that the respondents have acted fairly inasmuch as the petitioner had been notified of shortcomings and fallings and given a chance to improve. He refers to para 6 of Annexure P.8 where by a letter of 6.7.1994, the petitioner was notified of the deficiencies and again vide another letter of 13.7.1994, he was notified of his poor performance. Learned counsel for the respondent also relies on the latest judgment of the Supreme Court in Pavanendra Narayan Verma v. Sanjay Gandhi PGT of Medical Sciences and Anr. 2002 SCC 170 wherein the Supreme Court has reviewed the entire case law with regard to termination of services of the probationer, including the case of V.P. Ahuja v. State of Punjab and Ors. (supra) and relied on by the petitioner.

8. The Supreme Court after reviewing the entire conspectus of termination of probationer's service laid down tests for determining whether the same was punitive or stigmatic. The Court observed that "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 facts 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 facts is missing, the termination has been upheld." Again, the Supreme Court observed as under:

"Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

In the present case, the language used in the order of termination is that the appellant's "work and conduct has not been found to be satisfactory". It can, Therefore safely be held that the impugned order is not *ex facie* stigmatic."

9. Applying the aforesaid tests to the present case, it would be seen that this was not a case where any enquiry was conducted or any allegations made with regard to moral turpitude or otherwise. It was simply a case where the petitioner's performance had not been found satisfactory and up to the expectation. There is no unfairness in conduct of respondent as petitioner had been informed that his performance was not satisfactory prior to termination. The language used also did not cast any aspersion except noting that the work

and conduct has not been found to be satisfactory. Accordingly, following the dictum laid down by the Supreme Court in the above case. The termination is not ex facie stigmatic. The respondents have exercised their judgment bona fide for terminating the services of the probationer, which they have not found satisfactory and up to their expectation. There is no infirmity or error in the Award dated 1.10.1999, of the Labour Court. No ground for interference in exercise of jurisdiction under Article 226 of the Constitution of India is made out with the award of the Labour Court. The writ petition has no merit and is dismissed.