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Km. Madhu Sinha Petitioner

Union of India and Ors. Respondents

Hon'ble Mr. K. Chayya, Member (A) .

Civil Misc. Writ petition No. 9241 of 1980

2. The petitioner is aggrieved with the termination order dated 3.9.80. The facts are that the petitioner was appointed by the Director of Defence Institute of Work study (Ministry of Defence) Mussoorie on 12.4.1977 as Junior Scientific Assistant (II) Librarian. She was placed as usual on two years probation. Her work and conduct was not found satisfactory. Therefore in pursuance of the proceedings of the Departmental Promotion Committee held on 9.3.1979, the probation period of the petitioner was extended for One year by an order dated 9.4.1979 w.e.f. 12.4.1979. The

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period of probation was further extended for three months w.e.f. 12.4.80. For the third time the period of probation of the petitioner were extended upto 12.10.1980. During the extended period of probation her services were terminated vide order dated 3.9.80. Thus the services of the petitioner have been terminated during the period of probation.

3. The petitioner has made allegations of malice against Sri K.K. Karaye who joined as Director Defence Institute of Work study sometime in April 79. Sri K.K. Karaye has denied the allegations on affidavit. The respondents have alleged that her performance was not found satisfactory and therefore her services have been terminated without any stigma.

4. We have perused the service record of the petitioner. In the very first A.C.R written on or about 15.12.77, the then Deputy Director has awarded the following remarks to her:

" She has a shortcoming which has been informed to her verbally."

She was issued a written warning on 27.2.1978 as follows:-

Warning

" It has been observed that during day today work you are not taking much interest in performing your duty as a Librarian inspite of verbal warnings on many occasions in the past. Even though

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you are a qualified Librarian and also you were extended the procedure to classify all the books and place them properly in their respective locations, you did not carry out the job as instructed instead you started classifying unclassified books according to present location.

2. In view of the above, you are duly warned that if no improvement is noticed in future, serious view will be taken."

She was further communicated shortcomings in regard to her performance for the period from 12.10.1977 to 11.4.1978 as follows:-

" (i) Initiative : should take more initiative

(ii) Whether fit for retention in present grade: Her performance to be seen for some time more

2. She is advised in her interest to try to overcome the above shortcomings."

Despite extension of probation the applicant did not improve her work. Therefore finally she was issued a letter dated 30.6.1980 in the following words:-

" Your probationary period is further extended for a period of 3 months w.e.f. 12th July 1980 as you have not shown any improvement in your work. This is the last and final chance being given to you to show improvement in your work. In case you failed to show any improvement, your services will be terminated as per terms and condition of your appointment. "

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It is therefore not correct to say that there was no material for terminating the employment of the petitioner nor it can be accepted that the impugned order against the petitioner was passed to impose any penalty on her. The order also cannot be said to be arbitrary or whimsical.

5. The concept of probation, at one time, was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed from service except by providing an opportunity to meet the allegations if any against him in accordance with the principles of natural justice, the employer was put on guard. In order that an incompetent or inefficient servant is not fastid upon the employer because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before absorption in service. Thus the period of probation provides an opportunity, to the employer to observe the work, ability, efficiency, sincerity and competence of the employee. Viewed from this aspect, the courts have held that the termination of service of a probationer during or at the end

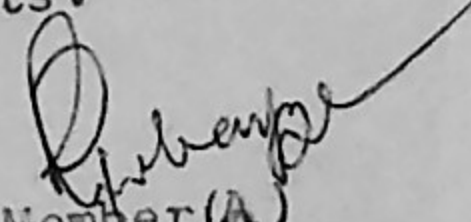
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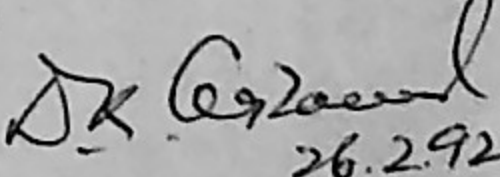
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end of period of probation will not ordinarily by itself be a punishment.

6. The High Court of Judicature at Allahabad, had occasion to consider the question of 'lien' on a post in M.P. Tewari Vs. Union of India 1974 A.L.)427. It has been observed in the said case "a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier." We are fully in agreement with the view expressed in the above case. Therefore, the order of termination (simplicitor) without casting any stigma during the period of probation well within the competence of appointing authority. Consequently applying the principle of law enunciated in the case of State of Uttar Pradesh Vs. Kaushal Kishore Shukla JT 1991(1) S.C. 108, we are of the view that impugned order of termination, which is simplicitor and not punitive on account of unsuitability, cannot be challenged.

7. In the result the petition is dismissed without any order as to costs.


Member (A)


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Member (J)

Dated: 26th February: 1992

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