
(2004) 08 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17834 of 2003

Sudhir Sharma

APPELLANT

Vs

The Punjabi University and Another

RESPONDENT

Date of Decision : 24-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311, 311(2)

Citation : (2005) 105 FLR 832 : (2005) 140 PLR 36

Hon'ble Judges : S.S. Nijjar, J;Nirmal Singh, J

Bench : Division Bench

Advocate : Balram Gupta and Shireesh Gupta, for the Appellant; R.L. Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—The petitioner has filed this writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari quashing the order dated 21.10.2003 (Annexure P.4) to the writ petition.

2. The petitioner holds the qualifications of M.A. (Punjabi), LL.B., Diploma in Computer Operator, Post Graduate Diploma in Management and Postgraduate Diploma in Marketing Management. He was appointed on ad hoc basis as a Data Entry Operator against the post of Technician, Grade-II (Teaching Aid) in the respondent-University on 21.8.2002. The appointment of the petitioner was initially for period of six months or till the vacancy was filled on regular basis whichever is earlier. The appointment order itself provided that the appointment shall be terminable by either party at any time without any notice. The appointment was also conditional: subject to the receipt of a report of verification of character antecedents of the petitioner from the concerned department. In case it was found that the character and antecedents of the petitioner were not satisfactory, his services were liable to be terminated without any notice. The appointment was further extended from 21.12.2002 to 30.6.2003 on the same terms and conditions. The term was again extended on 1.9.2003 for six months,

by order of July 3, 2003, During the last extension, the Registrar of the respondent-University issued order No. 30038/ Estt./S-5 dated 21.10.2003, terminating the services of the petitioner. This order is said to have been issued by the order of the Vice Chancellor for the negligence and violation of discipline by the employee. The entire order reads as follows:-

No. 30038/Estt.S.5 Date: 21.10.2003.

OFFICE ORDER

This is in reference to the office letter No. 21710-12/Estt./S dated 21.8.2002 earlier issued by this office.

On a surprise check of Internet Access Lab on 15.10.2002 carried out by the Director, University Computer Centre submitted a report that Sh. Sudhir Sharma who has been appointed on Adhoc basis as Data Entry Operator against the vacant post of Technician Grade-II (Teaching Aid) in the University Computer Centre is not discharging his duties honestly. Working is being done with the intention of causing loss to the University with malafide intention not issuing the coupons on time for fees paid by the students.

After considering the report of the Director, University Centre, the services of Sh. Sudhir Sharma, Data Entry Operator (Adhoc) are hereby terminated today on 21.10.2003 by the order of the Vice Chancellor for the negligence and violation of discipline by the employee.

3. Petitioner complains that his entire future has been ruined as on the basis of the aforesaid order, he will never be able to seek appointment with any other employer.

4. Written statement has been filed by the respondents. The extentions in the employment of the petitioner are admitted. It has however been stated that the petitioner has collected money from the users of the Internet Access Lab. The users were students or employees of the University. The answering-respondent had checked the utilization of the lab along with two other officials of the University Computer Centre on 15.10.2002 at 5.35 P.M. It was observed that although the lab was full of users but none of the users was issued the receipt before allowing to use the system. On checking the record register it was found that only six entries of the students/users had been made in the register maintained for the purpose for that day till 5.30 p.m.. The team had observed the ill-intention of the petitioner and was asked to issue the receipts on the spot. Thereafter, the Store Keeper-cum-Purchase Assistant of the Centre who was a member of the team was asked by the answering-respondent to monitor the number of users on 16.10.2003. It was found on the very next day i.e. 16.10.2003 that there were 77 users/students. Previously the average number of users shown in the register were 30 to 40. After the termination of services of the petitioner, another employee of the University of the Computer Centre was put on the same job who recorded the average number of users as 70 to 80. It is

also stated that there was no complaint against the conduct of the petitioner and extension in his service had been recommended as pleaded. Replication has been filed by the petitioner. It has been stated that the register which was checked by the team was in accordance with the procedure. Dr. Balram Gupta, learned Senior Advocate for the petitioner submits that the impugned order is liable to be quashed on the short ground that it has been passed by way of punishment. The order is stigmatic in nature. As a consequence of the aforesaid order, the brilliant career of the petitioner would be prejudicially affected. In such circumstances, it was incumbent on the respondents to comply with the rules of natural justice before passing the order of termination. Even if the respondents had the right in law not to further grant extension in the ad hoc appointment, they had no jurisdiction to stigmatise the character of the petitioner.

5. On the other hand, Mr. R.L. Sharma, has submitted that the petitioner had no right to hold the post since he was only appointed on ad hoc basis. It was not necessary to hold a detailed enquiry. It was further submitted on the basis of the averments made in paragraphs 5 and 6 of the written statement that a very responsible team of the respondent-University conducted a surprise check on the computer centre. It was found in the presence of the petitioner that a number of students had not been issued receipts who were officials permitted to make use of the Computer Centre. In such circumstances, the order of termination is perfectly legal and does not require any consideration.

6. We have considered the submissions made by the learned counsel for the parties.

7. The petitioner being an Ad hoc employee undoubtedly had no automatic right to continue on the post indefinitely. Hence his services were being extended from time to time. His services would have automatically come to an end on the expiry of extended term. During the term his services could have been terminated without any notice. He could have also left the job without any notice, in view of the terms of the appointment order. It is equally well-settled that his services could not be terminated by way of punishment for negligence, misconduct, indiscipline, or embezzlement, without complying with Rules of Natural justice. In other words, if the petitioner's services were to be terminated on account of misconduct, it was necessary for the respondents to issue a show cause notice to the petitioner. He had a right to give explanation to the allegations made against him. He also had a right to produce evidence to show that the procedure which was being observed was in accordance with the accepted norms. The respondents could only have passed the order of termination after dealing with all the defences which may be raised by the petitioner. It is also a settled proposition of law that any order which casts a stigma on an employee, even if the employee happened to be an ad hoc employee can only be passed after complying with the rules of natural justice. A perusal of the order passed by the respondents reproduced above, clearly shows that the respondents have reached a conclusion to the effect that the petitioner is not discharging the duties

honestly. A conclusion has also been recorded that the petitioner has been causing loss to the University with mala fide intention. A further conclusion has been recorded that the petitioner has been negligent for the purpose of his duties and has indulged in indiscipline. The stigmatic remarks could not have been recorded without giving full opportunity of hearing to the petitioner in accordance with the rules of natural justice.

8. This view of ours finds support from the judgment of the Supreme Court in the case of *State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, wherein the Supreme Court has held as under:-

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 have to be examined in each case the motive behind it being material.
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 in unexceptionable form preceded by any 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 thereafter will attract the operation of the said article."

The case of the petitioner would be clearly covered under proposition 3.

9. In the case of *Jarnail Singh v. State of Punjab*, 1986 (2) S.L.R. 278, the Supreme Court while considering the claim of the Appellants, ad hoc appointees, (whose services were terminated on account of misconduct, observed as follows:-

"20. It thus appears on a consideration of the averments made in the affidavits verified on behalf of the petitioners as well as on behalf of the respondents that the impugned order of termination of service of the petitioners had been made on the ground that there were adverse remarks in the service records of the petitioners as well as there were serious allegations of embezzlement of funds against some of the petitioners. It is quite clear that on consideration of all these adverse entries in the service record as well as serious allegations relating to misconduct, the petitioners were not considered fit by the Departmental Selection Committee to recommend the petitioners for regularisation of their services as Surveyors. The impugned orders of termination of services of the petitioners are

really made by way of punishment and they are not termination simpliciter according to terms of the appointment without any stigma as wrongly stated. It is undisputed that the Respondents Nos. 2 and 3 did not follow the mandatory procedure prescribed by Article 311(2) of the Constitution in making the purported orders of termination of services of the petitioners on the ground of misconduct and thus there has been a patent violation of the rights of the petitioners as provided in Article 311(2) of the Constitution."

10. We are of the opinion that the aforesaid observations of the Supreme Court are fully applicable to the case of the petitioner in this case.

11. We find merit in the submission of the learned counsel for the petitioner that the impugned order Annexure P4 if permitted to remain on the record, is likely to adversely affect the provisional career of the petitioner. In view of the above, we allow the petition, quash the impugned order Annexure P4. The respondents are at liberty to pass fresh orders in accordance with law.