
(2005) 12 OHC CK 0016
In the Orissa High Court
Case No : Writ Petition (C) No. 11888 of 2003

Udaya Chandra Ganda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-12-2005

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Orissa Judicial Service Rules, 1994 — Rule 5

Citation : (2006) 1 OLR 217

Hon'ble Judges : N. Prusty, J;I.M. Quddusi, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; A.G.A. for O.Ps. 1 and 2 and B.K. Dash, for O.P. No. 3, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—This writ petition is directed against the impugned order issued by the State Government vide notification dated 3.11.2003 terminating the petitioner from the service of Orissa Judicial Service Class-II.

2. The brief facts of the case are that the petitioner appeared and declared successful in the competitive examination held by the Orissa Public Service Commission in pursuance of the advertisement No.10 of 1999-2000 under the provisions of the Orissa Judicial Service Rules, 1994 (hereinafter referred to as "the Rules") meant for recruitment to Orissa Judicial Service Class-II by direct recruitment.

3. Pursuant to his selection, the petitioner was appointed along with 36 others on probation vide notification dated 19.4.2001 in the Orissa Judicial Service Class-II under Rule 5 of the Rules, 1994. All the newly selected officers along with the petitioner were placed for training vide notification dated 2.5.2001 issued by the Orissa High Court. After completion of training, all of them, on relaxation of their further period of probation were posted as Addl. Civil Judge (Jr. Division) at different stations. The petitioner was posted at Baripada under the judgeship of

Mayurbhanj. Thereafter, he was transferred and posted as Addl. Civil Judge, (Jr. Division)-cum-J.M.F.C. at Mottu under the judgeship of Koraput-Rayagada-Nowrangpur-Malkangiri vide notification dated 23.5.2003. Vide notification dated 3.11.2003 issued by the State Government, the services of the petitioner were terminated. It is a fact that the petitioner's services remained temporary throughout from the date of his appointment. The impugned order is a termination simplicitor.

4. We have perused the relevant records which were produced before us by the learned Addl. Government Advocate. The services of the petitioner were terminated on the ground of unsuitability by a decision taken by the Full Court in its meeting held on 12.8.2003 which is quoted as under :-

resolve that Shri U.C. Ganda, a Judicial Officer on probation, presently posted as J.M.F.C, Mottu be not retained in service as his services have not been found to be satisfactory. It was also resolved to send necessary recommendation to the State Government for issuing appropriate orders for termination of his services.

5. In the counter affidavit filed on behalf of opposite party No.1, it has been averred that as reported by this Court, the services of the petitioner had never been found to be satisfactory while he was on probation. Further, he was not confirmed in the post of Orissa Judicial Service Class-II by the date of his termination.

6. The petitioner who appeared in person has argued that the foundation of the order itself is of punitive nature and that no enquiry was conducted regarding the suitability before passing the impugned order of termination. The petitioner has placed reliance on the case of State of Maharashtra v. Veerappa R. Saboji and Anr. reported in : (1979)IILLJ393SC .

7. The members of the District Bar Association, Baripada apprised the District Judge, Mayurbhanj that the relationship of the petitioner with a lady advocate had created a very unpleasant atmosphere in the Bar and Bench of Baripada and in the town at various places. It had also happened earlier that the petitioner was going to commit suicide in his official quarter, but the matter was suppressed. The District Judge, Mayurbhanj verified the incidents and found that the petitioner was not hesitating to move, take tea and tiffin and frequently visit the village of the lady advocate and the matter had reached the climax resulting in the legally married wife of the petitioner having 2 to 3 children contacting the District Judge for immediate transfer of her husband from Baripada to a distant place to save their honour,prestige and future. The matter was reported to the High Court. Thereafter, on 12.6.2003 and Hon"ble Judge of this Court, who visited the Courts at Baripada, found the petitioner moving around the lady advocate openly even during the Court hours. He did not hesitate to come over to the lawyers shed of the lady advocate within the Court premises to have chit chat and take tea and snacks sitting in the sheds when the Court premises remained full of litigant public and others. Due to such activities the petitioner

did not take interest in judicial work by holding regular Courts. The father and wife of the petitioner coming to know of such activities, were coming to the Court premises to watch the petitioner. With a view to resist them from doing so, the petitioner enacted a drama of attempting to commit suicide. The matter was also discussed with the Senior Judicial Officers who substantially corroborated the facts but pleaded their helplessness in the matter.

8. In the above circumstances, the Court did not find the petitioner suitable to his post. As his services were purely temporary, a recommendation was made by the Full Court to the State Government to terminate his services.

9. In the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , the Hon"ble apex Court has held as under:

(2) A temporary government servant has no right to hold the post. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If the services of a temporary government servant is terminated in accordance with the terms and conditions of service, it will not visit him with any evil consequences. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination. Before terminating the services of a temporary servant or reverting the person officiating in a higher post to his substantive post, the government may hold a preliminary enquiry to form the requisite satisfaction for the continuance of the officiating government servant. Such an inquiry does not change the nature of the order of the termination or reversion. If, however, it is decided to take punitive action the competent authority may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with Article 311(2) which is applicable to temporary government servants also.

10. In the case of Bishan Lal Gupta Vs. The State of Haryana and Others, which was a case of a Judicial Officer who was a probationer is quoted as under :

These observations must we think, be meant to cover those cases where, even though the probationer may have no right to continue in service, yet, the order terminating his services casts a stigma on his name. This means that the individual concerned must suffer a substantial loss of reputation which may affect his future prospects. In that case justice requires a fuller hearing. If, however, after going into the particular facts and circumstances of a case, the Court finds, as seems to be the position in the case before us, that the enquiry conducted and notices given were intended only to arrive at a finding on the desirability of

continuing a person was not contemplated, it means that no stigma was intended to be cast. It may be that, in some cases, the mere form does not indicate the exact nature and result of the proceeding judged by its nature and its effect upon a probationer. To some extent the Courts are bound to take into account what the incontrovertible evidence disclosed. It may conclude that, even if the reputation of a probationer was to some degree affected by what took place yet, if those facts could not reasonably be disputed by him, it provided a sufficient ground for terminating his services. There is, in such cases, no injustice.

11. In the case of Hukam Chand Khundia Vs. Chandigarh Administration and Another, , the Hon''ble Apex Court has held as under :

2. Mr. P.P. Rao, the learned Senior Counsel appearing for the petitioner has submitted that if termination has in fact been effected by way of punishment, the real purpose of the order and not the outer form of it, is required to be looked into by piercing the veil. He has submitted that if on the score of misconduct, the service is terminated without holding any departmental proceeding and giving the petitioner a chance of showing cause, the order of ex parte termination of service on the ground of misconduct is illegal and void. Even in the case of temporary service, the provisions of Article 311 of the Constitution of India is applicable. In support of such contention, reference has been made to the decision of this Court in Jamail Singh v. State of Punjab. It, however, appears to us that no discriminatory treatment has been meted out to the petitioner as was done to the employee concerned in the said decision. It appears that the service of the petitioner was found unsatisfactory for the reasons indicated herein before. Since the petitioner was holding a temporary service and was on probation, an order of termination simplicitor has been passed without attaching any stigma against him. As the service records were found unsatisfactory, the termination order cannot be held arbitrary and capricious. In the aforesaid facts, we do not think that in reality an order of punishment has been passed against the petitioner in the cloak or pretence of termination simplicitor without holding any departmental proceeding thereby violating Article 311 of the Constitution. We, therefore, find no merit in this petition and the same is dismissed.

12. In the case of All India Judges'' Association Vs. Union of India and others, , the Hon''ble apex Court has referred the statement of American Judges in the judicial accountability according to which Burger, C.J. of the American Supreme Court once said "a sense of confidence in the Courts is essential to maintain the fabric of ordered liberty for a free people and it is for the Subordinate Judiciary by its action and the High Court by its appropriate control to ensure it."

13. The statement of Edmund Burke referred to in the above mentioned case by the Hon''ble apex Court is also quoted as under:

All persons possessing a portion of power ought to be strongly and lawfully impressed with an idea that they act in trust, and that they are to account for their conduct in that trust to the one great Master, Author and Founder of Society.

Further the Hon''ble Apex Court in the case of All India Judges'' Association (Supra) has observed about the society''s expectation from the judicial officers. It has been observed therein that the conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

14. In the review petition of the above mentioned case reported in All India Judges'' Association and Others Vs. Union of India and Others, the Hon''ble Supreme Court has observed that the judicial service is not service in the sense of employment. The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State.

15. In the case of K.V. Krishnamani Vs. Lalit Kala Academy, , the Hon''ble apex Court has held that the very object of the probation is to test the suitability and if the appointing authority finds that the candidate is not suitable. it certainly has power to terminate the services of the employee.

16. In the case of M/s. Oswal Pressure Die Casting Industry, Faridabad Vs. Presiding Officer and Another, , the Hon''ble apex Court has held that when an employee was appointed on probation, if his services were terminated without holding an enquiry the High Court was not right in holding that it was necessary to hold enquiry to come to the conclusion that he was not suitable or fit for being continued in service. Once it is found that the assessment made by the employer was supported by some material and was not mala fide, it was not proper for the High Court to interfere and substitute its satisfaction with the satisfaction of the employer.

17. Coming to the case at hand, the services of the petitioner were terminated, as he was not found suitable, by way of an innocuous order which cannot be regarded as having been based by way of punishment. In view of the foregoing discussions, we find no good ground to interfere in the impugned order.

18. The writ petition is misconceived and is therefore dismissed. No order as to cost.

N. Prusty, J.

19. I agree.