

A

V.P. AHUJA

v.

STATE OF PUNJAB AND ORS.

MARCH 6, 2000

B

[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

Service Law :

C

Probationer—Termination of service during the period of probation—Order stating that employee failed in performance of his duties administratively and technically—Held, order is stigmatic and punitive—Could not have been passed without holding a regular inquiry and giving an opportunity of hearing to the employee—Order quashed—Administrative Law—Principles of natural justice.

D

The appellant was appointed as Chief Executive in the establishment of the Punjab Co-operative Cotton Marketing and Spinning Mills Federation Ltd. His services were terminated during the period of probation by an order stating that he failed in the performance of his duties administratively and technically. The writ petition filed by him was dismissed by the High Court holding that the order was not stigmatic. Aggrieved, the appellant filed the present appeal.

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Allowing the appeal, the Court

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HELD : 1.1. The order terminating the services of the appellant, *ex facie*, is stigmatic as also punitive. The order is founded on the ground that the appellant had failed in the performance of his duties administratively and technically. It is for this reason that the services of the appellant were terminated. [132-D]

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1.2. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with principles of natural justice. In the instant case, the order which on the face of it, is stigmatic, could not have been passed without holding a regular inquiry and giving an opportunity of hearing to the appellant, and is, therefore, quashed. The appellant shall be put back on duty with all consequential benefits. [132-G; 133-A-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1965 of 2000. A

From the Judgment and Order dated 26.3.99 of the Punjab & Haryana High Court in C.W.P. No. 4084 of 1998.

M. Qamaruddin, Ambar Qamaruddin, Ajay Talesara and Mrs. M. Qamaruddin for the Appellant. B

Mrs. Jayshree Anand (Additional Advocate General, Punjab), G. Sivabalamurugan, Rajiv Dutta and Ashok K. Mahajan for the Respondents.

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Leave granted. C

The appellant was appointed as Chief Executive in the Establishment of Punjab Co-operative Cotton Marketing & Spinning Mills Federation Limited by order dated 29th of September, 1998. One of the terms of his appointment was that he would be on probation for a period of two years which could be extended further at the discretion of the Management. It further provided that during the probation period, the Management shall have the right to terminate his services without notice. His services were terminated by order dated 2.12.1998 reading as under :- D

"ORDER E

Sh. V.P. Ahuja, S/o Late Sh. H.N. Ahuja was appointed on probation for 2 years as Chief Executive of the Coop. Spg. Mills Ltd., vide orders Endst. No. Spinfed/CCA/7844-45 dated 29.9.98 and posted at Bacospin. However, he failed in the performance of his duties administratively and technically. Therefore, as per Clause-I of the said appointment order, the services of Sh. V.P. Ahuja are hereby terminated with immediate effect. F

Sd/-
(Managing Director)
SPINFED" G

This order was challenged by the appellant in the Punjab and Haryana High Court through a Writ Petition which was dismissed by order dated 26th of March, 1999 reading as under :- H

A "Vide order dated 2.12.1998, Annexure-P-17 petitioner has been asked to quit, concededly during the period of probation. The impugned order is not stigmatic and nothing at all has been urged that may detract from such an order being passed during the currency of probation. Insofar as, thus, order, Annexure-P-17 is concerned, we find no infirmity therein."

B It is this order which is challenged in this appeal.

The observation of the High Court that :-

C "The impugned order is not stigmatic and nothing at all has been urged that may detract from such an order being passed during the currency of probation."

D is surprising, to say the least. The order by which the services of the appellant were terminated has already been quoted by us above. The order, *ex facie*, is stigmatic as also punitive. The order is founded on the ground that the appellant had failed in the performance of his duties administratively and technically. It is for this reason that the services of the appellant were terminated. As pointed out above, the order, *ex facie*, is stigmatic.

E Learned counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of probation was two years, his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant cannot claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were terminated in terms of the conditions set out in the Appointment Order. This plea cannot be accepted.

F A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

G The affidavits filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is

H

stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant. A

The entire case law with respect to a "probationer" was reviewed by this Court in a recent decision in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Others*, [1999] 3 SCC 60=AIR (1999) SC 983=JT (1999) 1 SC 396. This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it. B

For the reasons stated above, the appeal is allowed, the judgment dated 26.3.1999, passed by the High Court is set aside and the Writ Petition of the appellant is allowed. The order dated 2.12.1998, by which the services of the appellant were terminated, is quashed with the direction that he shall be put back on duty with all consequential benefits. No costs. C

R.P.

Appeal allowed.