

N.V.C.P. Prasada Rao Vs. State Bank of Hyderabad, Hyd. and Another

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Court : Andhra Pradesh

Decided On : Jul-20-1999

Reported in : 1999(4)ALD411; 1999(4)ALT638

Judge : M.S. Liberhan, CJ and; Goda Raghuram, J.

Acts : State Bank of Hyderabad (Officers) Service Regulations, 1979 - Regulation 16(3)

Appeal No. : WA No. 858 of 1999

Appellant : N.V.C.P. Prasada Rao

Respondent : State Bank of Hyderabad, Hyd. and Another

Advocate for Def. : Mr. A. Gopal Reddy, Adv.

Advocate for Pet/Ap. : Mr. M. Surender Rao, Adv.

Judgement :

ORDER

Goda Raghuram, J

1. The appellant filed Writ Petition No.3606 of 1987 assailing the proceedings of the 1st respondent in Roc.No.PER/GR 1V/1895 dated 17-3-1987. By the said proceedings and pursuant to the power available under Regulation 16(3)(a) of the State Bank of Hyderabad (Officers) Service Regulations, 1979, the probation of

the appellant. Assistant Law Officer of the respondent-Bank, was terminated for unsatisfactory service. In terms of the extent regulations of the Bank, the order of termination was accompanied by one month's emoluments in lieu of one month's notice. By an interim order dated 23-3-1987 in WP MP No.4793 of 1987 the proceedings impugned in the writ petition had been stayed by this Court, consequent on which the appellant continued in the service of the Bank.

2. At the hearing of the writ petition, learned Counsel for the petitioner urged that the impugned order was not one of termination simplicitor but was actuated by bias and arbitrariness and was issued as a measure of punishment, further that in the absence of any reasons supporting it, the order was vitiated. The learned single Judge perused the service record of the appellant and found due application of mind on the part of the authorities anterior to arriving at the conclusion that the appellant-petitioner's performance during the period of probation is not satisfactory and that he has not reached the expected standards of efficiency despite the opportunities afforded. The record also disclosed that the reporting and reviewing authorities consistently recorded that the performance of the petitioner was wanting qua the standards expected, that his performance rating was below average and that sufficient opportunities given did not improve his performance during the entire two years period of probation. The record also disclosed a conclusion recorded by the reviewing authority of the petitioner's annual confidential reports, that he has not reached the standards expected of him to merit his confirmation in the Bank service as Officer JMGS-I not to speak of the potential to hold higher and responsible assignments.

3. On an in-depth analysis of the factual circumstances of the petitioner's case in the light of the settled parameters of Judicial review and on a consideration of the applicable law on the issue, derived from a catena of authorities referred to in the judgment, the learned single Judge found no warrant for interference with the impugned order. The learned single Judge categorically recorded a finding, and in our view rightly that the conclusion of non-suitability of the petitioner to hold the job to which he was appointed, has been arrived at rationally, the order is neither arbitrary nor capricious, it is neither punitive in nature nor does it cast a stigma, it is an order of termination simplicitor and could not be declared as illegal or ultra

vires. Consequent on the above findings, the relief was rejected leaving it open to the respondent-Bank, if it so considers, to take an appropriate decision of evaluating the petitioner's performance during these years, the petitioner having continued on the order of stay, whether he acquired the requisite proficiency to hold the post.

4. At the hearing of appeal, the Counsel for the appellant reiterated the self same grounds as have failed to commend themselves to the learned single Jttdge. An alternative submission has also been made that the appellant is now aged 44 years and he has been in service of the bank since 1985 and though his continuance in service since the date of the impugned orders was by virtue of the said interim orders, the respondent-Bank should be directed to continue him in service and not to throw him out at this age.

5. Relying upon a recent judgment of the Supreme Court in *Dipii Prakash Beierjee v. Saiysndranalh Base, National Centre for Basic Sciences, Calcutta and others*, II (1999) SLT 182, learned Counsel for the appellant contends that since the order of termination of probation is a consequence of the consideration of the service record and overall performance of the appellant, as seen from the order, the not ings in some of the orders and memos issued by the bank which are stigmatic in character, in having founded the impugned order, would render the order punitive and thus liable to be invalidated.

6. An analysis of the decision relied upon by the appellant docs not lead to any such principle having been enunciated by the Supreme Court. After analysis of the earlier authorities on the aspect the Court held-

'21. If findings were arrived at in enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the enquiry was not held, no finding were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth-' of the allegations because of delay in regular departmental proceedings or

he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.'

Elucidating the aspect as to what constitutes a stigma, the Supreme Court referred to various decisions wherein the expressions such as 'found unsuitable', 'want o application to bank's work and lack o potential and found not dependable' were held no! to constitute stigma. In conclusion on this aspect the Supreme Court held thai the determination ofthe issue whether the words employed amount to a stigma, depends on the facts and circumstances of each case and the language or words employed in the order of termination of probation.

7. As could be seen from the orders impugned in the writ petition, the respondent-Bank recorded on a careful consideration ofthe appellant's service record and his over all performance during the period of his probation, his performance was not satisfactory in the opinion of the employer and that he has not reached the expected standards of efficiency despite opportunities afforded to him. On that premise, the Bank concluded that the appellant has not completed his probation satisfactorily and consequently terminated his probation in terms of the applicable regulations. There is nothing in the phraseology employed in the impugned orders, either expressly or by any necessary implication warranting an interference that a stigma was either cast or intended. The record of the case discloses a well considered rational judgment on the part of the respondent-Bank in the exercise of thepowers conferred on it in the matter of termination of probation of the appellant. The power has been exercised within the parameters available in law and is not liable to be characterised as either arbitrary, founded on extraneous considerations, actuated by b.ias or prejudice or irrational.

8. The judgment of the learned single Judge, in our view, is correct and suffers from no error either in the application of law or in the exercise of discretion.

9. The fact of the appellant's continuance in service by virtue of an interim order of this Court during the pendency of writ petition, albeit for a period of over a decade does not entitle the appellant to continue in service, despite the rejection of his challenge to the impugned orders of termination. The maxim of law is well settled

actus cunae neminem gravabit. The respondent-Bank cannot be prejudiced to suffer the continuance of the appellant in service, a person who was considered unsuitable for confirmation in service. This Court would be derogating from its ordained role in extending any such benefit to the appellant founded on compassion de hors the authority of law.

10. In the circumstances, the appeal fails and is accordingly dismissed with no order as to costs.

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