

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.176/2000

Date of order: 6.2.2003

Lokesh Kumar Jain, S/o Sh.S.M.Jain, R/o Bambar Gate, Opp.
Govt. Agricultural Farm, Jaipur Road, Tonk, Ex LDC,
Kendriya Vidyalaya, Baran.

...Applicant.

Vs.

1. Kendriya Vidyalaya Sangthan, 18, Sanstnagat Kshetra,
Shahid Jeet Singh Marg, New Delhi through Commissioner.
2. Asstt.Commissioner, Kendriya Vidyalaya Sangthan, Regional
Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
3. Dr.C.P.Acharya, Principal, Kendriya Vidyalaya, Station
Road, Baran.

...Respondents.

Mr.S.K.Jain - Counsel for applicant.

Mr.V.S.Gurjar - Counsel for respondents.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE Mr.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant has challenged the order passed by the respondent No.2 terminating the services of the applicant w.e.f. 28.3.2000 as conveyed vide order dated 3.4.2000 (Annex.A1). It was further stated that an amount of Rs.4281/- against one month notice has been deposited in the S.B A/c No.1022 existing with the Bank of Baroda, Branch Barar vide Cheque No.349068 dated 3.4.2000.

2. The applicant was temporarily appointed as LDC in Kendriya Vidyalaya, Baran vide order dated 14.8.97 (Annex.A2) and he joined as such on 19.8.97. The terms and conditions of the appointment letter provides that:

"He will be on probation for a period of two years which may be extended. Upon successful completion of probation he will be confirmed in his turn according to availability of permanent vacancies.

During the probation and thereafter, until he is confirmed the services of the appointee are terminable by one months' notice on either side without any reason being assigned thereof, the appointing authority however, reserves the right to terminate the service of the appointee before expiry of the stipulated period of notice by making payment of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof."

The period of probation was extended for another term of six months w.e.f. 19.8.97 vide letter dated 24.9.99 (Annex.A4). By mistake in the above order for six months from 19.8.97 was recorded which was corrected w.e.f. 19.8.99 vide corrigendum Annex.A5. This period of probation was subsequently extended for further six months w.e.f. 19.2.2000 vide letter dated 4.2.2000 (Annex.A6). On 28.3.2000, the impugned order of termination was issued. The language used in the order reads as under:

"Sh. Lokesh Kumar Jain, LDC, Kendriya Vidyalaya, Baran is hereby informed that his services shall stand terminated with immediate effect in accordance with the terms and conditions as mentioned in his offer of appointment No.F22-6/97-KVS(JPR)/LDC dated 14.8.97 and this Office Order No.F.3-45/99-KVS(JPR) dated 24.9.99, 10.1.2000 and 4.2.2000."

According to the applicant, the period of probation lapsed on 18.8.99 and therefore, the order dated 24.9.99, extending the period of probation is wholly illegal and without

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jurisdiction and the applicant cannot be said to be on probation. In the alternative, the applicant has also submitted that in case it is assumed that the respondents could extend the probation period even after maximum period of probation in that eventuality it cannot be said that the work and conduct of the applicant was wholly unsatisfactory and the period of probation was extended with a view to afford an opportunity to the applicant to improve his performance. It is further submitted that the period of probation was further extended vide order dated 4.2.2000 for six months w.e.f. 19.2.2000. The said period was to expire on 18.8.2000 whereas the impugned order of termination was passed on 28.3.2000 without seeing the performance of the applicant. It is, mainly on these grounds, the applicant has filed the present application thereby praying for appropriate order or direction for setting aside the impugned order of termination (Annex.A1) and the applicant be declared to be in services for all purposes and to pay salary and allowances accordingly.

3. The respondents have contested the case by filing reply. It has been stated in the reply that the services of the applicant have been rightly terminated in accordance with the terms and conditions as mentioned in the letter of appointment dated 14.8.97 and order dated 24.9.99, 10.1.99 and 4.2.2000. Thus, the action of the respondents is perfectly legal and valid in accordance with the terms and conditions of the offer of appointment and in consonance with law laid down by the Hon'ble Supreme Court. It is, further averred that keeping in view the activities, work and conduct of the applicant, during the period of probation, he was not found fit. The applicant was also advised to show improvement in his work and conduct and the Principal concerned issued several Memos and duly

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warned the applicant but he failed to show any improvement. The period of probation was extended keeping in view the activities, work and conduct of the applicant since his joining the service, while making assessment of over-all performance.

4. When the matter was listed for hearing on 19.12.02, this Tribunal directed the respondents to file the relevant documents within two weeks by filing additional reply whereby it can be seen that the applicant was given opportunity to improve himself. The respondents have filed a detailed additional reply thereby enclosing as many as 27 documents to show that the applicant's work and performance over a period of 2 years was evaluated and decision regarding his suitability is based on his work and conduct. It was further stated that the decision to terminate the services cannot be said to be punitive in character aimed at punishing the applicant for a misconduct that he may or may not have committed but is based on his work and over all performance during the period of probation and even after the extended period.

5. The applicant has not filed any counter to the additional reply filed by the respondents.

6. We have heard the learned counsel for the parties and have gone through the pleadings.

7. Before we proceed with the matter, it will be relevant to mention the decision of the Apex Court regarding the scope of interference in respect of temporary appointment/appointment on probation. The Apex Court as early as in the year 1958 in the case of Parshottam Lal Dhingra Vs. Union of India, AIR 1958 SC 36, held that if the termination of service founded on the right flowing from contract or the service rules then *prima facie* the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But

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even if the Govt has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Govt may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. The decision in Dhingra (supra) case was further clarified by another Constitution Bench of the Apex Court in Benjamin (AG) Vs. Union of India, 1967(1) LLJ 718, It followed the two tests mentioned in Dhingra's case viz. (1) Whether the temporary Govt servant had a right to the post or the rank, or Whether he has been visited with evil consequences. If a punishment were restricted to evil consequences, the Court's task in deciding the nature of an order of termination would have been easier. Courts would only have to scan the termination order to see whether it ex-facie contains the stigma or refers to a document which stigmatises the officer, in which case the termination order would have to be set aside on the ground that it is punitive. In these cases the evil consequence must be assessed in relation to the blemish on the employee's reputation so as to render him unfit for service elsewhere and not in relation to the post temporarily occupied by him. This perhaps is the underlying rationale of several of the decisions on the issue. The Apex Court in some other decisions while construing the language used in the impugned order, found that it was ex facie stigmatic, as in the case of V.P.Ahuja Vs. State of Punjab & Ors, 2000(3) SCC 239 and in some other cases the Apex Court come to the conclusion that even if the order of termination records that the employee was "unsuitable to hold the post",

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then such a language used in the order of termination did not cast any stigma on the employee and was not punitive. This view has been held in H.F.Sangati Vs. Registrar General, High Court of Karnataka & Ors, 2001(3) SCC 117. Another celebrated decision on the point is that of Shamsher Singh Vs. State of Punjab 1974(2) SCC 831 whereby it was said that:

"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 temperamental 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 authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an enquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of Article 311(2) he can claim protection."

8. Thus, from the decision as quoted above, it can be inferred that no Govt servant, a probationer or temporary, cannot be discharged/reverted arbitrarily without any rhyme or reason. In order to see whether in substance an order of termination is punitive, it must be seen whether prior to

termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct (c) which culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.

9. Viewing the case from the principle as enunciated above, now let us examine the case of the applicant. From the perusal of the termination order which has been extracted above, it is quite evident that this order does not cast any stigma on the applicant and as such not ex-facie punitive. Further question which requires our consideration is whether the order of termination though ex-facie simplicitor can be termed as punitive in substance in the light of principle laid down by the Apex Court. The answer to this query is also negative, as it does not satisfy any of the test and stated above as the services of the applicant has not been terminated pursuant to any enquiry, into the allegation involving moral turpitude or misconduct which culminated in finding of guilt.

10. Now, the next question that will arise, whether the applicant had a right to the post or rank or whether he has been visited with evil consequences. The learned counsel for the applicant argued that the applicant cannot be said to be a probationer as he has completed the period of probation of two years on 18.8.99 whereas the period of probation was further extended for another six months w.e.f. 19.8.99, only vide letter dated 24.9.99 read with letter dated 10.1.2000 i.e. after the expiry of the period of two years probation. Thus, according to the learned counsel for the applicant, the applicant acquired right to the post and as such provisions of

Article 311 of the Constitution attracted and his services could not have been terminated without complying the provisions as contained under Article 311 of the Constitution. Thus, he has been visited with evil consequences. In the alternative the counsel for the applicant argued that even if it is assumed that the period of probation could have been extended and he has not acquired any right to the post, in that eventuality the period of probation was on second occasion extended w.e.f.

19.2.2000 vide order dated 4.2.2000 and this period was to expire on 18.8.2000 whereas his services were terminated w.e.f. 28.3.2000, without taking into consideration his performance during the second extended period of probation and also he has been denied an opportunity to show his improved performance during the extended period of probation.

11. On the other hand, the learned counsel for the respondents submitted that the probation period of the applicant could have been extended in terms of the conditions as stipulated in the offer of appointment and he has neither acquired any right on the post nor has been visited with evil consequences. His performance during the probation period as well as the extended period was not satisfactory and the applicant was given ample opportunity to improve his performance, attitude and conduct. He was allowed extension of probation but he failed to improve his performance during the extended period of probation, as such his services were rightly terminated.

12. We have given thoughtful consideration in the matter. It is not disputed that the applicant was appointed as LDC vide offer of appointment letter dated 14.8.97 and he joined on the post on 19.8.97. According to the terms and conditions as stipulated in the offer of appointment, the relevant portion extracted above, it is quite evident that the applicant was on

probation for a period of two years which may be extended and on successful completion of probation, he will be confirmed in his turn according to the availability of permanent vacancy. It further stipulates that during the probation and thereafter until he is confirmed, the services of the appointee are terminable by one month's notice on either side without any reason assigned thereof. Thus, from the stipulations as contained in the letter of appointment, it cannot be said that the applicant has successfully completed the period of probation as no such order has been passed by the respondents. Further contention of the learned counsel for the applicant that since the order extending the period of probation was passed after few days when he has completed two years of service on 18.8.99 and he shall be deemed to have completed the period of probation, cannot be accepted in view of the explicit conditions stipulated in the appointment letter that the period of probation of two years can be extended and the applicant will be confirmed only when he has successfully completed the probation period. Further, there is no outer limit prescribed in the terms and condition that the applicant shall be deemed to have been confirmed on the expiry of a particular period. So long as the order of confirmation is not issued even after expiry of the probation period, the probation may continue till such confirmation order is not issued. The second contention put forth by the learned counsel for the applicant that by extending the period of probation the applicant was given chance to improve his performance during the extended period as such period of probation could not have been curtailed and services terminated prior to the expiry of such period; there appears to be some substance in the submissions made by the learned counsel for the applicant but it will not materially affect the decision of

this case for the reasons stated hereinafter. No doubt, it is true that normally, the respondents should have watch the performance of the applicant during the further extended period of six months instead of terminating the services within two months from the expiry of the probation period. But as a matter of law, it cannot be said that the services cannot be terminated even prior to the expiry of the probation period when the performance of the applicant was not satisfactory at all and it has come to the notice of the respondents during the second extended period of probation that the applicant is not in a position to perform his duties on account of his deteriorating health and mental condition, as per the advice of the Medical Board (Annex.R6). In view of such deteriorating health and mental condition, how it can be comprehended that the applicant was in a position to improve his performance during the extended period of probation even if he was allowed to work till expiry of the second extended period of probation. Further, the respondents have placed on record various documents alongwith the additional reply which indicate that the work and performance of the applicant during the period of probation was not satisfactory and decision regarding his suitability was based on his work and performance and it was only thereafter the decision to terminate the services of the applicant was taken by the competent authority. From the material placed on record, it is quite evident that during the probation period and even after the extended period of probation, there are as many as 27 documents which indicate that the performance of the applicant was not satisfactory. He was advised to show improvement in his work and conduct. Further, the Principal concerned issued several memos and duly warned the applicant and as such it cannot be said that the

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applicant has completed his probation period satisfactorily and his services were terminated without taking in to consideration his performance during the entire period of probation. We are convinced that even during the extended period of probation, despite the opportunity given to improve his performance, the applicant has failed to avail the opportunity and his performance during the period of probation and even after the extended period was quite unsatisfactory. As such, even if the services of the applicant was terminated within two months when the probation period was extended for six months on second occasion does not afford justifiable cause so as to interfere with the order of termination. The applicant was a probationer and as such he has no right to the post. The competent authority on number of occasions considered the performance of the applicant and it was found that his work and conduct was not satisfactory and as such the authority concerned was within his right to pass the order of termination in terms of the conditions as stipulated in the appointment letter. We are also concious of the decision of the Apex Court in the case of State of Punjab Vs. Baldev Singh Khosla, 1996(2) ATJ 411, wherein the Apex Court held that the petitioner therein could not have been reverted during the extended period of probation without taking into consideration his performance during such extended period of probation. The Apex Court remanded back the case to the authorites to consider the case afresh taking into consideration the performance of the petitioner during the extended period of probation. This authority is not applicable in the instant case inasmuch as the respondents have placed sufficient material on record which indicate that under normal period as well as during the extended period of probation the performance of the applicant was not satisfactory at all and



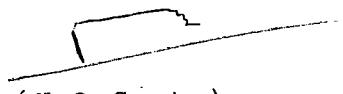
the applicant was reprimanded and given opportunity to show improvement which he failed to avail.

12. For the reasons stated above, the present application is dismissed with no order as to costs.



(M.L.Chauhan)

Member (J).



(H.O.Gupta)

Member (A).