

(2018) 05 MP CK 0118
In the Madhya Pradesh High Court
Case No : MP.2569.2018

Smt. Rajani Chandankhade	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Central Civil Services Leave Rules, 1972 — Rule 12

Citation : (2018) 05 MP CK 0118

Hon'ble Judges : SANJAY YADAV, J;ASHOK KUMAR JOSHI, J

Bench : Division Bench

Advocate : Ajit Singh Bhadoriya, Nakul Khedkar

Final Decision : Dismissed

Judgement

Whereas Smt. Rajni Chandankhade was appointed as Music Teacher vide order dated 01.12.1994 with posting in Kendriya Vidyalaya, Manendragarh.

Whereas Smt. Rajni Chandankhade was joined duty as Music Teacher in Kendriya Vidyalaya Manendragarh on 14.12.1994.

Whereas Smt. Rajni Chandankhade was transferred from Kendriya Vidyalaya Manendragarh (Jabalpur Region) to Kendriya Vidyalaya, Jhalwar (Jaipur Region) on 12.10.1998.

Whereas Smt. Rajni Chandankhade neither reported for duty at Kendriya Vidyalaya Jhalwar where she was transferred nor made any

correspondence and communication with the Principal, KV Jhalwar and the competent higher authorities regarding her absence.

Whereas Smt. Rajni Chandankhade had been absented her self more than five years without sanction of leave.

Now therefore, in terms of Rules 12 of CCS Leave Rules, 1972, the undersigned being the appointing and disciplinary authority hereby terminates the

services of Smt. Rajni Chandankhade, from KVS with immediate effect.Â Smt. Rajni Chandankhade therefore ceases to be in the strength of KVS.

(V. BISARYA) ASSISTANT COMMISSIONER

An appeal preferred by the petitioner was dismissed on 10.03.2011.

Aggrieved, petitioner filed an Original Application before the Tribunal whereby she challenged the order of termination on the ground that she was not afforded any opportunity of hearing. The Tribunal negatived the challenge on the findings:

â??6. We had sought from the learned counsel for the applicant as to what prevented her from appearing for duties even though she claims that she was sick, no medical certificate was produced nor any explanation is forthcoming from the learned counsel as to the nature of illness which prevented

her from not attending to her duties for such a long time. We are, therefore, unable to understand and assess what her claim for ill health is? Her

pleadings are significantly lacking in the necessary particulars which would have enabled that authority to take a decision as to whether her absence

was justified or not. As thing stand, it cannot be done for the aforesaid reasons. We also note that the applicant had been absent for a considerably

long time before she approached to the Court in the year 2013 that is she has approached the Court after 15 years of absence the Rule of sit back

enunciated by the Hon'ble Apex Court indicated that even if a right is patently available such right will be submerged by long lapse of time. After 15

years of time, we cannot possibly take care of any grievance of the applicant if at all it exists. Needless to say no grievance is forthcoming in the

pleadings of the applicant also she has not explained what prevented her from attending to duty or even to attempt to attend to the duties. Therefore,

Original Application is without any merit, and therefore, it is dismissed. No costs.â??

Though it is contended that the Tribunal grossly erred in dismissing the Original Application and that the order of termination was illegal in the eyes of

law as no opportunity of hearing was afforded, however, there being no denial of the fact that the petitioner was a probationer who remained absent

for long years, the employer, in our considered opinion, was justified in dispensing with her services.

The law relating to a probationer's confirmation has been considered by the

Hon'ble Supreme Court in *Wasim Beg Vs. State of Uttar Pradesh & Ors.* [(1998) 3 SCC 321] wherein it is held by their Lordships:

15. Whether an employee at the end of probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court has held that at the end of the maximum probationary period there will be deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with *State of Punjab*

v. Dharam Singh (1968 [3] SCR 1), *M.K. Agarwal v. Gurgaon Gramin Bank & Ors.* (1987) Supp. SCC 643, *Om Prakash Maurya v. U.P.*

Cooperative Sugar Factories Federation, Lucknow & Ors. (1986 Supp. SCC 95), *State of Gujarat v. Akhilesh C. Bhargav* (1987 [4] SCC 482).

16. However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such

probation beyond the maximum period, the courts have made an exception and said that there will be no deemed confirmation in such cases and the

probation period will be deemed to be extended. In this category of cases we can place *Samsher Singh v. State of Punjab* (1974 [2] SCC 831) which

was the decision of a Bench of seven judges where the principle of probation not going beyond the maximum period fixed was reiterated but on the

basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in

the case of *Municipal Corporation, Raipur Vs. Ashok Kumar Misra* (1991 [3] SCC 325). In *Satya Narayan Athya v. High Court of Madhya*

Pradesh (1996 [1] SCC 560), although the Rules prescribed that the probationary period should not exceed two years, and an order of confirmation

was also necessary, the termination order was issued within the extended period of probation. Hence the termination was upheld.

17. The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for

extension of probation or there is a Rule which requires a specific act, on the part

of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period. In this line of cases one can put Sukhbans Singh v. State of Punjab (1963 [1] SCR 416), State of Uttar Pradesh v. Akbar Ali Khan (1966 [3] SCR 821), Shri Kedar Nath Bahl v. The State of Punjab & Ors. (1974 [3] SCC 21), Dhanjibhai Ramjibhai v. State of Gujarat (1985 [2] SCC 5) and Tarsem Lal Verma v. Union of India (1997 [9] SCC 243), Municipal Corporation, Raipur v. Ashok Kumar Misra (supra) and State of Punjab v. Baldev Singh Khosla (1996 [9] SCC 190).

In the recent case of Dayaram Dayal v. State of M.P. and Anr. (AIR 1997 SC 3269) (to which one of us was a party) all these cases have been analysed and it has been held that where the Rules provide that the period of probation cannot be extended beyond the maximum period there will be a deemed confirmation at the end of the maximum probationary period unless there is anything to the contrary in the Rules.

As to termination simplicitor, the law on this issue is trite. In Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Ltd. and another

[(1999) 2 SCC 21], it is held:

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental inquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employees conduct but are cases where the employer has virtually accepted the definitive and clear findings of the Enquiry Officer, which are all arrived at behind the back of the employee - even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive, in such cases.

35. Coming now to the facts of the case before us, the enquiry officer, Shri R.P. Singh examined witnesses and in his report dated 22.1.76 has said: ""I

conclude that Shri R.S. Gupta took a sum of Rs.2000/- from Shri Jai Chandra Lal, thereafter referring to certain facts said they 'go to prove the

correctness of the complaint"". Not only that, he concluded ""I therefore suggest that service of Shri R.S. Gupta may be terminated and one month

salary may be given to him in lieu of the notice"". The very next day, the impugned simple order of termination followed.â??

In â??Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and another [(2002) 1 SCC 520]â??, their Lordships were pleased to

observe:

â??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.

29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what

language in a termination order would amount to a stigma? Generally speaking when a probationers 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 probationers appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier,

also do not hold so. 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.â??

In â??Krishnadevaraya Education Trust & Anr. Vs. L.A. Balakrishna [(2001) 9 SCC 319]â??, it is held by their Lordships:

â??5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation,

the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, normally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge, the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

7. In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if we take into consideration the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not upto the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment. In *Union of India and Ors. Vs. A.P. Bajpai and Ors.*

[(2003) 2 SCC 433], it is held:

7. The grounds stated in the counter affidavit filed by the appellants in answer to the challenge made by the respondent No.1 in the OA before the Tribunal were only the basis to assess the unsuitability of the respondent No.1 to continue in the sensitive post for which he was appointed. It may be added that Annexure C-3 on which the Tribunal heavily relied to say that the impugned order was stigmatic was an annexure to the counter filed by

the appellants. It was a confidential letter written by the Assistant Director of the Department. In our view, the Tribunal committed a serious error in

law and on facts of the present case in concluding that the order of termination of services of the respondent No.1 involved stigma attached to

respondent No.1. The grounds stated in the counter affidavit in answer to the challenge made by the respondent No.1 were the factors to assess the

suitability or otherwise of respondent No.1 to continue in service. Having regard to all relevant aspects, the authorities reached a conclusion that

respondent No.1 was not suitable to continue in service. The order of termination of his services was simpliciter without attaching any stigma to the

conduct of respondent No.1. In this view, the impugned order cannot be sustained. Accordingly, it is set aside and the appeal is allowed. No costs.â??

When the impugned orders are tested on the Vs. Union of India and others anvil of the law laid down in Wasim Beg, Radhey Shyam Gupta,

Pavanendra Narayan Verma, Krishnadevaraya Education Trust & Anr., A.P. Bajpai (supra), the same cannot be faulted with.

In the result, petition fails and is dismissed.

No cost.