
(2020) 08 SHI CK 0284

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1666 Of 2017

State Of H.P. & Ors

APPELLANT

Vs

Dr. Parvesh Thakur

RESPONDENT

Date of Decision : 24-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 309, 311
Indian Penal Code, 1860 — Section 376

Citation : (2020) 08 SHI CK 0284

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Ashok Sharma, Ranjan Sharma, Vinod Thakur, Vikas Rathore, Seema Sharma, Svaneel Jaswal, Ajay Sharma, Amit Jamwal

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The State has filed the instant petition against the order passed by the erstwhile H.P. Administrative Tribunal in O.A. No. 82/2017, dated 15.3.2017,

whereby the respondent was directed to be reinstated in service with all consequential benefits by quashing notification of termination dated

26.12.2016 and it was also made clear that the order shall not preclude the State from initiation of appropriate proceedings or action as warranted in

the facts and circumstances of the case against the respondent in accordance with law. .

2.The facts are not in dispute. The respondent was appointed as Veterinary Doctor in the Department of Animal Husbandry, in the year 2014 on

contract basis. Initially, the appointment was for one year and the same was renewed year after year.

3. On 13.12.2016, the respondent, while working as Veterinary Doctor in Veterinary Hospital, Katgaon, District Kinnaur, was arrested in a case under Section 376 and later on, released on bail on 27.12.2016.

4. Based upon arrest of the respondent, the State terminated services of the respondent by passing the following order:Â?

â??In exercise of powers conferred by the proviso 15Â{VII (B)} of Recruitment & Promotions Rules for the post of Animal Husbandry and

Veterinary Services, ClassÂI (Gazetted), made under Article 309 of the Constitution, the Governor, Himachal Pradesh is pleased to terminate the

contract appointment of Dr. Parvesh Thakur, Veterinary Officer (Contract) presently posted as Veterinary Hospital, Katgaon, Distt. Kinnaur, w.e.f.

13.12.2016, for remaining arrested under IPC Section 376, for more than 48 hours.â??

5. The respondent assailed the order of termination before the Tribunal by filing O.A. The State contested the O.A. by contending that the termination

of the respondent was in accordance with the terms of the contract and, therefore, the same called for no interference.

6. The learned Tribunal, after going through the pleadings and material on record; and after relying upon the judgments of the Hon'ble Supreme Court

in Gujarat Steel Tubes Ltd. vs. Mazdoor Sabha, 1980 (2) SCC 59,3 Nar Singh Pal vs. Union of India and ors., (2000) 3 SCC 58,8 All India Council for

Technical Education vs. Rominder Randhawa, decided on 23.2.2010, came to the conclusion that the impugned order of termination of services of the

respondent was punitive in nature and accordingly, directed his reinstatement with all consequential benefits by quashing the termination order, as

aforesaid.

7. It is vehemently argued by Mr. Ashok Sharma, learned Advocate General assisted by Ms. Seema Sharma, Deputy Advocate General that the

learned Tribunal has gravely erred in holding the respondent entitled for reÂinstatement in service with all consequential benefits ignoring the

provisions of the contract agreement/appointment order, more particularly, condition No.3, which clearly provides that the service of the respondent

was purely on contract basis and could be terminated in case performance/conduct of the contract appointee i.e. respondent, was not found good.

8. On the other hand, Mr. Ajay Sharma, learned Senior Advocate, assisted by Mr.

Amit Jamwal, Advocate, would contend that no fault can be found with the impugned order as the same has been passed in accordance with law.

9. We have heard the learned counsel for the parties and have also gone through the records of the case.

10. It is more than settled that the order of termination of a temporary employee or a probationer or even a tenure employee, simplicitor, without

casting any stigma, may not be interfered with by the Court, but the Court is not debarred from looking at the attending circumstances, namely, the

circumstances prior to the issuance of order of termination, to find out whether the impugned order is simplicitor or punitive.

11. What would be the scope of judicial review in such matters has been elaborately considered by the Hon'ble Supreme Court in *Gridco Ltd. & anr.*

vs. Sadananda Doloi & ors., 2012 AIR (SC) 729, wherein it was observed as under:Â?

â??26. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a

notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the

contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to

be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law

relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no

longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is

entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that

would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court

acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the arm chair of the Administrator to decide whether a

more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to

be vitiated by the infirmities referred to above and so long as the action is not

demonstrably in outrageous defiance of logic, the writ Court would do well to respect the decision under challenge.â??

12. The entire law on the subject has been considered in detail by the Division Bench of Allahabad High Court in Meenakshi vs. State of U.P. and

ors., 2018 (9) ADJ 550 wherein the Court, after taking into consideration as many as 49 judgments of the Hon'ble Supreme Court including various

Constitution Bench judgments, laid down the following principles to find out whether a simple order of termination/discharge of a temporary employee

or probationer is punitive or not:

â??(a) The termination of services of a temporary servant or probationer under the rules of his employment or in exercise of contractual right is

neither per se dismissal nor removal and does not attract the provisions of Article 311 of the Constitution.

(b) An order of termination simplicitor prima facie is not a punishment and carries no evil consequences.

(c) Where termination simplicitor is challenged on the ground of casting stigma or penal in nature, the Court initially would glance the order itself to

find out whether it cast any stigma and can be said to be penal or not. If it does not, no further enquiry shall be held unless there is some material to

show certain circumstances, preceding or attending, shadowing the simplicitoriness of the said order.

(d) The Court is not precluded from going beyond the order to find out as to whether circumstances, preceding or attending, makes it punitive or not. If

the circumstances, preceding or attending, show only the motive of the employer to terminate, it being immaterial would not vitiate the order unless it is

found that order is founded on such act or omission constituting misconduct.

(e) If the order visits the public servant with evil consequences or casts aspersions against his character or integrity, it would be an order by way of

punishment irrespective of whether the employee was a mere probationer or temporary.

(f) ""Motive"" and ""foundation"" are distinct, though the distinction is either very thin or overlapping. ""Motive"" is the moving power, which impels action

for a definite result, or to put it differently. ""Motive"" is that which incites or stimulates a person to do an act. ""Foundation"", however, is the basis, i.e.,

the conduct of the employee, When his acts and omissions treated to be

misconduct, proved or founded, it becomes a case of foundation.

(g) If an order has a punitive flavour in cause or consequence, it is dismissal, but if it falls short of it, it would not.

(h) Where the employer is satisfied of the misconduct and the consequent desirability of termination, it is dismissal even though the order is worded

innocuously. However, where there is mere suspicion of misconduct and the employer does not wish to bother about it, and, instead of going into the

correctness of guilt, feel like not to keep the employee and thus terminate him, it is simpliciter termination and not punitive.

(i) Where the termination simpliciter is preceded by an enquiry, preliminary or regular, the Court would see the purpose, object of such enquiry as also

the stage at which, the order of termination has been passed.

(j) Every enquiry preceding the order of termination/discharge, would not make it punitive. Where an enquiry contemplated in the rules before

terminating an probationer or temporary employee is held, it would not make the order punitive.

(k) If the enquiry is to find out whether the employee is fit to be confirmed or retained in service or to continue, such an enquiry would not render

termination punitive.

(l) Where the employer hold a formal enquiry to find out the correctness of the alleged misconduct of the employee and proceed on the finding

thereof, such an order would be punitive, and, cannot be passed without giving an opportunity to the concerned employee.

m) If some formal departmental enquiry commenced but not pursued to the end. Instead a simple order of termination is passed, the motive operating

in the mind of the authority would be immaterial and such an order would be non punitive.

(n) When an order of termination is assailed on the ground of mala fide or arbitrariness, while defending the plea of mala fide, if the authority has

referred certain facts justifying the order of discharge relating to misconduct, negligence or inefficiency of the employee in the appeal or in the

affidavit filed before the Court, that would not make the order founded on any misconduct.

(o) Sometimes when some reason is mentioned in the order, that by itself would not make the order punitive or stigmatic. The following words

mentioned in the order have not been held to be punitive.

- i. "want of application",
- ii. "lack of potential",
- iii. "found not dependable",
- iv. "under suspension",
- v. "work is unsatisfactory",
- vi. "unlikely to prove an efficient officer".

(p) Description of background facts also have not been held to be stigmatic.

(q) However, the words "undesirable to be retained in Government service", have been held stigmatic.

(r) If there is (i) a full scale formal enquiry, (ii) in the allegations involving moral turpitude or misconduct, (iii) which culminated in a finding of guilt;

where all these three factors are present, the order of termination would be punitive irrespective of the form. However, if any one of three factors is

missing, then it would not be punitive.â??

13. Judged in light of the aforesaid exposition of law, it would be noticed that the only basis for terminating the respondent was that he was arrested for

an offence punishable under Section 376 IPC and remained in custody for more than 48 hours.

14. The State did not even choose to hold any independent inquiry with regard to the case registered against the respondent.

15. It is not in dispute that the respondent was honourably acquitted in the case that was registered against him and the said findings have attained

finality as neither the State nor the prosecutrix filed an appeal against the judgment of acquittal, dated 22. 7.2019.

16. In the given circumstances, no fault can be found with the findings rendered by the learned Tribunal, wherein it was observed as under:Â?

â??From the sequence of the facts of the case, the inference is irresistible that the impugned order of termination of the services of the applicant is

penal in nature. It is well settled that though the order is innocuous on the face of it, then the Court, if necessary for the ends of fair play and justice,

can lift the veil and find out the real nature of the order. If it is found that the impugned order is penal in nature even though it is couched with the

order of termination in accordance with the terms and conditions of the order of

appointment, the order will be set aside.â??

17. Admittedly, we are not otherwise inclined to interfere with the impugned order as the Tribunal has clarified that the order would not preclude the

State from initiating appropriate proceedings as warranted in the facts and circumstances of the case against the respondent in accordance with law

and this finding has attained finality as the respondent has not assailed the same.

18. In view of aforesaid discussions, we find no merit in this petition and the same is accordingly dismissed, so also the pending application(s), if any,

leaving the parties to bear their own costs.