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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 673 of 1988.
T.A. No.

DATE OF DECISION 10th November, 1993.

Shri Harishkumar Vasudevhai Pandya Petitioner

Shri M.D.Rana

Advocate for the Petitioner(s)

Versus

National Research Centre for Respondent
Groundnut, Junagadh,

Shri R.A.Mishra. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Member (J)

The Hon'ble Mr. M.R.Kolhatkar : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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Shri Harishkumar Vasudevhai Pandya,
Senior Technical Assistant (T.IV),
National Research Centre for Groundnut,
Timbavadi,
Junagadh.

...Applicant.

(Advocate : Mr.M.B.Rang)

Versus

1. The Director,
National Research Centre for
Ground Nut, Timbavadi,
Junagadh.

2. The Director General,
Indian Council of Agriculture Research,
Krushi Bhavan,
New Delhi.

...Respondents.

(Advocate : Mr.R.A.Mishra)

JUDGMENT
O.A.NO. 673 OF 1988.

Dated : 10.11.1993.

Per : Hon'ble Mr.M.R.Kolhatkar : Member (A)

1. This is an application under Section 19 of the Administrative Tribunals Act, 1985, impugning the order of termination of the applicant, dated 15.10.1988, Annexure-A/ at page.14, as a probationary Senior Technical Assistant, in Project Co-ordinating Unit (Groundnut) National Research Centre for Groundnut, Junagadh.

2. The applicant has contended that his appointment under the Memorandum dated 24.02.1988, Annexure-A, at page - 10, though stated to be temporary is potentially of a permanent nature and he is also entitled to confirmation.

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It is contended that the National Research Centre for Groundnut, Junagadh, is an industry and that the termination of the service of the applicant was timed just after he had completed 220 days, a few days short of 240 days, which would have entitled him to protection under Section 25 of the Industrial Disputes Act. It is stated that the applicant had a distinguished career (M.Sc. 1st class distinction with 84% of marks) and he wanted to advance the same and accordingly he had submitted an application on 08.07.1988, for the post of Agricultural Officer in Gujarat Agricultural University in response to an advertisement which appeared on 15.06.1988, the last date for receipt of application being 30.07.1988.

The Director reportedly told the applicant that he should first resign and then submit the application as a fresh candidate direct. The applicant stated that if he was selected, he undertakes to resign. The applicant appears to have filed a Civil Suit in the Court of the Civil Judge, Senior Division, Junagadh, on 27.07.1988, on its file no.493. According to the applicant the Court had ordered the Director to return the application to the applicant so that the applicant could submit the application in time. But the Director did not comply with this order of the Court. The memorandum dated 29.07.1988, at Annexure-A, at page-3, refers to the letter of the resignation of the applicant and advises applicant to withdraw the two cases

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filed in the Court as a precondition and thereafter request of the applicant for acceptance of resignation could be considered. The applicant however, states nothing about the resignation or withdrawal of the same.

Applicant states that the final date of sending the application to the **Gujarat Agricultural University**, was extended by the University to 30.08.1993. The applicant withdrew the suit in the Court and in the mean while his original application was forwarded. According to the applicant, the Director, threatened him that he would not get appointment in the Agricultural University to which he would send adverse report against him. He threatened that he would not get appointment under Government of India. The applicant contends that the Director was biased against him. The applicant states that there were other persons like **Shri D.L.Parmar**, **A.G.Patel**, **P.V.Jhala**, and **M.K.Gangani** all the Research Assistants who have been retained but the **applicant** has been singled out for termination, because, he had filed a Civil Suit and Contempt Proceedings. The applicant has prayed that the order terminating his services dated 15.10.1988, should be declared as void and ineffective and the petitioner may be deemed to continue in service and for further and better reliefs.

3. The respondents have in the reply stated that the applicant was appointed to the post of Sr. Technical Assistant (T-4) in the scale of Rs.1640-2900/- w.e.f. 02.03.1988. The Director, National Research Centre, for Groundnut, Junagadh, is the appointing authority vide order dated 09.03.1988 at Annexure-R/1, and is competent to terminate his services. His services were terminated w.e.f. 15.10.1988, after considering the performance of the applicant for over seven months on account of his unsuitability/inadequacy for the job. According to the respondents the applicant was a probationer and his services were terminated according to the terms of appointment which are reproduced below :

"He will be on probation for a period of two years from the date of his joining the post, which may be extended at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render him liable to be discharged from service.

His appointment may be terminated without assigning any reason by one month's notice on either side under Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965. During the period of probation however, the appointing authority may terminate the service of appointee without notice and without the payment of salary in lieu thereof."

4. According to the respondents, the applicant's services were not covered under the Industrial Disputes Act. Moreover the applicant's services were simply terminated without assigning any reasons or stigmatizing him. He had no right to the post. The National Research Centre for Groundnut, Junagadh, is not an industry. According to the respondents, the applicant had applied for two posts : (1) the post of a Research Officer, which was in the same ~~grade~~ grade and (2) the post of Assistant Professor which was of a higher grade. Under the Rules-vide Annexure-R-II, the applications of probationers for posts in the same grade within or outside I.C.A.R. are not to be forwarded. Hence, the application for the post of Research Officer was not forwarded. However, his application for the post of Assistant Professor was forwarded, vide Annexure-R/3. It was urged that applicant had suppressed the fact of there being two applications for out-side post. Inspite of this procedure, the applicant had filed a Civil Suit on 27.08.1988, which was withdrawn by the applicant on 28.09.1988. It is stated by the respondents that the Civil Court, Junagadh, did not have jurisdiction to decide the matter. The respondents have denied that the applicant was asked to resign, or that the Director of the Centre was furious and angry and that he was biased. The respondents have denied that there was a pick and choose

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of
 policy ltermination of the applicant. The respondents
 have stated that although the applicant was offered one
 month's pay in lieu of the notice he refused to accept
 the same. According to the respondents the applicant
 is not entitled to any relief. Subsequently, the
 respondents also filed a copy/letter dated 23.05.1989,
 from Gujarat Agricultural University, showing that the
 applicant has been appointed as a Senior Research
 Assistant in the University, where he was requested to
 join on or before 25.05.1989.

5. We have heard the learned advocates for the
 parties. The applicant has relied on Kapurthala Central
 Co-operative Bank Ltd., Vs. Presiding Officer Labour Court,
 Jullunder, 1984-Lab. I.C. 974., to emphasise the point
^m that when under the Industrial Disputes Act, termination
 takes place just a few days ~~short~~ of 240 days, it is
 unfair labour practice. In particular the judgment at
 para - 10 states as below : -

"The practice of retrenching a work-
 man close to his attaining a year's
 continuous service in order to
 frustrate his attaining rights under
 chapter V.A. I.D.Act is an unfair
 labour practice unless there are reason
 with the employer with regard to the
 conduct and service of the workman
 being unsatisfactory."

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6. In our view this judgment is not of any help to the applicant. Whether the I.C.A.R. or the Research ^{Institute} there under are or are not industry has not been argued before us at length. Since the applicant has been appointed as a probationary officer in terms of Rules allied to Central Civil Services (Temporary Service) Rules 1965, the protection of Industrial Disputes Act, is not material and the point at issue can be decided on the basis of law relating to termination of a probationer. On this point the applicant has cited the case of M. Parmanandam Vs. Regional Manager, SBI, Vijaywada-1989-Lab. IC 1685, A Andhra Pradesh High Court, which the judgment is delivered by Hon'ble K. Rama Swamy J. which extensively reviews the law on the point of probationer's termination. The relevant ratio is quoted below :

"Before confirmation of the probationer, the appointing authority has power to terminate the probation as well. But the termination should be for relevant, valid and just reasons. The court has to see whether the misconduct is motive or foundation. The alleged misconduct must be in relation to the discharge of the duties as a probationer. If the misconduct is the foundation, necessarily an enquiry has got to be made and reasonable opportunity given to the probationer. According to the Locus classicus Samesher Singh Vs. State of Punjab-AIR 1974 SC 2192"

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when (the misconduct) is a mere motive, then Court cannot go into the motive but if it is the foundation, the Court is free to go into the question whether the order of termination of the probationer is founded on misconduct."

7. According to the applicant, the order of termination is not termination simpliciter but it is a punitive order passed in the context of the Civil Suit filed by the applicant against the respondent no.1, and as such he is entitled to get a reasonable opportunity of showing cause before the termination. Since this opportunity was not been given to him the order is liable to be set aside.

8. *W.M.* The respondents have denied that there was any punitive action. They have also highlighted the conduct of the applicant namely his failure to bring out that he had not made one application but two **applications** for outside posts, one of which was covered by Rules which was forwarded by the respondent no.1. The respondents have also pointed out that the applicant has since gained employment in Gujarat Agricultural University w.e.f. 25.05.1989, and on that ground as well, the applicant hardly deserves any relief.

9. We have considered the matter carefully. The latest judgment of the Supreme Court on this point is

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Governing Council of Kidwai Memorial Institute of ^{onc} ~~anology~~
Bangalore Vs. Pandurang Godwalkar, (1993 (2) SLJ 174).

In that case the court held that ~~was~~ the decision to terminate the services of the delinquent appear to have been taken by the Governing Council on the total and over-all assessment of the performance of the applicant in terms of the conditions of appointment and upheld the same. The principle of ~~tearing~~ ^{tearing} 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 levelled and the action taken.

If the decision is taken after taking into consideration the over-all performance and some action or inaction on the part of such employee it cannot be said that it amounts to his removal from service as punishment.

10. In that case reliance was placed on behalf of the respondents on the case of Anoop Jaiswal Vs. Govt. of India, ^{Handle} AIR 1984, SC 636. The Supreme Court distinguished that case by noting that in that case a clear finding was recorded by this Court that the service of applicant had been terminated because a particular misconduct was alleged against him which was never ~~was~~ enquired into.

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11. In our view the ratio of Anoop Jaiswal's case applies to the instant case. There is no evidence that the respondent had made a total and over-all assessment of the performance of the applicant. The immediate superior of the applicant is one Mr.M.S.Basu incharge project Co-ordinator, Groundnut - vide p.13. He is the person who is in a position to give a report on over-all technical performance of the applicant. There is nothing on record to show that any such report was submitted or was obtained. On the other hand the memorandum dated 29.07.1988, at page.12, clearly brings out that the respondent no.1, had taken an ~~unfair~~ charge against the applicant because of his action in filing the Civil Suit. For ready reference, we reproduce the contents of the memorandum : (Annexure-A/3, at Page.12) :

With reference to his resignation letter dated 29.7.1988 Shri H.V.Pandya, Technical Assistant T-4 is hereby asked to clarify the following points for consideration of his case for acceptance of resignation immediately : -

1. He has filed two applications in the Civil Court, Junagadh against the Director, N.R.C.G. Junagadh regarding non-forwardal of his application for the post of Agricultural Officer at GAU. He should, therefore, explain as to why he has resorted to approach the Court when he has decided to resign.

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2. Normally, one month notice is required to be given by a temporary employee while submitting resignation from a post. Here, the option of giving a Month's pay in lieu of notice is not available for the employee. Therefore, the reasons for not giving one month's notice may be explained.
3. In order to consider acceptance of his resignation, he is required to be free from all outstanding dues and cases. Therefore, he may withdraw the two cases filed by him in the Court and bring the Court's order to this effect, for further consideration.

Shri B.V.Pandya, Technical Assistant-T-4 is, therefore, asked to complete the above conditions immediately so as to enable the Appointing Authority to consider his request for acceptance of resignation.

This issues with the approval of the Director, NRCG, Junagadh."

This letter indicates administration's unhappiness over the fact of the applicant having filed a Civil Suit.

The Administration has ~~twisted~~ ^{twisted} bursted the ordinary meaning of the words. This is clear from item no.3, of the memorandum.

It is stated that the resignation cannot be accepted unless the applicant is free from all dues and cases.

Actually, the addition of the word "and cases" is a sly introduction by the administration for which there is no

basis under Rules. Whether the Civil Judge, S.D. Junagadh, had jurisdiction to consider the applicant's suit as a different matter. But the applicant had a right to approach, the Court of Law for redressal of his grievance. There is no Rule or law which requires that the applicant must withdraw the cases filed by him before the resignation letter can be accepted. Thus, the contention of the applicant that the respondent no.1, was unhappy with him because of his filing a Civil Suit and because of his initiating contempt proceedings appears to borne out by the record. We therefore, hold that the Civil Suit filed by the applicant was a foundation for the termination order. This being so, the applicant was entitled to a regular enquiry and hearing which respondent no.1, has not afforded to him.

12. So far as ^{the} question of grant of relief is concerned we have taken into account the fact that the applicant has subsequently been employed in Gujarat Agricultural University. Therefore, any relief in connection with reinstatement is not required under the circumstances.

13. We therefore, pass the following order :

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ORDER

"The order dated 15.10.1988, terminating the services of the applicant is quashed and set aside.

2. The applicant should be deemed to be in the service of the National Research Centre for Groundnut, Junagadh, for the period from 15.10.1988 till 25.5.1989, when he gained a regular out-side employment.

The applicant is entitled to full salary and other allowances, for this period. If the amount is not paid to the applicant within ^{of this order} three months, the applicant will also be entitled to the interest at the rate of 12% on the amount due and payable.

No order as to costs."

R.C.Bhatt

(R.C.Bhatt)
Member (J)
10.11.1993.

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)
10.11.1993.

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