
(2004) 05 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 60 of 2000

Vinod Kumar Walia

APPELLANT

Vs

Presiding Judge, Labour Court and Another

RESPONDENT

Date of Decision : 27-05-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2005) 104 FLR 1162 : (2005) 1 LLJ 536 : (2004) 2 ShimLC 8262

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Bhuvnesh Sharma, for the Appellant; Ramakant Sharma and Devyani Sharma, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The petitioner, who is a Diploma Holder in Mechanical Engineering, was appointed as an Assistant Engineer by respondent No. 2 Company vide appointment letter dated January 30, 1991 (Annexure P-2). Such appointment was on probation for a period of six months, which period of probation was extendable. The term regarding probation as contained in paras 8 and 9 of the appointment letter, Annexure P-2 is to the following effect:

"You will be on probation for a period of six months, which can be extended if necessary.

If no orders are passed on the completion of the initial period of six months the probation period shall be deemed to have been automatically extended by three months, i.e., up to nine months, if no orders are passed on the completion of the first nine months, the probation period shall be deemed to have been automatically extended by another three months, i. e., upto one year. However, within the expiry of these three months orders regarding extension of probation or your confirmation would be issued by us.

During the probation period either party will be at liberty to terminate the

appointment by giving thirty days notice or compensation in lieu thereof and without assigning any reason whatsoever."

2. Since the work and performance of the petitioner was not found to be satisfactory, his services were terminated with effect from September 14, 1991 by order dated September 12, 1991 (Annexure P- 3).

3. On an industrial dispute having been raised by the petitioner, the following reference was made by the appropriate Government u/s 10 of the Industrial Disputes Act, 1947 to the Labour Court for adjudication:

"Whether termination of Vinod Kumar Walia, Assistant Engineer on September 14, 1991 during the continuation of his probationary period by the Managing Director acting on behalf of the respondent on account of his unsuitability is legal and valid? If not, to what relief is he entitled to?"

4. The learned Labour Court, on the basis of the pleadings of the parties framed the following issues:

1. Whether the termination of Shri Vinod Kumar is illegal and unjustified? If so, to what relief the petitioner is entitled to? OPP.

2. Whether the petitioner was on probation at the time of his termination? If so, to what effect? OPR.

3. Relief.

5. The learned Labour Court under Issue No. 2 held that the appointment of the petitioner on probation under the Model Standing Orders could not have been for a period exceeding three months and as such the petitioner could not be held to be on probation on the date of termination of his services. Consequently, the termination of the petitioner was held to be bad under Issue No. 1. Answering the reference in the affirmative, the learned Labour Court vide its award dated June 4, 1996 directed the reinstatement of the petitioner in service as Assistant Engineer with effect from September 14, 1991 with all back wages and other consequential benefits.

6. Respondent No. 2 company assailed the award dated June 4, 1996 of the learned Labour Court by way of a writ petition being CWP No. 1911 of 1996. The said writ petition was allowed by a Division Bench of this Court on December 16, 1996 vide order as at Annexure P-5. The Division Bench after setting aside the award remanded the case to the learned Labour Court for disposal afresh. The Division Bench held that the learned Labour Court could not have gone into the question "whether the petitioner was on probation at the time of his termination?" Since such question was beyond the purview of the reference made to it and in the absence of any challenge having been made to the reference as such by the petitioner.

7. On remand, the reference came to be dealt with by the learned Labour Court. Vide award dated November 9, 1999 (Annexure P-6) the reference was again

answered by the learned Labour Court and it was held that the termination of services of the petitioner, who was on probation, vide Annexure P-3 was valid and legal.

8. Feeling aggrieved by and being dissatisfied with the impugned award dated November 9, 1999 (Annexure P-6) the petitioner has approached this Court by way of the present writ petition assailing his termination and the award of the learned Labour Court dated November 9, 1999.

9. There is no denying that the initial appointment of the petitioner was on probation for a period of six months which period was extendable by another six months. It is also on the record that the services of the petitioner were terminated while he was still on probation.

10. The services of the petitioner were terminated vide Annexure P-3. It reads:

"You are working as probationer with us in terms of Appointment letter No. ETL/PERS/E-229/90 dated January 30, 1991. Your initial probation period was of six months. Taking into account your work and performance, it was considered proper to keep you under probation for additional three months. Your work and performance has been reconsidered and we are unable to confirm you in services and it is decided to terminate your services with effect from September 14, 1991.

Kindly find enclosed an account payee cheque for Rs. 3886/- (Rs. Three thousand eight hundred and eighty six only) being amount in lieu of one month's notice and 15 days' salary.

Kindly contact Personal Dept. for your final clearance on any working day."

11. A bare reading of the above shows that nothing adverse or stigmatic is contained therein against the work and conduct of the petitioner. It only contains the comments with regard to work and performance of the petitioner during the probationary period. Keeping in view the work and performance of the petitioner he was found not suitable for confirmation in service and as such his services were terminated.

12. The Hon'ble Supreme Court in *Samsheer Singh Vs. State of Punjab and Another*, : has held that before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of rules governing a probationer in this respect, the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude, the probationer is unsuitable for the job and hence must be discharged/ terminated. No punishment is involved therein. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal of an inquiry. But in those cases the authority may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination.

13. Again in *H.F. Sangati v. R.G. High Court of H.F. Sangati etc. Vs. R.G. High Court of Karnataka and Others etc.*, the Hon^{ble} Supreme Court while dealing with the question of termination of services of a probationer, has observed:

"It is well settled by a series of decisions of this Court including the Constitution Bench decision in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and 7 Judges Bench decision in *Shamsher Singh v. State of Punjab (Supra)*: that services of an appointee to a permanent post on probation can be terminated or dispensed with during or at the end of the period of probation because the appointee does not acquire any right to hold or continue to hold such a post during the period of probation. In *Shamsher Singh's* case it was observed that the period of probation is intended to assess the work of the probationer whether it is satisfactory and whether the appointee is suitable for the post; the competent authority may come to conclusion that the probationer is unsuitable for the job and hence must be discharged on account of inadequacy for the job or for any temperamental or other similar grounds not involving moral turpitude. No punishment is involved in such a situation. Recently, in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, : having reviewed the entire available case law on the issue this Court has held that termination of a probationer's services, if motivated by certain allegations tantamounting to misconduct but not forming foundation of a simple order of termination cannot be termed punitive and hence would be valid. In *Satya Narayan Athya Vs. High Court of M.P. and another*, the petitioner appointed on probation as a Civil Judge and not confirmed was discharged from service in view of the non-satisfactory nature of the service. This Court held that the High Court was justified in discharging the petitioner from service during the period of probation and it was not necessary that there should have been a charge and an enquiry on his conduct since the petitioner was only on probation and it was open to the High Court to consider whether he was suitable for confirmation or should be discharged from service."

14. Dealing with a similar situation of termination of services of a probationer, the Hon^{ble} Supreme Court in *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another*, has held

"4. Generally in connection with an order of termination, a question is raised before the Court as to what is the motive behind the termination of the service of the employee concerned whether the reason mentioned in the order of termination has to be accepted on its face value or the background in which such order of termination simpliciter has been passed should be examined to find out as to whether an officer on probation or holding a temporary appointment has been, in fact, dismissed from the service without initiating any departmental enquiry. If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any

enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge as such penal in nature.

5. When an appointment is made on probation, it pre-supposes that the conduct, performance, ability and the capacity of the employee concerned have to be watched and examined during the period of probation. He is to be confirmed after the expiry of probation only when his service during the period of probation is found to be satisfactory and he is considered suitable for the post against which he has been appointed. The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken, to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment. It need not be said that the appointing authority at the stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation, is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee.

Even if such employee while questioning the validity of an order of termination simpliciter brings on the record that some preliminary enquiry or examination of some allegations had been made, that will not vitiate the order of termination. Reference in this connection may be made to the case of Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, : where it was pointed out that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. It was also said that even if misconduct, negligence, inefficiency may be the motive or the influencing factor which induced the employer to terminate the service of the employee which such employer admittedly had under the terms of the appointment, such termination cannot be held to be penalty or punishment....."

15. Following the abovesaid principle, the order of termination Annexure P-3 vide which the services of the petitioner, who was still on probation, cannot be said to be bad either being stigmatic or punitive. It is an order of termination simpliciter. For the self same reasons no fault can be found with the award dated November 9, 1999 (Annexure P-6) of the learned Labour Court.

16. As a result, there being no merit in the present writ petition, the same is dismissed leaving the parties to bear their own costs.