

(2000) 11 P&H CK 0160
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 82 of 1984

S.K. Arora, Assistant Engineer, Punjab State Agricultural
Marketing Board, Ferozepur

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311(2)
Punjab Agricultural Produce Markets Act, 1961 — Section 30, 33, 42

Citation : (2000) 11 P&H CK 0160

Hon'ble Judges : Bakhshish Kaur, J

Bench : Single Bench

Advocate : Mr. Rajiv Atma Ram, for the Appellant; Mr. K.S. Gill, for the Respondent

Judgement

Bakhshish Kaur, J.—Is the act of the respondents terminating the services of the petitioner in the midst of probation period legal and justified, or not, is the short question which requires consideration in this writ petition ?

2. Shri S.K. Arora-petitioner joined as Sectional Officer in the service of Punjab Public Works Department (B&R Branch) in the year 1974. During service, he improved his qualification and obtained AMIE in the year 1981. He worked as Sectional officer on officiating basis for seven and a half years. In the year 1981, he applied for the post of Assistant Engineer in the Punjab State Agricultural Marketing Board (in short "the Board") and he was selected and offered appointment to the post of Assistant Engineer (Civil) in PWD (B&R Branch) Public Health. His appointment was against the temporary post which was likely to continue and one of the terms of his appointment was that he would be on probation for a period of two years liable to be extended by another year, with a further rider that his appointment could be terminated by one month's notice.

While working as such, he applied for the post of Sub-Divisional Engineer in response to an advertisement issued by the Punjab Public Service Commission.

He was issued interview letter. As per condition, to be eligible for interview "No Objection Certificate" from his parent Department was required to be obtained. Accordingly, he made an application for issue of the requisite certificate, but it was not issued to him. Resultantly, he was not interviewed.

It is averred that his relations with the Executive Engineer, Jalandhar Division, were not cordial. He used to interfere in his duties. On the basis of a false report of embezzlement of certain amounts made by the Executive Engineer, his explanation was called vide letter Annexure P-4. He gave reply (Annexure P-5). He was served with a charge-sheet on 8.2.1983 (Annexure P-6). His detailed reply to the charge-sheet is Annexure P-7. Thereafter, he did not receive any communication from the Department. Ultimately, his services were terminated vide order Annexure P-2 without complying with the rudimentary principles of natural justice. Therefore, it is liable to be quashed on the ground that it is punitive in nature as it is founded upon the misconduct of the petitioner.

3. In the Preliminary Objections of the written statement filed by respondent Nos. 2 or 4, it has been averred that the petitioner has not availed the alternative remedy of revision u/s 42 of Punjab Agricultural Produce and Marketing Act (in short "the Act"). This petition is not maintainable as he had failed to successfully complete his probation period, therefore, his services were dispensed with. On merits, it pleaded that the petitioner proved to be incompetent and corrupt officer. As regards the issue of "No Objection Certificate", it is averred was received in the office on 3.8.1982, but it could not be finalised till 6.8.1982 (the date of interview). The dispensing of his services in the midst of the probation period is justified on the grounds that due to his unsatisfactory record of service and the adverse remarks recorded in his ACRs, his services could not continued .

4. The petitioner, in the replication, has averred that Section 42 of the Punjab Agricultural Produce and Marketing Act (in short "the Act") has no application to the facts and circumstances of the present case as this Section applies only in cases where orders have been issued under Sections 30 and 33 of the Act and his services have purportedly been terminated in accordance with his letter of appointment. No appeal, as alleged, has been provided under law and the only effective remedy available to him is the writ jurisdiction under Articles 226/227 of the Constitution of India.

5. The terms and conditions of appointment as contained in the appointment letter Annexure P-1 are as under :-

"1. The post will carry usual dearness and other allowances as admissible to Punjab Government employees in the same pay scale.

2. The appointment is against a temporary post which is likely to continue.

3. You shall be on probation for a period of two years, liable to be extended by another year.

4. Till your confirmation, the appointment shall be terminable on one month's notice on either side or pay and allowances in lieu of the notice.
5. Your character and antecedents are verified to be satisfactory by the concerned Distt. Magistrate/Police and you are declared medically fit by the Medical Board.
6. Your seniority in the cadre shall be on the basis of the order determined at the time of selection and shall not be affected by your date of joining.
7. In case you are already in Government service, you will have to get yourself relieved before joining this appointment.
8. You are to report for duty within 15 days of this offer, failing which it is liable to be cancelled.
9. In case you have not already passed examination in Punjabi of matriculation or equivalent standard, you will have to clear it within six months from the date of your appointment failing which your services shall be terminated.
2. In case you accept the offer, on the above conditions, you are requested to report to the Chief Engineer of the Mandi Board for duty."

The order of appointment was issued on September 20, 1981 and his appointment was on probation for a period of two years against atemporary post which was likely to continue. Before the expiry of period of probation, the services of the petitioner were terminated vide order Annexure P-2. The order Annexure P-2 reads as under :-

"As Sh. S.K. Arora, Assistant Engineer (Civil) Ferozepur has not been able to complete successfully his probationary period of two years as mentioned in para 3 of the above mentioned office order, his services are hereby terminated with immediate effect."

6. I have heard Shri Rajiv Atma Ram, learned counsel for the petitioner and Shri K.S. Gill, Advocate, for the respondents.

7. The petitioner's case is that the impugned order Annexure P-2 is stigmatic and the same could not be passed without holding an enquiry. Moreover, it has been passed in the midst of his probationary period. On the contrary, Sh. K.S. Gill, counsel of the respondent contended where a temporary employee is not found suitable for confirmation under the service rules, the termination of his services would not be stigmatic. In support of his arguments, learned counsel for the petitioner has placed reliance on State of Uttar Pradesh v. Tilak Raj 1976(1) SLR 129 (Allahabad); Collector and District Magistrate, Varanasi v. Mataru Ram 1975(2) SLR 60S (Allahabad) and Corporation of Calcutta v. Arun Kumar Sen and others, 1980(1) SLR 9 (Calcutta).

In Corporation of Calcutta's case (supra), it has been held that a probationer has no right to hold the post and the appointing authority is competent to decide

whether he should be discharged or confirmed and his discharge from service on account of unsatisfactory "services rendered during the period of probation does not amount to punishment. The learned counsel has also placed reliance on the decisions rendered by the Apex Court in *Union of India and others v. P.S. Bhatt* 1981 SLR 370 and *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , which deal with the provisions envisaged under Article 311(2) of the Constitution of India. It is observed that one test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post, the termination of his service will be itself be a punishment and he will be entitled to the protection of Article 311. It has also been observed in *Parshottam Lal Dhingra's* case (supra) as under :-

".....If the servant has no right to the post as where he is appointed to a post, permanent or temporary, either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment."

8. Adverting to the written statement, the respondents have taken up a specific plea under para 5 which is reproduced as under :-

"5. In reply to para 5 of the writ petition it is stated that the application filed by the petitioner for getting "No Objection Certificate" was received in the office on 3.8.1982 but this could not be finalised till 6.8.1982, which was the date of interview. So, the same could not be issued to the petitioner. The contention of the petitioner that he was not interviewed for lack or the no objection certificate is denied for want of knowledge. Further, it is made clear that the petitioner proved to be most incompetent and corrupt official in this organisation, as such, he could not have any chance for being selected as alleged by him." In para 9 of the written statement, it has been pleaded as under :-

"9. the probation period of the petitioner could not be extended due to his unsatisfactory record of service as explained above. The payment of salary in lieu of one month's notice has already been sent to the petitioner which could not be paid to him earlier. Therefore, the impugned order deserves to be sustained."

9. It is an admitted fact that the petitioner was served with a charge-sheet Annexure P-6 as he had allegedly committed irregularities in the execution of the work relating to the development of Mandi at Shanker, District Jalandhar and the petitioner filed reply to the charge-sheet, Annexure P-7, wherein he denied the allegation. In para 7 of the written statement, the respondents have averred as under :-

"7.It is also admitted that the petitioner filed reply to the charge- sheet Annexure P-7. It is further denied that the work and conduct of the petitioner was to the entire satisfaction of the authorities during his service tenure, rather he proved to be most dishonest, corrupt and inefficient official. The ACR of the

petitioner for the period from 16.10.81 to 31.3.82 shows that the petitioner had been highly corrupt, unpunctual and dishonest. A copy of the ACR is attached as Annexure R-1."

10. Having regard to the facts and circumstances of the case, once the petitioner was served with a charge-sheet and he has submitted reply thereto, then the enquiry proceedings could not be dropped midway nor his services could be terminated simply on the ground that he has not been able to successfully complete his probation period of two years. In a recent judgment of the Apex Court reported as V.P.Ahuja v. State of Punjab and others, 2000(2) SCT 327 : AIR 2000 SC 792 , it has been observed by Hon"ble Mr. Justice S. Saghir Ahmad, in paras 7 and 9 as under :-

"7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

9. The entire case law with respect to a "probationer" was reviewed by this Court in a recent decision in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, . This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it."

In the given case in hand also, in the impugned order, it is mentioned that the petitioner has not been able to successfully complete his probation period of two years, therefore, his services were terminated. It is pertinent to note that the impugned order was passed on 20.6.1983 when the period of probation of two years had not (been) completed. The petitioner was charge- sheeted. He has submitted his reply and enquiry was pending against him. Therefore, he could not be thrown out of service in the midst of probation period or pending decision in the enquiry being conducted against him.

11. For the aforesaid reasons, this petition is allowed. The impugned order Annexure P-2 is hereby quashed and the petitioner is reinstated with all consequential benefits. However, the competent authority will be at liberty to proceed with the enquiry against the petitioner from the stage of dropping the proceedings and passing of the impugned order.

12. Petition allowed.