
(2006) 05 MP CK 0063

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 2498 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Shri Balwan Sauda

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

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

Citation : (2006) 05 MP CK 0063

Hon'ble Judges : A.K. Patnaik, C.J;Ajit Singh, J

Bench : Division Bench

Advocate : S.A. Dharinadhikari, for the Appellant; P.L. Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J:

1. In this Writ Petition under Article 227 of the Constitution, the petitioner has challenged the order dated 13th October, 2001 passed by the Central Administrative Tribunal, Jabalpur Bench in O.A. No. 806/2003.

2. The facts briefly arc that the respondent was appointed as Safaiwala in Military Hospital, Sagar and was posted at Jabalpur on probation for a period of two years by order dated 28.4.1999. Thereafter, by order dated 17th August, 2002, the period of probation of the respondent was extended upto 10.11.2002. The petitioner was served with a show cause notice dated 29.4.2003 to show cause as to why his services will not be terminated for remaining absence for one day on 12.9.2002, for one day on 26.9.2002, for one day on 29.0.2002, for two days from 3.10.2002 to -1.10.2002, for two days from 2.12.2002 to 3.12.2002, for three days from 17.12.2002 to 19.12.2002, for two days from 2.1.2003 to 3.1.2003, for six days from 5.3.2003 to 10.3.2003 and for 36 clays from 11.3.2003 to 15.4.2003. Then his services were terminated by order dated 8th May, 2003. Aggrieved, the respondent filed the aforesaid OA No. 80G/2003

before the Central Administrative Tribunal, Jabalpur Bench and by the impugned order dated 13.10.2004 the Tribunal held that the order of termination was stigmatic as it was mentioned therein that the respondent did not perform his duties satisfactorily and in view of his frequent absence without leave his services are terminated, The Tribunal further held that before terminating the services of the respondent the proper procedure for conducting a departmental enquiry should have followed and since this was not done, the Tribunal quashed the order of termination and directed reinstatement of the respondent and payment of back wages from the date of termination till the date of his reinstatement.

3. Mr. S.A. Dharmadhikari, learned Counsel for the petitioner submitted that the view taken by the Tribunal that the order of termination was stigmatic is not at all correct. He submitted that the respondent was on probation and it is well settled that the services of a probationer can be terminated if his services are not found to be satisfactory. In support of his aforesaid submission, he cited the decision of Supreme Court in Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, .

4. In reply, Miss P.L. Shrivastava, learned Counsel for the respondent submitted that it will be very clear from the show cause notice dated 29.4.2003 that the services of the respondent were sought to be terminated for unauthorised absence during the days detailed in the said show cause notice. She further submitted that the respondent submitted his reply to the said show cause notice stating that due to mental illness of his wife, the respondent could not attend to his work. She submitted that respondent also submitted his leave application, but. the same was not considered by the authority concerned. She vehemently argued that since the alleged unsatisfactory work of the respondent was closely associated with unauthorised absence of the respondent which is really a misconduct, the authority should have in consonance with principles of natural justice conducted an inquiry and given an opportunity of hearing in such inquiry to the respondent before terminating his service. She cited judgment of Supreme Court in D.K. Yadav v. J.M.A. Industries Ltd. 1993(4) SLR 126, in which it has been held that before striking off the name of the workman from the rolls for absence of duty for 8 consecutive days, a reasonable opportunity should have been given to the employee and only after proper inquiry his services should have been terminated. She also relied on the decision of the Gauhati High Court in Lalzarzolianl v. State of Mizoram and Ors. 2000(1) SLR 693, wherein the learned Single Judge of the Gauhati High Court has held that where the termination of service of a probationer is not based on the unsatisfactory performance for the period of probation, but on an alleged act of misconduct which has direct nexus with the action taken by the authorities, it will be punitive in nature and an opportunity of hearing has to be given to the probationer before passing the order.

6. It appears from the facts of this case that the respondent was served notice

dated 29.4.2002 to show cause as to why his services will not be terminated for remaining absent, for the periods mentioned in the said show cause notice. Soon thereafter, the order dated 8.5.2003 was served on the respondent which reads as under:

On the verification of your records during the last four years which includes extended period of probation upto 09 May, 2003, you have not performed the duties satisfactorily.

In view of your frequent absence without leave, recommendation of Comdt, MH Jabalpur and the rules on the subject. I hereby terminate your service with immediate effect.

The first paragraph of the aforesaid order quoted above would show that the services of the respondent who was on probation upto 9.5.2003 was not found satisfactory but the second paragraph of the order quoted above would show that the services of the respondent was not found satisfactory because he was frequently absent without leave.

7. This is also clear from the fact that only a few days before the order dated 8.5.2003 was issued to the respondent, the show cause notice, dated 29.4.2003 was issued to the respondent asking him as to why his services will not be terminated for remaining absent on 12.9.2002, 26.9.2002, 29.9.2002, 3.10.2002, 4.10.2002, from 2.12.2002 to 3.12.2002, from 17.12.2002 to 19.12.2002, from 2.1.2003 to 3.1.2003, from 5.3.2003 to 10.3.2003 and from 11.3.2003 to 15.4.2003. There is no mention either in the said show cause notice dated 29.4.2003 or the order dated 8.5.2003 that the services of the respondent were not found satisfactory for any other reason. Hence, the immediate cause for terminating the services of the respondent is unauthorised absence and unauthorised absence amounts to a misconduct and termination of service of an employee for unauthorised absence without following the principles of natural justice would not be justified. In *D.K. Yadav v. J.M.A. Industries Ltd.* (Supra) cited by Ms. P.L. Shrivastava, learned Counsel for the respondent, the facts were that the service of an employee was sought to be terminated without following the principles of natural justice on the ground that he remained absent for 8 consecutive dates, and the Supreme Court relying on its earlier decisions held that discharge of the service of an employee for unauthorised absence was not a discharge simplicitor or a simple termination of service but a discharge camouflaged for serious misconduct and such termination of service of an employee without following the principles of natural justice is not valid. Similarly, in *Lakshmi Precision Screws Ltd. Vs. Ram Bahagat*, , the Supreme Court held that the action of an employer in terminating the services of the employee for unauthorised absence is in violation of principles of natural justice and is liable to be set aside. In *Prithipal Singh Vs. State of Punjab and Others*, , Rule 12.21 of the Punjab Police Rules provided that a Constable who is found unlikely to prove an efficient Police Officer may be discharged by the Superintendent at any time within three years of enrolment and under the said rules a Constable of the

Punjab Police was discharged and the Supreme Court held that even where an order of discharge looks innocuous, but if on a close scrutiny, by looking behind the curtain if any material exists of misconduct for which the order of discharge is passed, such an order of discharge has to be construed as stigmatic.

8. In Pavancndra Narayau Verma v. Sanjay Gandhi PGI of Medical Sciences and Anr. (Supra) cited by Mr. S.A. Dharmadhikari, learned Counsel for the petitioners, on the other hand, the order terminating the services of the probationer stated that the work and conduct of the probationer were not found to be satisfactory during the extended period of probation. In the said case, the order of termination of a probationer was not based on any specific misconduct such as unauthorised absence from work but on generally his unsatisfactory work and conduct and on these facts the Supreme Court held that the termination of the service of the probationer was not based on any allegation of misconduct and was not stigmatic.

9. We have, therefore, no doubt in our mind that the order of termination dated 8.5.2003 is stigmatic and is founded on the misconduct of unauthorised absence of the respondent. It is well settled law since Parshotam Lal Dhingra Vs. Union of India (UOI), that even where the service of a probationer is sought to be terminated on misconduct, reasonable opportunity of hearing as provided in Article 311(2) of the Constitution has to be granted to the probationer. Hence even though the respondent was a probationer, his services on the ground of misconduct of unauthorised absence could not be terminated without affording a reasonable opportunity of hearing to the respondent.

10. For the aforesaid reasons, we do not find any infirmity in the impugned order of the Tribunal. The Writ Petition is accordingly dismissed.

C.C. as per rules.