

Amy N. Irani Vs. Makers Development Services (P) Ltd. and anr.

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Court : Mumbai

Decided On : Jan-15-2003

Reported in : 2003(2)ALLMR52; 2003(3)BomCR785; [2003(97)FLR938];
(2003)IILLJ847Bom

Judge : D.B. Bhosale, J.

Acts : Industrial Employment (Standing Orders) Act, 1946

Appeal No. : O.O.C.J. W.P. No. 2485/2000

Appellant : Amy N. Irani

Respondent : Makers Development Services (P) Ltd. and anr.

Advocate for Def. : R.S. Pai, Adv., i/b., ;Sanjay Udeshi, Adv.

Advocate for Pet/Ap. : P.D. Varghese, Adv.

Disposition : Petition dismissed

Judgement :

D.B. Bhosale, J.

1. This writ petition is directed against the ex parte award dated January 29, 1997 in the Reference (IDA) No. 707 of 1984 and the judgment and order dated February 29, 2000 in the application filed for setting aside the ex parte award,

passed by the Presiding Officer, 6th Labour Court. The Deputy Commissioner of Labour, Bombay, had made reference to the Labour Court for adjudication of dispute under Sections 10(1)(c), 12(5) and 39 of the Industrial Disputes Act, 1947 (for short 'ID Act').

2. The reference was partly allowed and the respondent-company was directed to pay full back wages from December 1, 1983 till the date of order and also to pay 12 months compensation in lieu of reinstatement on the basis of last drawn wages of the petitioner. The respondent-company had challenged the judgment and order dated October 26, 1984 passed by the Presiding Officer, 2nd Labour Court in Writ Petition No. 1154 of 1995. This Court (R.M. LODHA, J.) by order dated July 10, 1997 had partly allowed the writ petition and the order dated October 26, 1994 passed by the 2nd Labour Court was quashed and set aside and the matter was sent back to the Labour Court for fresh hearing of Reference (IDA) No. 707 of 1984 in accordance with law. The parties were also directed to appear before the 2nd Labour Court on August 1, 1997 and in case the said Court was vacant, by consent the reference was transferred to 6th Labour Court, Bombay. The concerned Labour Court was also directed to hear and dispose of the matter as expeditiously as possible and in no case later than four months from the date of appearance of the parties.

3. After remand, the petitioner failed to appear before the Labour Court and in view thereof the reference was disposed of ex parte in negative. The petitioner, therefore, filed an application for setting aside the ex parte award dated November 29, 1997 passed by the Presiding Officer of 6th Labour Court, Bombay. The only ground made out by the petitioner for setting aside was that he had filed Appeal No. 121 of 1998 before the Division Bench of this Court challenging the order passed by LODHA, J., on July 10, 1997 in Writ Petition No. 1154 of 1995, and the appeal was pending which ultimately came to be disposed of on March 12, 1998 as had become infructuous, in view of the Award passed by the Labour Court on November 29, 1997. On March 12, 1998 for first time the petitioner came to know the disposal of reference by the Labour Court on November 29, 1997. The petitioner in her evidence has stated that as per the direction of this Court she had attended the 2nd Labour Court on August 1, 1997 when she found that the

opponents were not present in the Court and she was informed that the papers in her case were not received. The petitioner' has not explained either in the application or in her evidence, which came to be recorded for deciding her application dated March 20, 1999 filed for setting aside ex parte award, as to why she did not attend 6th Labour Court, Bombay, despite the specific directions given by LODHA, J., in the order dated July 10, 1997. There is no dispute that the 2nd Labour Court was vacant on August 1, 1997. The Labour Court, after considering the evidence led by the parties, documents placed on record and the arguments advanced by learned counsel appearing for the parties, rejected the application dated January 20, 2000 filed by the petitioner for setting aside the ex parte award dated November 29, 1997. Under the circumstances the petitioner has approached this Court challenging the judgment dated February 29, 2000 passed in Miscellaneous Application (IDA) No. 20 of 1999 for setting aside the ex parte award and judgment dated November 29, 1997 passed in the main reference by the Labour Court. At the request of learned counsel appearing for the petitioner, instead of dealing with the challenge to the judgment dated January 20, 2000, rejecting the application dated March 20, 1999 for setting aside the ex parte award dated November 29, 1997, I heard learned counsel for the parties on merits at length. I adopted this course, with the consent of learned counsel for the parties. The learned counsel for the petitioner appears to have agreed for this course, in view of the specific directions given by LODHA, J., in the order dated July 10, 1997, to the Labour Court, to examine the evidence led by the respondent-company on the ground of loss of confidence and unsatisfactory work, and then give positive finding whether the termination was justified or not. The learned counsel for the parties are ad idem that there was no need for recording fresh evidence and the Labour Court was directed to hear the parties and decide the reference on the basis of evidence already placed on record.

4. The factual matrix, in brief, giving rise to the writ petition reveals that the petitioner was appointed by the respondent- company as a secretary on probation for six months on January 27, 1983. The period of probation was extended by three months from August 15, 1983 till November 15, 1983. On November 25, 1983 the petitioner was called and asked to resign and since she refused to do so her services were terminated by the letter dated December 1, 1983. It is the case

of the respondent-company that during the probation period, work of the petitioner was not found satisfactory, and she also was not found suitable for the post and hence her services were terminated. However, according to the petitioner during the period of probation she rendered unblemished and meritorious service with the respondent-company. After termination of the service of the petitioner, she by her letter dated January 18, 1984 demanded reinstatement in service with full back wages and continuity of service as according to her, the termination was illegal, improper and mala fide. Since there was no response she raised dispute which was finally referred for conciliation and thereafter the Deputy Commissioner of Labour (Conciliation) by his letter dated November 10, 1984 referred the dispute for adjudication to the 2nd Labour Court at Bombay being Reference (IDA) No. 707 of 1984.

5. The 6th Labour Court disposed of the reference holding that the petitioner was not entitled for reinstatement, continuity of service and back wages. It is in this backdrop the petitioner has approached this Court challenging the Award dated November 29, 1997 and also the impugned judgment dated November 29, 1997 passed by the Labour Court below in Miscellaneous Application (IDA) No. 20 of 1999 for setting aside the ex parte award dated November 29, 1997. As recorded earlier, I need not enter into the controversy whether the petitioner had sufficient cause to remain absent before the Labour Court when the reference was finally heard, since learned counsel for the parties requested me to hear writ petition on merits and on the basis of material placed on record. It may be noted that LODHA, J., while remanding the matter had specifically observed that 'the evidence was led by the employer by producing Mr. Shenoy and Exhibit C-3 on record and, however, it was found that the Labour Court has not adverted to the evidence led by the petitioner-management on the point of loss of confidence and unsatisfactory work'. Referring to the judgment of Apex Court in *Kamal Kishore Lakshman v. Management of Pan American World Airways Inc. and Ors.* : (1987)ILLJ107SC, it was further held that 'the Apex Court has held that the termination of service on account of loss of confidence amounts to stigma and the management can justify termination in the course of adjudication. It was, therefore, incumbent upon the Labour Court to examine the evidence led by the petitioner on the ground of loss of confidence and unsatisfactory work and then give a positive finding whether the

termination was justified or not.' It was also observed by R.M. LODHA, J. that 'the Labour Court had failed to exercise its jurisdiction in accordance with law by not considering the evidence led by the petitioner on the point of loss of confidence justifying workmen's termination and, therefore, the order dated October 26, 1994 cannot be sustained and matter needs to be sent back to the 2nd Labour Court for fresh decision in accordance with law.' Keeping the observation made by R.M. LODHA, J., learned counsel appearing for the parties concentrated their arguments on the issue as to whether the evidence led by the petitioner-management on the point of loss of confidence and unsatisfactory work was sufficient to terminate the service of the present petitioner on that count.

6. I heard Mr. Varghese, learned counsel for the petitioner and Mr. Pai, learned counsel for the respondents. Perused the writ petition and documents annexed thereto including the notes of evidence relied upon by the petitioner.

7. Mr. Varghese, learned counsel for the petitioner, at the outset submitted that the Labour Court after remand of the matter did not frame issue for its determination as to whether the termination of the petitioner on account of loss of confidence and unsatisfactory work, as indicated in the judgment and order of this Court dated July 10, 1997, was justified. He further submitted that in view of the admitted position that the standing orders are applicable to the workmen, working with respondent-company acquires a status of deemed continued employee as per Clause 4-A of the Standing Orders, unless the service of the workmen is terminated on completion of the probation period. In support, Mr. Varghese placed reliance on the judgment of this Court in *Indian Tobacco Company Ltd. v. The Industrial Court and Ors.* : (1990) ILLJ236 Bom . He submitted that upon completion of three months of uninterrupted service by the probationer he has to be made permanent in that post by the management within a period of seven days from the date of completion of the probation period. It was also pleaded that the order of termination on the ground of loss of confidence was a punitive order or it amounts to stigma, which ought to have been preceded by a domestic enquiry and if no such enquiry was held, the action of termination cannot be said to be bona fide action. Mr. Varghese emphasised that the standing orders were applicable and the Labour Court ought to have recorded its findings on the applicability of the

standing order. He further submitted that since the petitioner deemed to have been confirmed under the provisions of standing order the respondent-company ought to have held domestic enquiry which could not have been dispensed with by the respondent-company in view of the provisions of standing order. In support, Mr. Varghese placed reliance on the judgment of this Court in *V.P. Ahuja v. State of Punjab and Ors.* : (2000)ILLJ 1099 SC and in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Ors.* : [1999]1SCR532 . Relying on the judgment of the Apex Court in the case of *Kamal Kishore Lakshman* (supra) Mr. Varghese submitted that loss of confidence by the employer in employee is a feature which certainly affects the character or reputation of the employee and, therefore, allegation of loss of confidence amounts to stigma and in view thereof if disciplinary enquiry is not preceded the prejudicial order and action would be bad and it cannot be sustained.

8. Per contra Mr. Pai, learned counsel for the respondent- company, at the outset submitted that after remand by this Court the Labour Court, though has not framed specific issue that whether the termination of the petitioner on point of loss of confidence and unsatisfactory work was wrong, it has examined the evidence led by the parties in the light of the observations made in the order of remand, and after discussing it at length, given positive finding that the termination was justified. Merely because there is an omission on the part of the Labour Court to frame specific issue, the Labour Court cannot be said to have not considered the case in the light of the observation made by LODHA, J., and recorded its finding on the point of loss of confidence and unsatisfactory work justifying the petitioner's termination. Mr. Pai, further submitted that in so far as the standing orders are concerned they would not change the complexion of the impugned action. He submitted that even if it is assumed for the sake of argument that the petitioner stood confirmed as provided in Clause 4-A immediately on expiry of three months extension, the termination of the employee cannot be held bad. He placed heavy reliance on the judgment of the Apex Court in the case of *Kamal Kishore Lakshman* (supra). He submitted that in the case of a workman the order of termination could be justified even in the course of adjudication before the appropriate forum under the Industrial Disputes Act even though no enquiry has been undertaken earlier. Reliance was also placed by Mr. Pai on the judgments of

this Court in *West Coast Paper Mills Employees Union, Bombay v. A.R.M. Shaikh and Ors.* 1999 1 CLR 759, and between *Hotel Horizon Pvt. Ltd. v. Bhartiya Kamgar Karmachari Mahasangh and Anr.* : (2002)ILLJ186Bom .

9. I have carefully gone through the impugned judgment and order dated January 29, 1997 passed by the Labour Court perused the evidence produced on record and documents annexed to the writ petition. It is true that the Labour Court after remand has not framed specific issue based in the light of the observation made by this Court in the order of remand dated July 10, 1997. The relevant observations read thus:

'4. Shri K.G. Shenoy in his deposition has stated that the performance of the workman was not upto the mark during probation period still we gave some time for improvement and probation of the workman was extended. In paragraph 5 of his deposition Mr. Shenoy has deposed that there are appraisal reports for the period from August 15, 1983 to November 14, 1983 at pages 21 to 24 to Exhibit C-3. These appraisal reports show unsatisfactory performance of the workman. According to the petitioner company services of the workman were terminated because of loss of confidence and unsatisfactory work. The evidence was also led by the employer by producing Mr. Shenoy and Exhibit C-3. However, I find that Labour Court has not adverted to the evidence led by the petitioner management on the point of loss of confidence and unsatisfactory work. In *Kamal Kishore Lakshman's case* (supra) the Apex Court has held that termination of service on account of loss of confidence amounts to stigma and the management can justify termination in the course of adjudication. It was, therefore, incumbent upon the Labour Court to examine the evidence led by the petitioner on the ground of loss of confidence and unsatisfactory work and then give a positive finding whether the termination was justified or not. The Labour Court fails to exercise its jurisdiction in accordance with law by not considering the evidence led by the petitioner on the point of loss of confidence justifying workman's termination and, therefore, the order dated October 26, 1994 cannot be sustained and matter needs to be sent back to the second Labour Court for fresh decision of the matter in accordance with law.'

10. Pursuant to the observations made in the aforesaid paragraphs it would have been more appropriate for the Labour Court to frame specific issue and examine the evidence led by the petitioner on the ground of loss of confidence and unsatisfactory performance and then record the positive finding whether the termination was justified or not. Since that was not done I went through the award, evidence and other material annexed to the writ petition carefully to satisfy whether the Labour Court has examined the evidence in the light of the aforesaid observations of this Court. After going through the entire material placed on record, I am satisfied that the finding of the Labour Court on the point of loss of confidence is not based on the material placed on record including the evidence led by the respondent-company. However, the finding of the Labour Court on the point of unsatisfactory performance of the petitioner stands justified on the basis of the material placed on record. I would like to record my reasons for reaching the aforesaid conclusion in the later part of the judgment.

11. The Labour Court appears to have placed heavy reliance upon the following documents while recording its finding that the services of the petitioner were terminated on the ground of loss of confidence and unsatisfactory work, confidential report dated December 1, 1993 written by Mr. Kotwal, President of Cement Division where the petitioner was working as his secretary at the relevant time; appraisal report for the period between August 15, 1983 to November 14, 1983 which was signed by Mr. Kotwal; performance appraisal for the period between May 15, 1983 to August 15, 1983; statement showing number of days the petitioner worked; leave enjoyed by her during the probation period; written note of Shri Gupta regarding confidential performance appraisal and three vouchers dated December 3, 1983 pertaining to the dues offered to the petitioner. All the aforesaid documents have been proved by Shri Govind Shenoy, the witness examined by the respondent-company. Referring to these documents, Mr. Shenoy has stated that after completion of the period of six months, the period of probation was extended by three months. After expiry of three months period, the services of the petitioner were not found upto the mark and, therefore, it was proposed to be terminated. Mr. Shenoy has specifically stated in his evidence that there was no improvement in her performance and, therefore, her services were finally terminated on December 1, 1983. Unfortunately, neither the petitioner nor the

respondents have placed the confidential report and appraisal report on record for my perusal. The Labour Court though appeared to have gone through the entire material placed on record including the confidential report and appraisal report has failed to make specific reference to the reports and recorded its finding on the point of loss of confidence. I did not find any material placed on record or the oral evidence, on the basis of which it could be said that the petitioner failed to gain confidence of her superior or there was loss of confidence, though material is sufficient to hold that the performance of the petitioner was unsatisfactory. Similarly I did not find any discussion in the award as to what made the learned Presiding Officer to record his finding that the ground of loss of confidence stands proved against the petitioner- The only ground which I found in the award recorded by the learned Presiding Officer for holding that the petitioner did not gain confidence of the management, was that she was holding the post of secretary, the post of confidence and trust in the company. Merely because the petitioner was holding a post of Secretary which is the post of confidence and trust and that her performance was unsatisfactory would not mean the case of loss of confidence stands proved against the petitioner. In my opinion it would not be proper to hold termination valid on the ground of loss of confidence. There are no allegations of misconduct or breach of trust against the petitioner. The fact that the employer was not fully satisfied with the overall performance of the duties by a workman, does not necessarily imply that the employee has failed to gain confidence or in other words unsatisfactory performance would lead to loss of confidence in the workman. In my opinion holding of a position of trust and confidence, alone is not sufficient to infer loss of confidence unless there are allegations of such nature whereby it could be said that the workman has abused his position and committed acts which resulted in forfeiting the same and to continue such workman in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline and the security of the establishment. Unless these aspects are present it would not be proper to record a positive finding on the point of loss of confidence. In the present case, the respondent-management has not made any such allegation against the petitioner except that her performance was unsatisfactory. However, the material placed and the evidence of Mr. Shenoy, as expressed earlier, is sufficient to hold that the

petitioner's performance was unsatisfactory. Mr. Shenoy, has specifically stated in his evidence that her performance was unsatisfactory, which resulted in extension of her probation by three months. During this period also, he states, that her performance was not upto the mark and, therefore, it was proposed to terminate her services. Mr. Shenoy, after making reference to the documents placed on record has, reiterated that there was no improvement in her performance. It is very pertinent to note that, in oral evidence Mr. Shenoy, does not state, for any reason that there was a loss of confidence in the petitioner. In the result, I set aside the findings recorded by the Labour Court holding termination valid on the ground of loss of confidence. The Labour Court ought to have borne in mind the specific directions given by this Court in the order of remand dated July 10, 1997 that it had not adverted to the evidence led by the petitioner-management on the point of loss of confidence and unsatisfactory work. The emphasis was on the point of loss of confidence. The appraisal reports, confidential reports, notes of Shri Gupta and other material, in my view, is sufficient to terminate the services of the petitioner on the ground of unsatisfactory performance. As a matter of fact LODHA, J., in the order of remand dated July 10, 1997 has also recorded that the appraisal reports show unsatisfactory performance of the petitioner. Specific reference is also made in the order to the evidence of Mr. K.G. Shenoy, however, it was found in the light of the judgment of the Apex Court in the case of Kamal Kishore Lakshman, (supra) that the termination of services of the workman on the ground of loss of confidence amounts to stigma and the management should justify termination in the course of adjudication. Specific reference was made to the aforesaid judgment of the Apex Court requiring the Labour Court to weigh the evidence and record its finding on the ground of loss of confidence. In view thereof I have no hesitation in holding the termination bad on the ground of loss of confidence and just, valid and reasonable on the ground of unsatisfactory performance.

12. Coming to the second limb of argument advanced by learned counsel appearing for the petitioner that the management ought to have conducted enquiry in as much as the petitioner had acquired the status of permanent employee. He based this argument on the standing orders. Admittedly, the respondent-company is covered under Industrial Employment (Standing Orders) Act, 1946 (for short 'Act of 1946') and in view thereof there was no need for framing independent issue by

the Labour Court to the effect whether the standing orders apply to the respondent- company. The reliance was placed upon Clause 4-A of the Model Standing Order Schedule I to the Act of 1946. Clause 4-A reads thus:

4-A. Every probationer who has completed the period of three months uninterrupted service in the post in which he is provisionally employed shall be made permanent in that post by the Manager by an order in writing, within seven days from the date of completion of such service:

Provided that, where certified standing orders which prevail on the date of coming into force of this rule prescribe a longer probationary period than three months, the probationer shall complete such probationary period:

Provided further that, if the services of the probationer are found to be unsatisfactory, the Manager may terminate his services after his probationary period.

Explanation: For the purpose of this clause, the probationary period shall not include any interrupted service and shall not be deemed to have been broken by such interrupted service'.

The mandate of the aforesaid Standing Order is that upon completion of three months of uninterrupted service by the probationer in the post in which he is provisionally employed shall be made permanent in that post by the management by an order in writing within stipulated time of seven days from the date of completion of probationary period. Obviously, the work of probationer has to be judged within this period only. The second proviso of Clause 4-A provides that in case a workman on probation is found to be unsatisfactory the management is empowered to terminate the service of an employee immediately on completion of his probation. In the present case there is no dispute that no order in writing was issued to the petitioner making him permanent in the post held by her. The extended period of probation got over on November 15, 1983 and on December 1, 1983 the petitioner's services were terminated. It will not be out of place to make reference to Section 13-A of the Act of 1946 which provides remedy to the probationer to refer the question of not making him permanent on expiry of the

probation period to the post held by her as contemplated under Clause 4-A of the Standing Order. The petitioner has not resorted to that remedy. Even If we proceed on the assumption that the petitioner acquired status of permanent employee on the post held by her it cannot be said that manner in which the petitioner has been terminated it was done in violation of the provisions of the standing orders or in breach of principles of industrial justice. The judgment of the Apex Court in Kamal Kishore Lakshman, (supra) is clear on the point of law that if disciplinary enquiry has not preceded the prejudicial order in the case of a workman the order could be justified even in the course of adjudication before the appropriate Tribunal under Industrial Disputes Act, even though no inquiry had been undertaken earlier. The ratio laid down by the Apex Court in Kamal Kishore Lakshman (supra) is clear cut answer to the argument advanced on behalf of the petitioner that the respondent-company ought to have initiated domestic enquiry against the petitioner since she had acquired deemed confirmed status as superintendent working with the respondent-company. The relevant observations in the judgment of Kamal Kishore Lakshman (supra) reads thus : (1987)ILLJ107SC :

'10. Retrenchment as defined in Section 2(oo) of the Industrial Disputes Act as held by this Court in several cases means termination of service for any reason whatsoever otherwise than punishment inflicted by way of disciplinary action and the other exceptions indicated therein. In the present case though no formal domestic inquiry had been held the employer took the stand in the adjudication that termination was grounded upon loss of confidence and substantiated that allegation by leading evidence. The legal position firmly established is that if there has been no appropriate domestic enquiry or no enquiry at all before disciplinary action is taken, it is open to the employer to ask for such opportunity in the course of adjudication in the facts of the present case, the order of separation grounded upon loss of confidence has been justified before the Labour Court and the Labour Court has come to the conclusion upon assessment of the evidence.

11. Several decisions were relied upon by appellant's learned counsel in support of his contention that the conclusion in Chandu Lal's case that loss of confidence amounted to stigma was wrong. We have not been shown a single case other than

Chandu Lal's where this aspect has been directly considered. Whether termination is grounded upon stigma would not vary from case to case depending upon whether it involves a government servant or a workman. But the procedural safeguards appear to be different when termination is sought to be founded upon stigma. If disciplinary inquiry has not preceded the prejudicial order in the case of a government servant the action would be bad while in the case of a workman the order could be justified even in the course of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no inquiry had been undertaken earlier'.

13. It is thus clear that if there has been no appropriate domestic enquiry or no enquiry at all before the disciplinary action is taken, it is open to the employer to ask for such opportunity in the course of adjudication. In other words the order could be justified even in the course of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no enquiry has been undertaken earlier. In the present writ petition, there is no dispute that such an opportunity was not offered to justify the impugned action. The parties have led evidence, cross examined the witnesses, produced documents etc. All these support the contention of Mr. Pai, learned counsel for the respondent that during the course of adjudication before Labour Court the parties got sufficient opportunity. In view of this, I find no substance in the submission of learned counsel for the petitioner that the respondent-company ought to have conducted enquiry against the petitioner before terminating her services on the ground of unsatisfactory performance. Even if it is assumed that termination of probationer on the ground of unsatisfactory performance is also stigmatic the compliance of enquiry stood complied with during the course of adjudication proceedings before the Industrial Court. This Court in West Coast Paper Mills Employees Union, case (supra) has followed the same principle laid down by the Apex Court in the case of Kamal Kishore Lakshman (supra) and in Hotel Horizon Pvt. Ltd. case (supra). It is thus clear that in case the employer adduce cogent material before the Labour Court to justify its action of discharge simpliciter on the ground of unsatisfactory performance is proved before the Labour Court, there is no question of compliance of Section 25-F of the Industrial Disputes Act. This Court has gone a step further and has observed in Hotel Horizon Pvt. Ltd. (supra) that the order of the discharge

simpliciter cannot be said to be illegal or improper because there was no charge-sheet or there was no enquiry held before the order of, discharge simpliciter was passed or there was no compliance with Section 25-F of the I.D. Act. The law requires the employer to justify the action of discharge simpliciter either on the ground of confidence or unsatisfactory performance before the adjudicating authority. In the present case, I have already held that the respondent-company has proved before the Labour Court the ground of unsatisfactory performance for the termination of the services of the petitioner. Mr. Varghese, learned counsel for the petitioner placed reliance upon the judgments of Supreme Court in case of Dipti Prakash Banerjee, (supra) and V.P. Ahuja (supra). In V.P. Ahuja 's case (supra) the Apex Court in Paragraphs 7 and 8 held thus at pp. 1100 & 1101 of : (2000)ILLJ 1099 SC :

'7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

8. The affidavit filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular inquiry and giving an opportunity of hearing to the appellant'.

14. In view of the findings recorded in the earlier paragraphs of the judgment, the ratio laid down by the Supreme Court need not be distinguished and the principle laid down in V.P. Ahuja's case stands complied with in the present case. The petitioner got an opportunity of being heard in the course of adjudication proceedings before the Labour Court. Mr. Varghese, learned counsel for the petitioner placed reliance upon paragraph 43 in the case of Dipti Prakash Banerjee (supra) in support of his submission. Paragraph 43 of the report reads thus 1999 I LLJ 1054: :

'43. As pointed out in Bishan Lal Gupta v. State of Haryana (supra) an ordinary enquiry by a show cause might be sufficient for the purpose of deciding whether the probationer could be continued. But where the findings regarding misconduct

are arrived at without conducting a regular departmental inquiry, then the termination order will be vitiated. The learned senior counsel for the respondent relied upon *Hindustan Paper Corporation v. Purnendu Chakraborty* : (1978)ILLJ316SC where it was held that for termination of 'lien', no detailed inquiry was necessary and that if that be the position, termination of probation stands on a lesser footing. But the case turned upon a special rule in that case which specifically provided that for 'termination of lien' a regular inquiry was not necessary. That case cannot therefore be of any assistance to the respondents'.

15. On the face of the observations made by the Apex Court in the aforesaid paragraphs it is clear that the findings of the Apex Court, are hardly of any use to the petitioner in the light of the peculiar facts and circumstances of this case. Though the service of the petitioner was terminated without holding domestic inquiry, the petitioner got ample opportunity of being heard before the Labour Court during the adjudication. In the result, I find no reason to interfere with the impugned order passed by the Labour Court.

16. The writ petition is, accordingly, dismissed. No order as to costs. Needless to state that the respondent-company shall pay the dues, if any, of the petitioner within a period of four week from today with interest at the rate of 10%.

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