

(1999) 03 MAD CK 0068

In the Madras High Court

Case No : Writ Petition No's. 1380 and 1381 of 1991

Swaminathan M.

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (2000) 2 LLJ 1578

Hon'ble Judges : S.S. Subramani, J;J. Kanagaraj, J

Bench : Division Bench

Advocate : M. Radhakrishnan, for the Appellant; S. Natarajan, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Subramani, J.—Both these writ petitions, though filed by different persons, arose under similar circumstances and the relief sought for also similar. Respondents are also same in both the writ petitions.

2. Both petitioners were appointed as temporary Dalayats and as per the impugned orders, their services are terminated. Order of termination is challenged in both these writ petitions on various grounds that it is violative of Article 311(2) of Constitution of India; it is punitive in nature and termination order violates principles of natural justice order is discriminative in the sense that petitioners have been singled out while others similarly situated are retained in service; no departmental enquiry was conducted and the order violates some of the decisions of this Court.

3. Writ petitioner in W.P No. 1380 of 1991 was appointed as per the order of District Judge, Dharmapuri at Krishnagiri as a temporary dalayat and was posted to act as dalayat in Sub-Court, Krishnagiri. Thereafter, he was transferred from Sub-Court, Krishnagiri, to District Court, Krishnagiri. While so, he was given a memo, dated September 28, 1989, asking for explanation for the alleged

misconduct. A reply was submitted by petitioner. It was thereafter, impugned order was passed.

4. Writ-petitioner in W.P. No. 1381 of 1991, was also appointed by District Judge, Dharmapuri at Krishnagiri under similar circumstances and he was also given a show-cause notice on September 28, 1989, along with the petitioner in the earlier case. In fact both of them were given the same memo asking them to explain their conduct why action shall not be taken for their negligence in discharging their duties. It is said that both these petitioners were on night duty in the District Judge's Bungalow and they are found fast asleep and they did not wake up even though the patrolling night police constable blew his whistle continuously to get the para book for signature on September 27, 1989.

5. Even though respondents were served, they did not file counter. But learned Government Pleader argued the matter on instructions.

6. Learned counsel for petitioner submitted that even though petitioners were appointed temporarily, they are entitled to, impeach the termination order on the ground that it is violative of principles of natural justice. Even though impugned order is an order of termination simpliciter the foundation for termination is the allegations made against them, i.e., they were negligent in discharging their duties. Since the termination is consequent to a memo of charge, termination cannot be treated as simple termination but a termination with stigma. Consequently, the impugned order is invalid. It is further argued by learned counsel that even though the order does not say anything about the charges, the Court while exercising its powers under Article 226 can unveil the reason behind the termination and if it is found that the foundation for termination is an accusation against petitioner, the termination is liable to be interfered with. The principle of natural justice will apply whether the appointment is temporary or permanent.

7. As against the said contention, learned Government Pleader submitted that the impugned order does not show any stigma on petitioners and therefore there is no scope for judicial review.

8. Only question required for consideration in this writ petition is whether the impugned orders terminating petitioners are liable to be interfered with by this Court?

9. Learned counsel for petitioners relied on the decision reported in 1991 W.L.R. 98 Sampath v. State of Tamil Nadu. That is also a case where a temporary delayat in District Munsiff Court was proceeded against and finally his services were terminated in public interest. No reason was mentioned except to say that it is public interest. The question posed before the Court was whether the order is made on the ground of inefficiency or misconduct or whether it is only an order of simple termination? In that case, reason for termination was mentioned, in the counter- affidavit of Government that the employee is not fit and suitable for the post of public service and therefore in public interest his services are terminated.

On the facts of the case, their Lordships said that it is not a termination simpliciter but a stigma and consequently, the order was violative of principles of natural justice. In that case their Lordships said that if it is a case of non-suitability of a candidate to hold the post the candidate must be informed earlier about the work and performance and the same has not been done and the order is bad. For the said purpose, Lordship followed the decision of Supreme Court reported in Dr. Mrs. Sumati P. Shere Vs. Union of India (UOI) and Others, .

10. Recently, Hon"ble Supreme Court considered this question elaborately in the decision reported in Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, . That is also a case of temporary employment and the order simply said that the services of petitioner have been terminated. But, prior to the case, a memo was issued to employee alleging that he has fraudulently taken some amount and therefore he should offer his explanations. Delinquent employee denied this allegation. Thereafter, no disciplinary enquiry was conducted nor oral enquiry in the presence of delinquent employee was conducted. But without issuing notice to delinquent employee, an enquiry was conducted. Report was also not given to delinquent employee. It is thereafter a simple order of termination was issued to the employee. That order was challenged by employee before Administrative Tribunal alleging that it is punitive in nature though appeared to be innocuous. Tribunal upheld this plea of delinquent employee and the termination order was set aside. Aggrieved by that order, employer, i.e., Uttar Pradesh State Agro Industries Corporation in that case filed a writ petition before the High Court of Allahabad. Writ petition was allowed and the delinquent employee took the matter before Hon"ble Supreme Court.

11. In para 12 of the judgment their Lordships took into consideration two lines of cases, which deal with such questions. Their Lordships took note of certain decisions of Hon"ble Supreme Court where it has taken the view that if ex parte enquiry or report are motive for termination order, that termination is not to be called punitive merely because principles of natural justice have not been followed. On the other hand, another set of cases wherein Supreme Court has taken the view that facts revealed in the enquiry are not the motive but the foundation for termination in the services of temporary servants or probationer and hence punitive as principles of natural justice have not been followed and such orders are to be declared as void. Both these lines of decisions were considered in that case and their Lordships summarised the law in the judgment, which read thus G. Butchi Raju Vs. Non-conventional Energy Development Corporation of Andhra Pradesh Ltd. and Another, :

"33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, as

stated by shAH, J. (as he then was) in *The State of Orissa and Another Vs. Ram Narayan Das*, . It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary inquiry is held because the purpose of a preliminary inquiry is to find out if there is prima facie evidence or material to initiate a regular departmental inquiry. It has been so decided in, *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, . The purpose of the preliminary inquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge memo issued, reply obtained and an enquiry officer is appointed - if at that point of time, the inquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in *State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, and *Benjamin* case 1967 I LLJ 718 (SC). In the latter case, the departmental inquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases the allegations against the employee merely raised a cloud on his conduct and as pointed by KRISHNA IYER, J., in *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, , the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer, by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found and were merely the motive.

34. But in cases where the termination is preceded by an inquiry 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 inquiry 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 employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the inquiry 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."

12. In view of this decision, we do not think that the decision of learned single Judge of this Court will apply to the facts of this case. In this case, except for issuing memo asking for explanation matter did not proceed further and no

enquiry was conducted. No report was also taken behind the back of petitioners. Therefore, it cannot be said that a memo is a foundation for termination of service of petitioners and we do not find by the impugned order there is any stigma on petitioners. Once we hold that there is no stigma, there is no scope for application of natural justice also. By the terms of employment, their services are liable to be terminated without assigning any reason. We hold that the employer by passing a simple order of termination as permitted by the appointment order has not caused any stigma which would attach to the rest of the career of petitioners. We hold that the impugned orders are not punitive and no ground is therefore made out for interference under Article 226 of Constitution of India.

13. In the result both the writ petitions are dismissed. No costs.