
(1976) 04 CAL CK 0006
In the Calcutta High Court

State of West Bengal

APPELLANT

Vs

Somendra Nath Lahiri

RESPONDENT

Date of Decision : 29-04-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : 80 CWN 638 : (1977) 2 LLJ 358

Hon'ble Judges : Sankar Prasad Mitra, C.J.; Salil Kumar Datta, J

Bench : Division Bench

Judgement

Sankar Prasad Mitra, C.J.—This is an appeal from a judgment of Mr. Justice Masud, delivered on the 9th January, 1974. In an application by the respondent under Article 226 of the Constitution the learned trial Judge following the decision of Mr. Justice Sabyasachi Mukherji in *Siladitya De Vs. State of West Bengal and Others*, , had made the rule absolute.

2. On 19th June, 1970, the respondent was selected for appointment as a Sub-Inspector in the Calcutta Police Force. The Deputy Commissioner of Police, Headquarters, Calcutta, addressed a letter to him in which it was stated inter alia as follows:

You have been provisionally selected for appointment as a Sub-Inspector in the Calcutta Police. If you are appointed to the post, then you have to undergo the prescribed course of training in the Police Training College, Barrackpore, 24 Parganas for period of one year.

x x x After you successfully complete the course of training at the Police training College, you will have to undergo further course of practical training in Police work in different units of the Calcutta Police Force for period of one year. If you fail to make a suitable progress during your training period at the Police Training College or in the Calcutta Police, you will be liable to be discharged from service at any time during the training period.

x x x If you are finally appointed to the post, then you will be required to report

your arrival to the D.I.G., Training, Police Training College, Barrackpore on the forenoon of 1st July, 1970 where you will have to undergo the requisite course of training.

x x x

3. This letter of the Deputy Commissioner of Police. Headquarters Calcutta, is dated the 19th June, 1970. There is also another letter addressed to the respondent of the same date by the Central Reserve Officer, Calcutta Police, forwarding the aforesaid letter of the Deputy Commissioner. In the Central Reserve Officer's letter it is stated:

In enclosing the provisional appointment letter, I would request you to call at this office on the 22nd June, 1970 at 1 p.m. to receive your kits and other necessary instructions, if you agree to the terms and conditions of appointment.

4. In May, 1971, the final examination was held by the Police Training College at Barrackpore. The respondent appeared at this examination. In June, 1971, the result of the final examination was published. The respondent was unsuccessful.

5. On 9th July, 1971 the respondent was discharged was as "unsuitable".

6. On 12th July, 1971, the order of discharge was published in the Calcutta Police Gazette. The said publication was as follows:

Order by the Deputy Commissioner of Police, Headquarter.

The following cadet Sub-Inspectors, Sargeants of the Calcutta Police, who were undergoing training at the Police Training College, Barrackpore, are discharged from the force with effect from the 8th July, 1971 as unsuitable.

(1) ***

(2) Sub-Inspector 704 Soumendra Nath Lahiri.

(3) ***

(4) Sargeant 228 Siladitya De

(D.C.H.O.'s Order No. 684, dated 9th July, 1971).

7. Now, Rule 46, Sub-rule 3 of the Police Regulations in Chapter XV provides, inter alia, as follows:

A probationary Sub-Inspector or Sub-Inspectors shall be confirmed on the completion of his or her probationary period unless the Deputy Commissioner, Headquarters, shall make an order extending his or her period of probation or discharging him or her from service or in the case of a promoted Sub-Inspector or Sub-Inspectors reverting him or her to his or her substantive rank. Any order for such extension of the probationary period or reversion or discharge shall indicate grounds on which the order is made.

8. On behalf of the appellant it was argued before us that the respondent was not a probationary Sub-Inspector at all, and, as such Rule 46(3) is not attracted to his case. Reliance was placed on the two letters of the Deputy Commissioner of Police, Headquarters, Calcutta and the Central Reserve Officer, Calcutta Police, which we have already referred to, and it was submitted that the respondent's appointment was purely a provisional appointment.

9. On behalf of the respondent the contention has been that the respondent was a probationer and Rule 46(3) applies to him.

10. In this appeal it is not necessary for us to enter into this controversy. We shall proceed on the footing that the respondent was a probationary Sub-Inspector.

11. learned Counsel for the respondent contends:

(1) that the respondent's dismissal was in violation of Rule 46(3) and

(2) the grounds of dismissal stated in paragraph 12 of the affidavit-in-opposition of Sidney Kitson, Deputy Commissioner of Police Force, affirmed on the 27th June, 1972, show that a stigma was attached to his reputation.

12. On both the grounds, according to Mr. Chatterji, appearing for the respondent, the order of discharge should be set aside.

13. So far as the first ground is concerned, Mr. Chatterji says that an order for discharge must indicate the grounds on which the order is made. In the instant case the ground stated is "unsuitable". This is a conclusion and not a ground at all.

14. Rule 46(3) requires that the order of discharge shall "indicate" the grounds. The word "indicate" means "to express briefly, lightly or without development". (Vide Shorter Oxford English Dictionary, Vol. I 3rd Edn. at Page 989.)

15. When the Rule requires, therefore, that the ground of discharge are to be "indicated", it would be enough to state briefly without further development what the ground was. In the present case the ground given is "unsuitable". Now "suitable" means "suited to or for well-fitted for the purposes, appropriate to the occasion". (Vide Concise Oxford Dictionary, 5th Edn. Page 1292). When, therefore, a person is discharged on the grounds that he is unsuitable it means that he is not suitable or well-fit for the post which he was supposed to hold. In our opinion the use of the word "unsuitable" is a sufficient indication of the grounds of discharge as required by Rule 46(3).

16. Mr. Chatterji, in support of his second point aforesaid, drew our attention to paragraph 12 of the affidavit-in-opposition we have already referred to. The paragraph runs thus:

2 With reference to paragraph 16 of the said petition I deny that the petitioner had dutifully and properly undergone the training. He was unsuccessful in the

examination. He was also found unsuitable by the Board for further training.

17. learned Counsel contends that it is obvious from paragraph 12 of the affidavit-in-opposition that there were three grounds for the order discharge, namely:

(1) not undergoing training dutifully and properly,

(2) failure in the examination and

(3) the finding by the Board that the candidate was "unsuitable" for further training.

18. These three grounds taken together amount to "stigma" invoking the provisions of Article 311 of the Constitution.

19. Quite a few Supreme Court decisions were placed before us. It would, however, be enough to state that in the State of Punjab and Another Vs. Shri Sukh Raj Bahadur, Mr. Justice Mitter after analysing a number of previous decisions of the Supreme Court formulated the following propositions:

1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

4. An order of termination of service is unexceptionable if preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.

5. If there be a full-scale departmental enquiry envisaged by Article 311, i.e., an enquiry officer is appointed, a charge sheet submitted, explanation called for and considered, any order of termination of service made thereunder will attract the operation of the said Article.

20. These five principles have again been approved by the Supreme Court in State of U.P. and Others Vs. Sughar Singh, .

21. It is clear, therefore, that unless there is an aspersion against character or integrity an order of discharge cannot be considered to be an order by way of punishment. In fact, the word "Stigma" means imputation attaching to a person's reputation; stain on one's good name vide Concise Oxford Dictionary, 5th Edition, page 1262. "Character" in the context of circumstances we are

concerned with means "moral strength, backbone, reputation, good reputation" (vide Concise, Oxford Dictionary, 5th Edition, page 200).

22. In the three grounds stated in paragraph 12 of the affidavit, in-opposition there are no aspersions against the character or integrity of the respondent. There is no imputation attaching to his reputation. In these circumstances, it cannot be said that the order of discharge was by way of punishment and before it was passed the provisions of Article 311 of the Constitution should have been complied with.

23. Assuming, however, that the three grounds specified in paragraph 12 of the affidavit in-opposition amount to a "stigma" as urged by learned Counsel for the respondent, we may refer to the Supreme Court's judgment in *State of Bihar v. Gopi Kishore Prasad* 1960 I L.L.J. 578. In this case Sinha, C.J., has summarised the law regarding termination of service or discharge of a probationary public servant. One of the points made by Sinha, C.J. is: "...if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding on account of his misconduct, or inefficiency, or some other cause".

24. In the instant appeal in the order of discharge the only ground indicated is unsuitability. On the principle enunciated by Sinha, C.J. and in the earlier decisions cited above the order of discharge itself does not attach any stigma to the respondent and he cannot challenge it on the ground that the requirements of Article 311(2) of the Constitution had not been complied with.

25. For all the reasons aforesaid this appeal is allowed. The judgment and order of the trial Court are set aside. The rule is discharged. The interim orders, if any, are vacated. There will be no order as to costs.

Salil Kumar Datta, J.

I agree.