

(1990) 06 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 576 of 1989

Vikram Pharmaceuticals Pvt. Ltd.

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 15-06-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 1 ILR HP 94

Hon'ble Judges : P.C. Balakrishna Menon, C.J.; Bhawani Singh, J

Bench : Division Bench

Advocate : N.K. Sodhi and Rajiv Sharma, for the Appellant; Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—The Petitioner, Vikram Pharmaceuticals Private Limited, 33, Sector-1, Parwanoo appointed Shri Onkar Chand Dutta (hereafter "the Respondent") as Accounts Assistant in the Company at Parwanoo at a consolidated salary of Rs. 850/- per month from 1-10-1985 (Annexure P/1). The Respondent was to remain on probation for a period of six months from the date of joining his duties. It further envisages that his services could be terminated during the probationary period at any time if the work was found to be unsatisfactory and that the confirmation of the Respondent after the expiry of the probation period was subject to his work and conduct being found to be satisfactory during this period.

2. The Petitioner joined his duties on 1-10-1985 itself. The period of probation was to expire on 31-3-1986. The Petitioner issued a communication (Annexure P-4) dated 31-3-1986 extending the probationary period for one month with effect from 1-4-1986 to April 30, 1986 with a view to see the work and conduct of the Respondent. It also mentions that in case his work and conduct were found unsatisfactory during the probationary period, the services were liable to be terminated from any date without giving any prior notice. It also says that the

Respondent had not been attending the office, so he was advised to attend the Chandigarh office regularly. The Petitioner issued a letter dated April 29, 1986 (Annexure P-6) which is quoted as under

Your probation period expires on 30-4-1986. Your services are no more required by us.

You are requested to clear the shortage of Rs. 6471.67 (Rupees Six thousand four hundred seventy one and paise sixty seven only) in your account by the 15th of May, 1986.

3. The Respondent raised an industrial dispute regarding the termination of his services and brought the matter before the Conciliation Officer, but these proceedings failed. The matter came before the Secretary of the Labor Department who, at one stage, directed the reinstatement of the Respondent but this order was withdrawn soon thereafter.

4. The matter came for consideration before this Court in Civil Writ Petition No. 598 of 1987 and the State Government was directed to reconsider the matter but it declined to refer the same to the Labor Court for adjudication. This order was again challenged before this Court and the State Government was directed to refer the following dispute for adjudication to the Labor Court:

Whether , on the facts and in the circumstances of the case, the termination of employment vide letter dated April 29, 1986 is just, legal and proper and whether or not the relief of reinstatement with back wages or any other appropriate relief could be granted.

5. Consequently, in view of the directions of this Court, the State Government made a reference to the Labour Court in the aforesaid terms. The Labor Court called upon the parties to submit their claims and counter-claims and after allowing the parties to lead evidence, announced the award on August 31, 1989 (Annexure P-7). It held that the Respondent stood automatically confirmed after March 31, 1986 when the initial period of probation for six months expired. It also held that since no domestic inquiry was held against the Respondent, the termination was illegal but looking to the circumstances of the case, the Labour Court directed the Petitioner to pay a lump sum amount of Rs. 35,000/- to the Respondent.

6. The Petitioner has a serious grievance against these findings of the Labour Court, so they have been assailed by moving this petition under Article 226 of the Constitution of India.

7. The case of the Petitioner in nutshell is that the findings of the Labour Court that the Respondent stood confirmed automatically on the expiry of initial period of six months are absolutely wrong and illegal. The finding that domestic inquiry was necessary before the services of the Respondent could be terminated, has also been assailed.

8. It is contended that the Respondent was on probation and in the absence of any statutory provision, automatic confirmation on the expiry of six months probationary period and prohibiting extension beyond six months, the Petitioner continued to remain on probation till specific order confirming him could be passed. Further, it was also contended that although the period of probation of the Respondent was extended through communication of March 31, 1986 (Annexure P-4), duly received by the Respondent, however, even if the case of the Respondent, that it was not received by him is accepted, in that case also no beneficial result could be achieved by the Respondent since he continued to remain on probation till his services were terminated on April 29, 1986 (Annexure P-6).

9. In order to support his submissions, Shri N.K. Sodhi, Senior Counsel for the Petitioner, placed reliance on para-12 of The Management of the Express Newspapers (Private) Ltd. Madurai Vs. The Presiding Officer, Labour Court, Madurai and Another, wherein Das Gupta, J., speaking for the Bench, observed as under:

12. The main, contention urged by Mr. Gupta in support of the appeal is that the High Court was wrong in law in thinking that once the period of six months expired Mr. Bobb still continued to be in service of the Appellant as a probationer. According to the learned Counsel there would be automatic termination of service as soon as the period of probation of six months had expired unless an order of confirmation was made. This contention is, in our opinion, wholly unsound. There can, in our opinion, be no doubt about the position in law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period of his services had either not been terminated or he is confirmed. It appears clear to us that without anything more an appointment on probation for six months gives the employer no right to terminate the service of an employee before six months had expired-except on the ground of misconduct or other sufficient reasons in which case even the services of a permanent employee could be terminated. At the end of the six months period the employer can either confirm him or terminate his services, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer. The High Court was therefore right in rejecting the Management's contention that there was an automatic termination of Mr. Bobb's services after August 28, 1957. Mr. Gupta also tried to persuade us to examine the correctness of the High Court's view that the Labor Court's finding on the question of victimisation was not liable to interference. It appears to us clear that when the Labour Court came to the conclusion on a consideration of the evidence that the Management's action was not benefice but amounted to victimisation of the employee, it would not have been open to the High Court to disturb that finding except on the ground of an error apparent on the face of the record or on the ground that there was no evidence at all to support it. The High Court has not only found no such error but has gone further and indicated its

support of that finding. It is not open to the Management to challenge the High Court's conclusion on this point.

10. Another decision brought to our notice is Dhanjibhai Ramjibhai Vs. State of Gujarat, It is relevant: to quote paras 8, 10 and 11 of this judgment as under:

It is then submitted that the Appellant enjoyed a legitimate expectation of being confirmed on the expiry of two years of probation and on successfully completing the qualifying tests and training undergone by him. We are not impressed by that contention. It" was open to the State Government to consider the entire record of service rendered by the Appellant and to determine whether he was suitable for confirmation or his services should be terminated. There was no right in the Appellant to be confirmed merely because he had completed the period of probation of two years and had passed the requisite tests and completed the prescribed training. The function of confirmation implies the exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service.

9. XX XX XX XX 10. The last contention is that the Appellant should have been heard before his services were terminated. The order of termination does not contain any stigma or refer to any charge of misconduct on the part of the Appellant. It is said that the State Government terminated the Appellant's services because a complaint had been made against him by Messrs Shiraj and Company, whose case had been dealt with by him, and that the Appellants should have been given a hearing to show that there was no basis for the complaint. There would have been substance in this contention if the Appellant's services had been terminated on the ground of misconduct committed in connection with the case of Messrs. Shiraj and Company. On the Contrary, it appears from the record before us that the Appellant's services were terminated because on an overall appreciation of his record of service he was found unsuitable for being absorbed in service.

11. A distinction is sought to be drawn between a probationer whose services are terminated on the expiry of the period of two years and a probationer, who has completed the normal span of two years and whose services are terminated sometime later after he has put in a further period of service. We are unable to see any distinction. It is perfectly possible that during the initial period of probation the confirming authority may be unable to reach a definite conclusion on whether the candidate should be confirmed or his services should be terminated. Such candidate may be allowed to continue beyond the initial period of two years in order to allow the confirming authority to arrive at a definite opinion. It seems to us difficult to hold that a candidate enjoys any greater right to confirmation if he is allowed to continue beyond the initial period of probation.

11. Looking to the facts of this case, we are in agreement with these submissions of the learned Counsel for the Petitioner. In the facts and circumstances of this case as well as the principles laid down in the aforesaid decisions, the position of

the Respondent does not change on completion of six months period of probation. He continued to remain on probation till the day his services were terminated. Decision reported in State of Punjab Vs. Dharam Singh, does not apply in this case for the simple reason that in Dharam Singh's case, Rules specifically provided the maximum period of probation, so the employee was deemed to have been confirmed on completion of this period. This legal position is, therefore, well established and any view contrary to the same cannot be taken.

12. The next submission was that there was no requirement of holding any domestic inquiry since it was a simple case of combination without casting any stigma on the Respondent as is clear from the impugned document. Further, the Respondent was not intended to be punished. His overall work and conduct mistaken into consideration for passing the impugned order.

13. We see substance in this contention also. It is a simple order of termination. It does not cast any stigma on the career of the Respondent. He has not been punished. As a matter of fact, certain incidents have been taken into consideration while assessing his work and conduct. The employer could take note of these incidents in order to assess the overall work, performance and conduct of the Respondent. These factors do not find mention in the order of termination. Therefore, the view of the Labor Court on this aspect of the matter is thoroughly inapt and against law.

14. In view of the acceptance of the principal submissions of the Petitioner, the case of the Respondent that he stood confirmed on completion of the initial period of probation and that inquiry was necessary before terminating his services, stands rejected.

15. Respondent's further submission was that the Petitioner had been harassing him during all this period and he was, at one stage, compelled to file a petition for anticipatory bail against his arrest. We saw this order but it does not in any way support this complaint of the Respondent. Rather, it shows that there was no case against the Respondent and he withdrew his petition from the Court on the information of the Public Prosecutor that no such case has been registered against the Respondent.

16. Equally untenable was the plea of the Respondent that the Petitioner was so much against the Respondent that he did not comply with the order of reinstatement once passed by the Secretary (Labor) to the Government of Himachal Pradesh because this order was cancelled at a later stage on the submissions of the Petitioner before the department concerned. The Respondent cannot derive any benefit from the fact that it was at the instance of the court that the matter was referred to the Labor Court since it was ultimately referred by the State Government and adjudicated before the Labor Court.

17. The case was heard finally on 28-5-1990 and judgment in the case was reserved. The Respondent filed CM.P. No. 568 of 1990 praying for summoning the file of the Labour Court in case No. 15/88. While making submissions in this

application, the Respondent again submitted that on completion of the probationary period, he became permanent and the letter extending the probationary period was rigidly rejected by the Labor Court. He also" stated that the file "would show the order of Sessions Court, Chandigarh, in the anticipatory bail application. Since these submissions were already made by the Petitioner during the course of hearing of the petition and documents were shown to the Court, we see no substance to accept the prayer of the Petitioner at this stage. Moreover, all his submissions have been duly taken note of and answered accordingly.

18. The matter has been examined quite exhaustively, more so in view of the fact that the Respondent appeared in person. We are of the opinion that in view of the facts and circumstances of this case, the Labor Court has not legally decided the matter. Accordingly, this petition is allowed and the order of the Labor Court is set-aside. However, the parties are left to bear their own costs.