OIL AND NATURAL GAS COMMISSION AND ORS. A

v.

DR. MOHD. S. ISKENDER ALI

April 14, 1980

[A. C. GUPTA, S. MURTAZA FAZAL ALI AND P. S. KAILASAM, JJ.] B

Termination of Services—Termination Simpliciter—Services of a probationer terminated without further proceeding against the departmental enquiry—Whether offends Art. 311(2) *of the Constitution and attaches any stigma.*

The respondent was appointed on a purely temporary basis to the post of a medical officer in the Oil and Natural Gas Commission. Under the terms and C conditions of service, he was to remain on probation for a period of one year which could be extended at the discretion of the appointing authority He was appointed on October 15, 1965. During the period of his probation, on a report against him for negligence and dereliction of duty, a departmental enquiry was held against him but that was not proceeded with, nor was any punishment imposed on him. His period of probation was extended for six months from 15-10-1966 and before his services were terminated, there D was no express order either confirming him or extending the period of probation. His services were terminated with effect from 28th July 1967.

The respondent filed a writ petition in the High Court on the ground that the order terminating his services was *malafide* and was in fact passed by way of penalty entailing evil consequences. The plea taken by the respondent found favour with the High Court which allowed the petition and quashed the E order of the appellant terminating the services of the respondent. Hence the appeal by special leave by the State.

Allowing the appeal the Court

HELD : 1. A temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so F that he may be retained. The remarks, in the assessment roll merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or not his probation should be extended. These remarks were not intended to cast any stigma. [607G-H. 608A]

R. L. Butail v. *Union of India,* [1971] 2 S.C.R. 55, followed.

2. The contention that the real motive behind the termination of the service G of the respondent was to inflict a punishment on him and as the appellants did not comply with the requirements of Article 311 of the Constitution, the order impugned was illegal is not correct. In the first place, it was clearly pleaded by the Government in its counter-affidavit that although an enquiry was held it was not continued and no punishment was imposed on the respondent. As the respondent was merely a probationer the appointing authority did not consider it necessary to continue the enquiry but decided to terminate the services of the H respondent as he was not found suitable for the job. In the case of a probationer or a temporary employee, who has no right to the post, such a termina-

A tion of his service is valid and does not attract the provisions of Article 311 of the Constitution. [608C-E, G-H, 609A]

Even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the employer to terminate the services of the employee, a power which the appellants undoubtedly possessed, even so as under the terms of appointment of the respondent such a power flowed from the B contract of service it could not be termed as penalty or punishment. [611C-D]

Shamsher Singh and Anr. v. *State of Punjab*, [1975] 1 SCR 814; *Purshottam Lal Dhingra* v. *Union of India*, [1958] SCR 828; *State of U.P.* v. *Ram Chand Trivedi*, [1977] 1 SCR 462; *State of Maharashtra* v. *Veerappa R. Saboji and Anr.* [1980] 1 SCR 551, followed.

3. The order impugned is *prima facie* an order of termination simpliciter C without involving any stigma. The order does not in any way involve any evil consequences and is an order of discharge simpliciter of the respondent who was a probationer and had no right to the service. The respondent has not been able to make out any strong case for this Court to delve into the documents, materials in order to determine a case of victimisation or one of punishment. The short history of the service of the respondent clearly showed that his work had never been satisfactory and he was not found suitable for being D retained in service and that is why even though some sort of an enquiry was started, it was not proceeded with and no punishment was inflicted on him. In these circumstances therefore, if the appointing authority considered it expedient to terminate the services of the respondent—a probationer—it cannot be said that the order of termination attracted the provisions of Art. 311 of the Constitution. Thus, if the appellant found that the respondent was not suitable for being retained in service that will not vitiate the order impugned. [611G-H, E 612B-D]

State of Bihar v. *Gopi Kishore Parsad*, A.I.R. 1960, 689; distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1385 of 1979.

Appeal by Special Leave from the Judgment and Order dated F 10-7-1969 of the Assam & Nagaland High Court in Civil Rule No. 249 of 1967.

B. Datta for the Appellant.

A. R. Barthakur, S. K. Nandy and *P. Bharthakur* for the Respondent.

G The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by special leave is directed against a judgment and order dated 10th July 1969 of the High Court of Assam and Nagaland. The facts giving rise to the appeal lie within a very narrow compass. The respondent, Dr. Md. S. Iskender Ali, was H appointed on a purely temporary basis to the post of a medical officer in the Oil and Natural Gas Commission. Under the terms and conditions of his service, he was to remain on probation for a period of

one year which could be extended at the discretion of the appointing authority. The respondent was appointed on October 15, 1965 and the order of his appointment may be extracted thus :

"No. 52/35/65-ENT Dated the 15th October 1965

MEMORANDUM

With reference to his interview on the 18th August 1965 held at Sibsagar, Shri Dr. Md. S. Iskender Ali is hereby informed that he/she has been selected for a temporary post of Medical Officer in the Oil & Natural Gas Commission on an initial pay of Rs. 325/- p.m. in the scale of pay of Rs. 325-25-500-30-EB-30-800 (plus non practising allowance @ 25% of basic pay subject to minimum of Rs. 150/-). He will be entitled to draw dearness and other allowances at such rates and subject to such conditions as may be laid down in the rules and orders governing the grant of such allowances from time to time."

The order of appointment was accompanied by conditions regulating his appointment and two of them may be extracted below, as they appear to be very relevant for the purpose of deciding the question at issue :—

"(ii) The appointment may be terminated at any time by one month's notice to be given by either side, viz., the appointee or the appointing authority, without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee without notice or before expiration of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof;

(iii) He will be on probation for a period of one year from the date of appointment. This period may be extended at the discretion of the appointing authority, if necessary. During the period of probation, the services are liable to be terminated at any time without notice, and/or assigning any reasons whatsoever."

It appears that during the period of his probation there were some reports against the respondent as a result of which a departmental enquiry was held against him but which does not appear to have been proceeded with nor was any punishment imposed on him. After he

had completed the period of one year on 15-10-1966 his probation was extended for another six months and before his services were terminated, there was no express order either confirming him or extending the period of probation. Ultimately, by an order dated 28th July 1967 the services of the respondent were terminated with effect from 28th July 1967. The order of termination runs thus :—

"No. 57/191/67-ENT Dated July 28, 1967

OFFICE ORDER

Under para 2(iii) of offer of appointment No. 52/35/65-ENT dated October 16, 1965 the service of Dr. Md. Iskender Ali, Medical Officer (still on probation), is hereby terminated with effect from the date of the service of this order on him."

The respondent felt aggrieved by the termination of his services and filed a writ petition in the High Court on the ground that the order terminating his services was *mala fide* and was in fact passed by way of penalty entailing evil consequences. The plea taken by the respondent found favour with the High Court which allowed the petition and quashed the order of the appellant terminating the services of the respondent. The appellant obtained special leave to appeal from this Court; hence the appeal has now been posted before us for hearing.

The only point raised before us by the appellants was that as the respondent was a mere probationer and the order terminating his services was an order of termination simpliciter without involving any stigma or penalty, the High Court was in error in quashing the order of termination and directing the reinstatement of the respondent. The counsel for the appellants submitted that reading the order *per se* there is nothing to indicate that it was passed by way of punishment. As the respondent was a temporary employee on probation, it was open to the employer to terminate his services at any time before he was confirmed. If the employer was satisfied that he was not suitable for being retained in service. The counsel for the respondent, on the other hand, submitted that the order, though *per se* innocuous, was really a cloak to conceal the real mischief which the order purported to perpetuate as the order of termination was preceded by a full-fledged departmental inquiry and a regular chargesheet was submitted against the respondent, it was because the respondent was found guilty that he was punished by way of dismissal from service. In other words, the argument of the respondent was that the order of termination of the

services passed by the appellant was an order which amounted to dismissal from service involving a clear stigma and would, therefore, attract the provisions of Art. 311 of the Constitution and was rightly quashed by the High Court. A

Before examining the respective contentions of the parties it may be necessary to mention a few admitted facts : B

(1) It is not disputed that the respondent was appointed in a temporary post of Medical Officer and on probation of one year.

(2) Being a probationer, the respondent had no right to the service. C

(3) Under the terms of his appointment particularly clauses (ii) and (iii), extracted above, the appointing authority could terminate the services without assigning any reasons.

(4) Under clause (iii) of the conditions of appointment, the appointing authority had a discretion to extend the period of probation and to terminate the services of the respondent without any notice and without giving any reasons whatsoever. D

(5) After the respondent had put in one year's probation, his period of probation was extended for a further period of six months which is a clear pointer to the fact that the appointing authority was not convinced that the respondent had satisfactorily completed the period of his probation. E

F

The confidential roll reflecting the assessment of the work of the respondent during the period 31-12-1965 to 30-12-1966 clearly shows that the officer was careless and lacking in sense of responsibility. The report also shows that the reporting officer recommended that the period of probation should be extended. In accordance with the recommendation, the period of probation was further extended by six months. G The learned counsel for the respondent submitted that the remarks made in the assessment roll went to show that the intention of the appointing authority was to proceed against the respondent by way of punishment. We are, however, unable to agree with this submission. It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory H so that he may be retained. The remarks, in the assessment roll, merely indicate the nature of the performance put in by the officer

A for the limited purpose of determining whether or not his probation should be extended. These remarks were not intended to cast any stigma. In the case of *R. L. Butail* v. *Union of India & Ors.*(1) this Court while indicating the nature of assessment made by the reporting officer observed as follows :—

B

> "These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a Government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comperative merit when questions of promotion, confirmation, etc., arise."

C It was then vehemently contended by the respondent that as the appointing authority chose to institute a departmental inquiry against the respondent for dereliction of duty and negligence in not attending to a baby who died due to his carelessness, the enquiry should have been carried to its logical end and charge-sheet having been framed, the provisions of Art. 311 of the Constitution were clearly D attracted and therefore it was not open to the appellants to have terminated the services by giving the order a cover of termination simpliciter. In other words, the contention was that the real motive behind the termination of the service of the respondent was to inflict a punishment on him and as the appellants did not E comply with the requirements of Art. 311 of the Constitution, the order impugned was illegal. We are, however, unable to agree with this argument. In the first place, it has been clearly pleaded by the Government in its counter-affidavit that although an enquiry was held yet it was not continued and no punishment was imposed on the respondent. In this connection, relevant portion of paragraph 11 F of the counter-affidavit before the High Court may be extracted :—

> "A preliminary enquiry was made before the charge was framed and on the enquiry report a prima facie case having been found against the petitioner due charge was framed against him. No punishment under Regulation 28 of Oil and Natural Gas Commission (Conduct, Discipline and G Appeal) Regulation was inflicted on the petitioner."

In these circumstances, therefore, it is obvious that as the respondent was merely a probationer, the appointing authority did not consider it necessary to continue the enquiry but decided to terminate H the services of the respondent as he was not found suitable for the job. It is well settled by a long course of decisions of this Court that

(1) [1971] 2 S. C. R. 55.

in the case of a probationer or a temporary employee, who has no right to the post, such a termination of his services is valid and does not attract the provisions of Art. 311 of the Constitution. In the case of *Shamsher Singh & Anr.* v. *State of Punjab*,(1) the matter was considered in all its aspects by a Constitution Bench comprising seven Judges of this Court and the Court adumbrated the following propositions :—

> "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 any 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 tempermental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this..... The fact of holding an inquiry is not always conclusive. What is decisive is whether the order is really by way of punishment.....A probationer whose terms of service provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2)....
>
> An order terminating the services of a temporary servant or probationer under the Rules of Employment and without anything more will not attract Article 311. Where a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with Aricle 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct."

Similarly, the matter was previously considered in *Parshotam Lal Dhingra* v. *Union of India*(2) where the following observations were made :—

> "Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to

(1) [1975] 1 S. C. R. 814.
(2) [1958] S. C. R. 828.

A get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi permanent service as defined in the Temporary Service Rules, the termination of
B his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a Governmen servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold
C the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311. In other words and broadly speaking Art. 311(2) will apply to those cases where the Government servant, had he been employed by a private employer, will
D be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules, is, *prima facie* and *per se*, not a punish-
E ment and does not attract the provisions of Art. 311."

All these decisions were reviewed in the case of *State of U.P.* v. *Ram Chandra Trivedi*(1) where this Court observed as follows :—

"Keeping in view the principles extracted above, the respondent's suit could not be decreed in his favour. He was
F a temporary hand and had no right to post. It is also not denied that both under the contract of service and the service rules governing the respondent, the State had a right to terminate his services by giving him one month's notice. The order to which exception is taken is *ex facie* an order of termination of service simpliciter. It does not cast any stigma
G on the respondent nor does it visit him with evil consequences, nor is it founded on misconduct. In the circumstances, the respondent could not invite the Court to go into the motive behind the order and claim the protection of Article 311(2) of the Constitution.

H We, therefore, agree with the submission made on behalf of the appellant that the High Court was in error in arriv-

(1) [1977]1 S. C. R. 462.

A

ing at the finding that the impugned order was passed by way of punishment by probing into the departmental corespondence that passed between the superiors of the respondent overlooking the observations made by this Court in *I. N. Saksena* v. *State of Madhya Pradesh* [1967 (2) S.C.R. 496] that when there are no express words in the impugned order itself which throw a stigma on the Government servant, the Court would not delve into Secretariat files to discover whether some kind of stigma could be inferred on such research."

B

C

The facts of the present case appear to be on all fours with those of the aforesaid decision. From the undisputed facts detailed by us in an earlier part of the judgment, it is manifest that even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the employer to terminate the services of the employee, a power which the appellants undoubtedly possessed, even so as under the terms of appointment of the respondent such a power flowed from the contract of service it could not be termed as penalty or punishment.

D

The matter was again considered at great length by a recent decision of this Court in the case of *State of Maharashtra* v. *Veerappa R. Saboji & Anr.*,(1) where Untwalia, J., observed thus :

E

"Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and find whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government servant who challenges such an order."

F

Applying the principles enunciated by this Court in various cases to the facts of the present case, the position is that the order impugned is prima facie an order of termination simpliciter without involving any stigma. The order does not in any way involve any evil consequences and is an order of discharge simpliciter of the respondent who was a probationer and had no right to the service. The respondent has not been able to make out any strong case for this Court to delve into the documents, materials in order to determine a case of victimisation or one of punishment.

G

H

(1) A. I. R. 1980 S. C. 42.

A Reliance was, however, placed by the respondent on a decision of this Court in the case of *The State of Bihar* v. *Gopi Kishore Prasad*(1), where it was held that although termination of the service of a person holding the post on probation cannot be said to deprive him of any right to the post and is no punishment but where instead of terminating a person's service the employer choose to hold an enquiry into his alleged B misconduct and proceeds by way of a punishment, such a course involves a stigma and an order of termination is bad. Such, however, is not the case here. The short history of the service of the respondent clearly shows that his work had never been satisfactory and he was not found suitable for being retained in service and that is why even C though some sort of an enquiry was started, it was not proceeded with and no punishment was inflicted on him. In these circumstances, therefore, if the appointing authority considered it expedient to terminate the services of the respondent—a probationer—it cannot be said that the order of termination attracted the provisions of Art. 311 of the Constitution. Thus, if the appellant found that the respondent was not D suitable for being retained in service that will not vitiate the order impugned as held and observed by this Court in the cases cited above.

For these reasons, therefore, we are satisfied that the order terminating the services of the respondent was valid and did not involve any stigma and was fully justified in the facts and circumstances of the E present case. The High Court, therefore, erred in law in quashing the impugned order. For these reasons, we allow this appeal, set aside the judgment and decree of the High Court and hold that the order terminating the services of the respondent was valid in law. In the circumstances of the case, there will be no order as to costs.

F S.R. *Appeal allowed.*

(1) A. I .R. 1960 S. C. 689.