

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.3058/2003

New Delhi, this the 18<sup>th</sup> November, 2004.

Hon'ble Mr.Justice M.A.Khan, Vice-Chairman (J)  
Hon'ble Mr.S.A.Singh, Member(A)

Vijay Rajpal S/o Shri P.L.Rajpal,  
Ex.PGT Teacher,  
K.V.Bagfa  
R/o J-110, JJ Colony,  
Shrinivaspuri, New Delhi.

(By advocate: Shri K.K.Sharma for Shri S.N.Anand)

...Applicant.

Versus

1. The Commissioner,  
Kendriya Vidyalaya Sangathan,  
18, Institutional Area  
Shaheed Jeet Singh Marg  
New Delhi.
2. The Assistant Commissioner  
Kendriya Vidyalaya Sangathan  
Regional Office  
Hospital Road, Silchar  
Assam – 788 001.

...Respondents

(By Advocate Shri S.Rajappa)

ORDER

By Shri S.A.Singh, Member (A):

1. The applicant was appointed as PGT (Maths) in KVS, Bagfa on 24.7.2001. The condition no.4 of the appointment letter dated 24.7.2001 reads as under:-

“4. He/She will be on probation for a period of 2 years which may be extended. Upon successful completion of probation he/she will be confirmed in his/her turn as per Kendriya Vidyalaya Sangahan rules.

5. During the probation and thereafter, until he/she is confirmed the services of the appointee are terminable by one Month's notice on either side without any reason being assigned therefore. The appointing authority, however, reserves the right to terminate the services of the appointee before expiry of the stipulated period of notice by making payment of sum equivalent to the pay and allowances for the period of the unexpired portion thereof.”

2. The applicant is aggrieved by the impugned order dated 24.4.2003 terminating his services with immediate effect in terms of Para-5 of the appointment letter. The

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pleadings of the applicant is that the impugned order is stigmatic in as much as future avenues of employment have been blocked and there was no material before the competent authority to take such drastic action. Moreover, the applicant was appointed on a permanent post and as such his services cannot be terminated without following due process of law and without giving reasonable opportunity of being heard.

3. The applicant contended that his work was excellent as he had improved the results in teaching from dismal 33% to 66% in the academic year 2002-03 and, therefore, in the absence of any report showing unsatisfactory work his services could not be terminated. The excellent work done by him has been commented by the Parent Association and also by the Chairman of the Vidyalaya Management Committee. As per law laid down in the case of Ajit Singh vs. State of Punjab (1983) 2 SCC 217 and in the case of Ramendra Chandra vs. Union of India AIR 1963 SC 1552 that the defects making a person on probation unsuitable or unfit to retain in service should be pointed out to him. In view of this, the impugned order should be quashed and set aside and respondents are directed to reinstate the applicant in service forthwith.

4. This was vehemently contested by the respondents. The respondents pleaded that the termination order suffers from no illegality, as the same has been passed in terms of Para-5 of the appointment letter. Moreover the applicant was given sufficient opportunity to improve his work and conduct by issuing Memorandums dated 19.12.2001, 31.01.2002, 23.8.2002 and 28.01.2003. On perusal of the same, it shows that they are advising the applicant to improve his conduct and efficiency and are not stigmatic. The applicant did not improve and, therefore, his services were terminated accordingly to the condition of the appointment letter. It is also pleaded that the Principal is the best judge to decide regarding the competence of the teachers and not the parent association.

5. The Principal and the Chairman of the KVS watched the work of the applicant and they found that the work and conduct was not satisfactory and had thus decided to terminate his services before completion of probation. There is no malafide in its

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termination order which has been passed after watching the conduct and giving him opportunity to improve himself. Moreover, the impugned order is not stigmatic as it is an order stating that services stand terminated under Para-5 of the appointment letter. The respondents have also stated that the case law cited by the applicant is not applicable in the present case whereas the established law is that during probation, an employer has a right to dispense with the services of the employee if he is not found satisfactory in work and conduct.

6. The applicant pleaded in his rejoinder that there was a clear violation of natural justice. His services were terminated without holding a proper enquiry and giving a reasonable opportunity for presenting his case on the fabricated charges of smoking in the class room and taking private tuitions etc. In fact his work is very satisfactory as the results from 33% to 60% and thereafter 85%. He relies upon the case of V.P. Ahuja vs. States of Punjab & Ors. [(2000) 3 SCC 329] wherein it has been held that "a probationer like a temporary servant is also entitled to certain protection – His services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice". The aforesaid has been contested by the respondents' counsel during the oral arguments stating that his termination was unsatisfactory performance and was not stigmatic. He relies upon the judgement of the Tribunal in the case of **Shri Kirtan Kumar vs. Commission, KVS and another** in OA 3186/02 dated 20.4.2004 wherein it has been held that totality of the facts and circumstances it is clear work and performance is not up to the mark, the order can certainly be passed.

7. We have heard counsel for the parties and have gone through the document placed on record. The short question before the Tribunal is whether the impugned termination order is stigmatic and violative of the principles of the natural justice.

8. This Tribunal's judgement in the case of **Shri Keertan Kumar (Supra)** has examined the case law on the subject and held that:

"20. Once the performance is not upto the mark then during the probation, the respondents could certainly terminate the services. The Supreme Court in the case of Krishnadevaraya Education



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Trust & Anr. V. L.A.Balakrishna, 2001 (1) SCALE 196 clearly held that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the appointee is to be seen. Once it is unsatisfactory, the employer has a right to terminate the services. Identical is the position herein."

The Supreme Court in the case of A.P. State Federation of Cooperative Spinning Mills Ltd. & Anr. Vs. P.V. Swaminathan, 2001 LLR 560 held as under:

"3. The legal position is fairly well settled that an order of termination of a temporary employee or probationer or even a tenure employee, simplicitor without casting any stigma may not be interfered with by court. But the court is not debarred from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with, but if the court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed. The decision of this Court relied upon by Mr. K. Ram Kumar also stipulates that if an allegation of arbitrariness is made in assailing an order of termination, it will be open for the employer to indicate how and what was the motive for passing the order of termination and it is in that sense in the counter affidavit it can be indicated that the unsuitability of the person was the reason for which the employer acted in accordance with the terms of employment and it never wanted to punish the employee. But on examining, the assertions made in paragraphs 13 and 14 of the counter affidavit. In the present case it would be difficult for us to hold that in the case in hand, the employer appellant really terminated the services in accordance with the terms of the employment and not by way of imposing the penalty in question."

From the above reading of the principles laid down by the Supreme Court, the touchstone is whether the order is passed because of the inefficiency and unsuitability or as to punish the employee. The Tribunal must lift the veil and go behind the order to determine whether it was stigmatic or otherwise. In the present case, the impugned termination order reads:

"2. In order to consider confirmation/termination of his services in terms of para-5 (Five) of his appointment letter, I have perused his service record and probation reports. I find

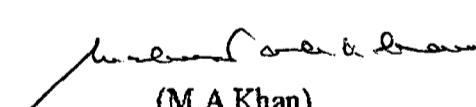
his service have not been confirmed as yet under para-5 of his letter of appointment, his services are terminable during the probation and thereafter until his confirmation, by giving one month notice or pay and allowances in lieu of notice period.

3. In pursuance of para-5 of the aforesaid offer of appointment, I being the Appointing Authority hereby terminate forthwith the services of Shri Vijay Rajpal, Post Graduate Teacher (Mathematics), Kendriya Vidyalaya, Bagafa with immediate effect. The competent Authority further directs that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of one month which he was drawing immediately before the termination of his services as Post Graduate Teacher (Mathematics) Kendriya Vidyalaya Bagafa in lieu of notice period."

9. Clearly the above order is simpliciter. To go behind the veil we have gone through the records made available to us concerning the overall assessment of the applicant by the Principal and the then Chairman Ram Chander Khanat. We find that the recommendations of the Principal and the Chairman were arrived at on the basis of unsatisfactory performance despite numerous chances being given for improvement. This is also apparent from the documents referred to in Para-4 earlier. Therefore, it is evident that the motive of the respondents for the impugned order was the overall unsuitability of the applicant for the position and hence the respondents have acted in accordance with the terms of the appointment letter.

10. In view of the above facts and circumstances of the case, we find that the OA is without merit. It must fail and is accordingly dismissed.

  
 (S.A. Singh)  
 Member (A)  
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 (M.A. Khan)  
 Vice-Chairman (J)