
(2009) 11 CHH CK 0057
In the Chhattisgarh High Court
Case No : Writ Appeal No. 127 of 2009

Smt. Hamida Begum

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Police Act, 1861 — Section 34(6)

Citation : (2009) 4 CGLJ 321

Hon'ble Judges : Dharendra Mishra, J

Bench : Division Bench

Advocate : R.K. Kesharwani, for the Appellant; Vinay Harit, Dy. A.G. and Sudeep Agarwal, for Respondents. No. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—This writ appeal is directed against the impugned order dated 26.3.2009 passed in W.P. (s) No. 3343/08 whereby the learned Single Judge has dismissed the writ petition filed by the Petitioner/Appellant herein.

2. Case of the Appellant before the writ court was that the Petitioner was appointed as "Peon" on daily wages in the Municipal Council, Mahasamund on 1.7.1980. She served for a continuous period of 28 years as daily wagger till she was removed from her post vide order dated 20.5.2008 by the Municipal Council, Mahasamund. The State Government has issued a circular dated 5.3.2008 for regularization of the daily rated employees who are working before 31.12.1988. As per circular dated 5.3.2008 the Petitioner was entitled to be considered for regularization of her service, however, in order to deprive the Petitioner from the benefits of that circular, she has been removed from her post on the flimsy grounds. The impugned order is stigmatic as it mentions that the Petitioner is apathetic and negligent towards her duties and she misbehaved with the employees and officers. However, the said order has been passed without following the principles of natural justice and without affording any opportunity of hearing to the Petitioner.

3. Mr. Keshawarni, learned Counsel for the Appellant submits that the Appellant did not pray for regularization of her services and she only prayed for quashing of the impugned order of removal, as the same cast a stigma and it was passed without affording opportunity of hearing. The order impugned would affect her future prospects of procuring employment being stigmatic and punitive in nature and such order could not be passed without enquiry after observing the principles of natural justice. However, the learned Single Judge has dismissed the writ petition with a finding that the order cannot be termed to be stigmatic and appointment of the Petitioner was illegal and void ab initio as she was employed on daily wages on day-to-day basis and not for a particular tenure or on permanent basis. From bare perusal of the order of removal, it is evident that termination is not simplicitor but it cast stigma upon the Appellant. Reliance is placed on the judgment in the matters of Telecom District Manager and Others Vs. Keshab Deb, .

4. On the other hand, Mr. Agarwal, learned Counsel for the Respondent Municipal Council submitted that terming the employee apathetic and negligent towards the duty and complaint of misbehave with the employees and officers, per se, could not be construed stigmatic. There were complaints from the staff against the Appellant, the Appellant herself tendered written apology for her behaviour and in these circumstances, her termination from the post has been rightly upheld as the Appellant did not have any right to continue on the post. Reliance is placed on the judgments in the matters of Abhujit Gupta Vs. S.N.B. National center, Basic Sciences and Others, .

5. We have heard learned Counsel for the parties. We have perused the record of the writ petition as also the impugned order.

6. The only question for our consideration in this writ appeal is whether the order of termination dated 20.5.2008 was stigmatic and therefore, the same could not be passed without following the principles of natural justice?

7. The order impugned reads thus:

8. From the documents filed by the Respondent Municipal Council, it is seen that on account of certain complaints of the employees of the Municipal Council, the Appellant was not paid wages for a period of five months. The Appellant vide her application dated 15.4.2008 requested for payment of her withheld wages and tendered apology for any mistake committed by her in performance of her duty.

9. In the matter of Telecom District Manager and Others Vs. Keshab Deb, the Petitioner was a casual labour on daily wages. The stand of the employer was that the Petitioner's attitude, behaviour and conduct as a casual labour in the department were not at all satisfactory. He was arrested by the police on 12.3.1989 for the offence u/s 34(6) of the Police Act. He was prosecuted and found guilty by the court of law and he was fined on 13.3.1989. Thereafter, he was not allowed to join duty. The Division Bench of Gauhati High Court upheld the order of the Administrative Tribunal whereby the order of termination passed

by the employer was held to be illegal as the same was punitive in nature and passed on the basis of alleged misconduct without giving any opportunity to rebut. Dismissing the appeal of the employer, the Hon''ble Supreme Court has held that the order of termination was illegal, however, since the appointment of the Petitioner was not in accordance with law, therefore, instead of issuing direction to reinstate with back wages, compensation was ordered.

10. In *Abhujit Gupta Vs. S.N.B. National center, Basic Sciences and Others*, the Hon''ble Supreme Court has referred Para-21 of the judgment delivered in the matter of *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, with approval thus;

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 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. In the instant case, the allegations present in the order of termination only refers that the Appellant was apathetic and negligent towards her duties and she misbehaved with the employees and officers of the Council. The aforesaid assertion cannot be termed to be stigmatic and in our considered opinion, observations of the learned Single Judge in this regard are just and proper and it cannot be held to be erroneous.

12. In the result, the writ appeal has no substance, the same deserves to be dismissed and it is hereby dismissed.