
(2009) 02 DEL CK 0035

In the Delhi High Court

Case No : Writ Petition (C) No. 1898 of 2000

Vineet Taneja

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0035

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : G.D. Gupta, S.K. Sinha and Vikram Saini, for the Appellant; A.K. Thakur, for NSICL., Sewa Ram and R.K. Bachchan for R-1, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—The question that arises for determination in this petition is whether the National Small Industries Corporation Limited (?NSICL?) arrayed as Respondent No. 2 in this petition, was justified in issuing Office Order dated 4th April 1997 terminating the Petitioner's services as management trainee with effect from 16th January 1997.

2. The Petitioner was selected as a Management Trainee and informed by the NSICL a letter dated 26th July 1996 that his selection was subject to the following conditions:

(a) The duration of training will initially be one year from the date you report for training, which can however, be extended for another year subject to your satisfactory performance during the first year of training. During the said period, you could be inter-changed and/or deputed for training to other local or outstation units, at the discretion of the management, if and as need be.

(b) You will be paid consolidated stipend of Rs. 4,000/- per month during the first year and Rs. 4500/- per month during second year of training.

(c) You will be entitled to 15 days leave every year during the period of training.

3. Paras 4 and 6 of the said letter, which are relevant for the present case, read as under:

4. The Corporation reserves the right to terminate your training without notice and such termination will not entitle you to any compensation, loss, etc.

6. Your undergoing training in this Corporation, will not confer any right to claim for regular employment in this Corporation. However, on successful completion of training for two years, you will be considered for appointment to a suitable job in the Corporation.

4. By a letter dated 8th August 1996 the Petitioner accepted the appointment. However on the very next day, 9th August 1996, he wrote to the NSICL stating that due to 'some highly unavoidable family circumstances' he was unable to 'undertake training at present' and sought extension up to 30th November 1996. By a letter dated 23rd August 1996 the NSICL informed the Petitioner that it had allowed his request for extending the time for reporting for training up to 30th November 1996 and that if he failed to join by 1st December 1996 it would be presumed that he was not interested in the training and that the same would be treated as cancelled without further reference to him.

5. After the Petitioner reported for the training he was by an Office Order dated 7th January 1997 transferred as management trainee to the Regional Office of NSICL at Noida in Uttar Pradesh. The Petitioner was relieved from the head office on 8th January 1997. He joined the regional office at Noida on 9th January 1997. According to the Petitioner he thereafter fell ill and had to go on leave with effect from 16th January 1997. According to him, he wrote to the Regional Manager at the Regional Office, Noida on 20th January 1997 seeking medical leave from 15th January 1997 to 22nd January 1997. According to him, he again wrote on 31st January 1997 stating that he had been suffering from bronchitis and high fever and sought medical leave with effect from '16th January 1997 till restoration of my health.' He added in the said letter that 'medical certificate in this regard will follow soon.' However according to the Respondent NSICL they did not receive the letters dated 20th January and 31st January 1997. The Petitioner has also not placed on record any proof of the NSICL having received the said letters.

6. The Petitioner by a letter dated 15th February 1997 requested for grant of leave from 16th January 1997 to 28th February 1997 due to sickness as he had been advised complete bed rest and stated that 'medical certificates in this regard will follow soon.' It is significant that till this date no medical certificate was sent by the Petitioner. The aforementioned letter is acknowledged as having been received by the NSICL as is evident from an internal Office Memo dated 20th March 1997 from the Regional Office, Noida to the Head Office, a copy of which has been placed on record. The Regional Office, Noida noted that he had not joined duty even after 28th February 1997, the date till which he had sought leave. It was opined in the said note that the Petitioner did not seem to 'be fit to

serve in the Corporation? on account of irregularity in the attendance.

7. The Petitioner wrote a further letter on 14th March 1997 with which he enclosed three medical certificates. He sought leave up to 16th March 1997. This letter addressed to the Regional Office appears to have been received by them much later.

8. The Petitioner claims to have written again on 18th March 1997 seeking leave till 31st March 1997. However the receipt of this letter is denied by the Respondent and no proof of the said letter having been received by the NSICL is placed on record.

9. The following Office Order was passed by NSICL on 4th April 1997 which is the subject matter of challenge in the present petition:

Office Order

It has been reported that Shri Vineet Taneja, Management Trainee, R.O., Noida applied for leave from 16.1.1997 to 28.2.97 on medical grounds without sending any medical certificate. It has further been reported that after the expiry of said leave neither he attended the office nor sent any information/application. His absence with effect from 16.1.1997 to 28.2.1997 without sanction of leave and un-authorised absence with effect from 1.3.1997 till date has been viewed seriously by the Management. Accordingly it has been decided to terminate his services as Management Trainee w.e.f.16.1.1997 and his name struck off from the rolls of the Corporation with effect from 16.1.1997.

10. It appears that three days thereafter the Regional Office in Noida received the Petitioner's letter dated 14th March 1997 enclosing the medical certificates. It informed the Petitioner by a letter dated 7th April 1997 that his case is being forwarded to the Head Office for suitable action. However since by that date the Petitioner's services had already been terminated. The Head Office at Noida by a letter dated 21st April 1997 wrote to the Petitioner as under:

Dear Sir,

Please refer to your application dated 14.3.1997 applying for Medical Leave from 16.1.1997 to 16.3.1997 forwarded to us by Regional Office, Noida vide their ION No. NSIC: TRG:33:96-97 dated 7.4.1997.

In this connection, your attention is invited to this office order of even number dated 4.4.1997 (sent under Registered cover) terminating your services as Management Trainee w.e.f. 16.1.1997 (copy of said office order dated 4.4.1997 is again enclosed for ready reference).

11. The Petitioner gave a representation on 26th April 1997 protesting against the termination of his services. By a letter dated 7th May 1997 he was informed that the earlier decision dated 4th April 1997 remained unchanged.

12. According to the Petitioner, based on the legal advice that he sought soon

thereafter, he did not file a petition at that time. Subsequently, he came across a news item dated 8th March 2000 in which the decision of the Supreme Court (reported as V.P. Ahuja Vs. State of Punjab and Others,) was discussed. In the said decision it was held that if the order of termination was ex-facie stigmatic and punitive then the termination order passed without following the principles of natural justice was liable to be set aside. The Petitioner thereafter filed the present petition on 4th April 2000.

13. Mr. G.D. Gupta, learned Senior counsel appearing for the Petitioner makes the following submissions:

(a) the impugned order of termination is violative of the principles of natural justice.

(b) Even if the Petitioner was only a trainee, since order was stigmatic, the formality of the show cause notice followed by an enquiry had to be complied with, failing which the termination order stands vitiated. Reliance is placed on the judgment of the Supreme Court in V.P. Ahuja v. State of Punjab 2003 SCC 239.

(c) The Petitioner was really never informed of the reasons why his reasonable request for grant of leave on medical ground was being turned down. Petitioner had to remain absent for bonafide reasons and that the impugned order is therefore punitive and disproportionate.

14. On behalf of the Respondents it is submitted that the petition is barred by laches and the explanation for filing the petition after nearly three years after the order of termination was not satisfactory. When the Petitioner was only a trainee there was no question of NSICL having to issue a show cause notice prior to the termination of his services. The opinion formed that the Petitioner's services were not up to the mark would not be considered to be stigmatic. Reliance is placed on the judgments of the Supreme Court in Krishnadevaraya Education Trust and Another Vs. L.A. Balakrishna, , State of Punjab v. Bhagwan Singh, (2002) 9 SCC 636 , Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, and Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another, .

15. As regards the plea of laches this Court is not entirely satisfied with the explanation offered by the Petitioner for waiting till 4th April 2000 to challenge an order dated 4th April 1997 terminating his services. However this Court finds that even on merits the Petitioner has not been able to make out a case for interference.

16. The law in relation to the termination of the services of a trainee or a probationer is fairly well settled. In Pavanendra Narayan Verma the Supreme Court has explained at length the tests that would apply to determine if an order terminating the services of a probationer is stigmatic. On the facts of that case it was held that the opinion expressed in the termination order that the probationer's work and conduct has not been found satisfactory was not ex

facie stigmatic. In those circumstances the question of having to comply with the principles of natural justice did not arise. In para 29 of the judgment, it was explained (SCC, p.529):

29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

17. On the facts of the present case the decision taken by the Respondent to terminate the services of the Petitioner cannot be held to be either arbitrary or reasonable. Here is a case of an employee choosing to stay away from duty from 16th January 1997 onwards without there being any sanction of such leave. Further although leave was sought on medical grounds, medical certificates were enclosed only with the letter dated 14th March which in any event was received by the Respondent after the termination order had been passed. In the written submissions filed by the petitioner an attempt is made for the first time to introduce an alleged medical certificate issued by a doctor for the period 17th March to 6th April 1997 which the petitioner says he 'remembers at this stage' was sent with letter dated 18.3.1997, though it appears by mistake, it was left out from being mentioned as an enclosure to the said letter.? This Court finds the explanation unconvincing and in any event cannot permit such material to be relied upon for the first time, eight years after the writ petition was filed.

18. In the written submissions the petitioner refers to the decision of the Supreme Court in Dr. Mrs. Sumati P. Shere Vs. Union of India (UOI) and Others, to contend that the contents of the inter-office memo to the effect that the petitioner was 'careless, non-punctual and irregular in attending office' ought to have been communicated to him and that the failure to do so vitiated the order. This Court finds that the decision in Sumati Shere turned on facts which were different from the facts on hand. In the instant case, the termination order dated 4th April 1997 cannot be said to be stigmatic if one were to apply the tests enumerated by the Supreme Court in Pavanendra Narayan Verma and the other decisions discussed therein. In Krishandevaraya Education Trust it was held that 'the probationer is on test and if the services are found not be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.' Again in Muir Mills Unit of NTC (U.P) Ltd. it was held that: 'In the event of a non-stigmatic termination of the services of a probationer, principles

of audi alteram partem are not applicable. Even if the termination order of the probationer refers to the performance being 'not satisfactory', such an order cannot be said to be stigmatic and the termination would be valid.? In State of Punjab v. Bhagwan Singh the Court declined to interfere with the termination simpliciter of the services of a probationer. The contention of the petitioner here that there is a difference between a probationer and a person undergoing training is untenable for the simple reason that the terms and conditions of the petitioner's appointment in the instant case indicate to the contrary. They make it abundantly clear that 'The duration of training will initially be one year from the date you report for training, which can however, be extended for another year subject to your satisfactory performance during the first year of training' and further that 'the Corporation reserves the right to terminate your training without notice and such termination will not entitle you to any compensation, loss, etc.' This was accepted by the petitioner without demur.

19. There is no ground made out for interference with the impugned order dated 4th April 1997 issued by the Respondent No. 2 NSICL terminating the Petitioner's services as Management Trainee.

20. The petition is dismissed with no order as to costs.