KRISHNADEVARAYA EDUCATION TRUST AND ANR. A

v.

L.A. BALAKRISHNA

JANUARY 15, 2001

[B.N. KIRPAL AND MRS. RUMA PAL, JJ.] B

Service Law

Probation—Termination of service during—Validity of—Respondent appointed as Assistant Professor—Termination of service during probation— Termination order stating that job proficiency of respondent was not upto the mark—Termination order successfully challenged before Tribunal— Subsequently fresh termination order passed—This order also set aside by the Tribunal—High Court upheld the decision of Tribunal—Appeal before Supreme Court—Decision of Tribunal set aside—Held second termination order was innocuously worded—Even the ground mentioned into the first order viz., the job proficiency of the respondent was not upto the mark was a valid reason for terminating the service of the respondent—That reason cannot be cited for contending that the termination was by way of punishment. C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No : 628 of 2001. E

From the Judgment and Order dated 09.02.2000 in CRP 3807/99 of the High Court of Karnataka at Bangalore.

P.P. Rao, A.K. Goel, Ms. Kiran Suri and Sheela Goel for the appearing parties. F

The following Judgment of the Court was delivered :

Special Leave granted.

The respondent was appointed to the post of Assistant Professor on 22nd September, 1990 on probation. Within the probationary period, by order dated 16th June, 1991, his services were teminated. In the order terminating the services, it was mentioned as follows: G

"As a matter of policy, as usual, a committee was constituted to go H

A into the general performance of each staff. The committee after having gone through the records of each individual right from the date of his/her inception into the Institute, is of the opinion that your on the job proficiency is not upto the mark. Hence, the Institution feels that your services are no longer required."

B The aforesaid order was challenged before the Educational Tribunal on the ground that the order terminating the appointment cast a stigma and, therefore, such an order could not be passed without holding a departmental inquiry.

Before the Tribunal, the appellants herein conceded and the said order C of termination was set aside. Subsequently again, within the period of probation, a fresh order of termination was passed which was as follows :

"Sri L.A. Balakrishna, Assistant Professor, Department of Mechanical Engineering will be relieved of his duties with effect from 1.8.1991, he may be paid his dues if any."

D This order was again challenged and the Tribunal came to the conclusion that the real reason for passing this order was that his services were found to be unsuitable and, therefore, this was by way of punishment. The order was set aside and the high Court upheld the decision of the Tribunal. Hence, this appeal.

E There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, than the employer has a right to terminate the services as a reason thereof. If the termination F during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, normally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services G are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

H If such an order is challenged, the employer will have to indicate the

grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not *ipso facto* mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

A

B

In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if we take into consideration the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not upto the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment.

C

We, accordingly, allow this appeal and set aside the decision of the Tribunal as well as that of the High Court. No costs.

D

T.N.A

Appeal allowed.