

MoinuddIn Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Sep-06-1991

Reported in : 1991(2)WLN448

Judge : A.K. Mathur, J.

Appeal No. : S.B. Civil Writ Petition No. 2654 of 1990

Appellant : Moinuddin

Respondent : State of Rajasthan and anr.

Advocate for Pet/Ap. : Mr. Mridul

Disposition : Petition dismissed

Judgement :

A.K. Mathur, J.

1. The petitioner by this writ petition has prayed that his order of termination dated 22-12-1989 (Annex. 4) may be quashed and the petitioner may be declared to be confirmed on the post of Additional District Judge on and from 12-1-1990.

2. The petitioner in pursuance of the advertisement applied for appointment to the Rajasthan Higher Judicial Service and after selection he came to be appointed as Additional District and Sessions Judge by the order dated 31-12-1986 on

probation for a period of two years and thereafter on 9-1-1987 vide Annex. 1 he was posted as Additional District and Sessions Judge, Baran. The petitioner has not placed on record the order dated 31-12-1986 appointing him on probation. However, his period of probation was extended by the order dated 9-3-1989 for another period of two months which has been placed on record as Annex. 2. Thereafter his period of probation was further extended by the order dated 10-5-1989 upto 31-12-1989. However, the petitioner's services were thereafter discharged by the order dated 22-12-1989, the copy whereof has been placed on the record as Annex. 4. Against this the petitioner filed a representation to the Governor of Rajasthan and this representation was referred to the High Court for consideration. The petitioner has been informed vide the communication of the Registrar, Rajasthan High Court dated 8-6-1990 that the matter was placed before the Full Court on 25-5-1990 for consideration and the same has been rejected. A copy of this letter dated 8-6-1990 has been placed on the record as Annex. 6. Aggrieved against his discharge from service the petitioner has filed the present writ petition.

3. The petitioner submitted that while working as Additional District and Sessions Judge, No. 2, Jodhpur he was communicated an adverse entry for the year 1987 vide communication dated 4-10-1989 (Annex. 7). The adverse entry for the year 1987 reads as under:

Integrity doubtful. Not fair and impartial in dealing with the Public and the Bar. Judgments on facts and law are not sound, well reasoned and expressed in good language. There are persistent reports about his lack of integrity.

Integrity certificate for the period from 22-8-87 to 31-12-1987 during the year 1987 was withheld.

4. Then, again in the year 1988, the petitioner was communicated an adverse entry by the Registrar, Rajasthan High Court by his communication dated 4-10-1989, which reads as under:

A dis-honest and corrupt officer.

Integrity certificate for the period from 1-1-1988 to 25-6-1988 during the year 1988 withheld.

5. The petitioner made a representation against these entries vide his representation dated 16-10-1989, but the representation was rejected and he was communicated by the Registrar, Rajasthan High Court vide his communication dated 23-12-1989 that his representation has been rejected. A copy of the communication has been placed on the record as Annex. 10.

6. The petitioner submitted that during the year 1987 he was posted at Baran in district Kota where he joined on 12-1-1987 and at that time Shri Ram H. Ajwani was posted as District Judge and the petitioner was subordinate to Shri Ajwani. Nothing adverse was recorded by Shri Ajwani. Thereafter Shri J.P. Bansal came to be posted as District Judge, Kota from 22-8-1987 and it is alleged that both these adverse entries were recorded during his time and his integrity certificates for the period from 22-8-1987 to 31-12-1987 during the year 1987 and from 1-1-1988 to 25-6-1988 in the year 1988 were withheld. It is alleged that thereafter the petitioner was transferred to Jodhpur and he joined at Jodhpur on 25-8-1988 and at that time one Shri P.C. Goel was the District Judge and Reporting Officer of the petitioner. But he was not found anything adverse against him. The petitioner also alleged that Hon'ble Mr. N.M. Kasliwal, J. as he then was, was his reviewing Judge, who visited Baran on 23-3-1989 and met some members of the Bar. It is alleged that some of the members of the Bar vouchsafed the good reputation of the petitioner and some did not. But they were unable to specify the instances.

It is submitted that some of the persons alleged liason of the petitioner with the Public Prosecutor and Jailor. But no body could produce and specific evidence. It is said that Hon'ble Mr. Kasliwal, J. submitted his report. It is alleged that thereafter the matter was placed before the Full Court on 18-12-1989 and that the members were divided and ultimately the Full Court resolved that the petitioner should be discharged.

7. A return has been filed by the respondent No. 2. and the respondent has submitted that all the material relating to the petitioner's services was placed before the Full Court and the Full Court after being satisfied resolved that the

petitioner should be discharged from service. It is submitted that the Registrar (Vig.) was also sent to make a detailed enquiry and he also submitted his report and the report submitted by Hon'ble Mr. N.M. Kasliwal, J. were also placed before the Full Court as well as the report of the three members Committee which disposed of the petitioner's representation against his adverse Annual Confidential Reports was also placed before the Full Court and the Full Court resolved that the petitioner's services shall be discharged as he was on probation and he has not made sufficient use of his opportunities.

8. Mr. Mridul, learned Counsel for the petitioner, submitted that when there was such a dispute regarding the working of the petitioner his services should not have been discharged without making a regular enquiry. Learned Counsel submitted that the petitioner's probation was extended twice and during the extended period of probation nothing adverse was found against the petitioner then his services should not have been discharged and a regular enquiry should have been held. In support of his submission, learned Counsel has invited my attention to *Ishwar Chand Jain v. High Court of Punjab and Haryana and Anr.* : AIR 1988 SC1395 and *D.K. Agarwal v. High Court of Judicature at Allahabad* : AIR 1988 SC1403 . Learned Counsel also submitted that his representation against the adverse entries was rejected by the communication (Annex. 10) and that order is not a reasoned order.

9. Mr. Gupta, learned Counsel appearing for the respondent High Court, submitted that in view of the adverse entries made against the petitioner it was not conducive to retain the petitioner in service as an honest and independent judiciary is sine qua non of the Rule of law. Learned Counsel submitted that when the integrity of the petitioner has been doubted and more so the petitioner was on probation, therefore he has failed to sufficiently utilise the opportunities and the Full Court after considering the matter at length has found that such person should not be retained in service. Therefore, the action taken by the respondent in discharging the petitioner who was on probation from service cannot be said to be bad in any manner.

10. I have gone through the whole writ petition and heard both the learned Counsel at length. The service conditions of the petitioner are governed by the Rajasthan Higher Judicial Service Rules, 1969. Rules 25 and 26 of the aforesaid Rules which are relevant for our present purpose read as under:

25. Probation: All persons appointed to the service by direct recruitment under Clause (ii) of Rule 8 shall be placed on probation for a period of two years.

26. Service when dispensed with or period of probation extended:

(1) If it appears at any time during or at the end of the period of probation that an officer has not made sufficient use of his opportunities or if he has otherwise failed to give satisfaction, the Governor may in consultation with the Court dispense with his services:

Provided that the Governor may, in special cases in consultation with the Court, extend the period of probation of such officer by a specified period not exceeding one year.

(2) An officer whose services are dispensed with during or at the end of the original or extended period of his probation under Sub-rule (1) shall not be entitled to any compensation.

11. The appointment of the petitioner was on probation for a period of two years and it was extended for two months at the first instance and thereafter it was further extended. But during the extended period he was discharged from service on 22-12-1989 vide order Annex. 4. A probationer is supposed to show a satisfactory performance for his confirmation. The very concept of probation is that the incumbent is on trial and during that trial if he failed to exhibit satisfactory performance then the employer has a right to discharge the incumbent from service. In the present case, the petitioner while working on probation did not sufficiently discharge his duties as is evident from the two adverse entries reproduced above. Therefore, the Full Court after considering the matter did not feel inclined to confirm the petitioner in service and accordingly recommended to the Governor to discharge the petitioner from service and consequently he was

discharged from service.

The petitioner during the years 1987 and 1988 earned adverse entries, it is reported that his integrity is not above board and his integrity certificates were withheld, then in that case such persons cannot be retained in service. Simply because, during the extended period of probation nothing adverse was found by the subsequent reporting officer that will not absolve the incumbent from the bad entries earned by him earlier.

12. In the case OF Ishwar Chand Jain (supra) the incumbent was a Judicial Officer and the Vigilance Judge who conducted enquiry into certain complaints made against the Judicial Officer on probation which formed foundation for High Court recommending Officer's dismissal on the ground that the officer's work and conduct were not satisfactory. Out of the 4 complaints on which the enquiry was conducted by the Vigilance Judge opined that the matter relating to items Nos. 1 and 2 needed further investigation and he further found that he was not in a position to record any definite finding on the allegations made in those complaints. So far as the third complaint is concerned, he found that there was nothing wrong in postponing the pronouncement of the order with a view to give time to the parties to compromise the matter. As regards the 4th complaint, the Vigilance Judge did not express any opinion. This report did not show that the officer's work and conduct was not satisfactory or that he was not fit to act as a Judicial Officer and therefore in that light the Hon'ble Supreme Court set aside the order of dismissal of the petitioner and ordered his reinstatement. But that is not the case here. Here, in the present case, the immediate officer i.e. District Judge recorded the adverse reports against the petitioner regarding his integrity for the years 1987 and 1988 and thereafter the Registrar (Vig.) also conducted the enquiry and found that the reputation of the petitioner is not above board. Later on, Hon'ble Mr. Kasliwal, J. made an enquiry and nothing specifically adverse was found by him. All these materials were placed before the Full Court and the Full Court after considering all this material did not feel persuaded to confirm the petitioner and recommended to the Governor to discharge the petitioner from service and accordingly he was discharged from service. Therefore, this case has no relevance. In this view of the matter, the case cited by the learned Counsel cannot

be of any assistance.

13. Similarly, in the case of D.K. Agarwal (*supra*) the question was in regard to grant of Super Time Scale to the incumbent. The super-time scale was denied to the petitioner on account of certain adverse remarks. But that entry of adverse remarks was found by the Chief Justice to be baseless and it was recorded that such entry should not have been communicated to the concerned Judicial Officer. In this view of the matter, it was found that since the Chief Justice has recorded that the adverse entry should not have been communicated to the petitioner, therefore depriving the petitioner of the super time scale was found to be unjustified and the Hon'ble Supreme Court directed the respondents to grant Super-time Scale to the incumbent. Therefore, this case also does not provide any useful assistance to the petitioner.

14. Mr. Mridul, learned Counsel for the petitioner emphasised that once the period of probation of the petitioner has been extended and nothing has been found adverse against the petitioner during this extended period of probation, therefore, he should have been confirmed and at best an enquiry should have been conducted. I am not impressed by the argument of the Warned counsel for the simple reason that so long as the adverse entries which have been recorded-against the petitioner are not expunged then simply by extending the period of probation those adverse entries will not be wiped out nor in such cases the enquiry is warranted because Rule 25 of the Rules clearly lays down that all persons appointed to the service by direct recruitment shall be placed on probation for a period of two years and Rule 26 says that the incumbent can be discharged at the end of the period of probation if he has not made sufficient use of his opportunities or if he has failed to give satisfaction. It is further provided that in special cases the period of probation can be extended but not exceeding one year. Therefore, a combined reading of Rules 25 and 26 shows that even during the extended period the petitioner remains on probation only. Simply because the period has been extended that would not automatic enure confirmation to the petitioner. The confirmation has to be by a positive order. Here, in the present case, the petitioner has been discharged during the extended period of probation, therefore, the enquiry in the present case was not at all warranted. In this connection, recently

their Lordships of the Supreme Court has occasioned to examine a some what similar Rule 8 of the M.P. Govt. Servants' General Conditions of Service Rules, 1961 and observed that while discharging such persons after the expiry of the period of initial probation or extended period of probation the question of conducting any enquiry under the Classification, Control and Appeal (Rules) after giving an opportunity and that too for specific charges does not arise at all. It was observed as under in *Municipal Corporation, Raipur v. Ashok Kumar Misra* : (1991) IILLJ343SC as under:

Exercise of the power to extend the probation is hedged with the existence of the rule in that regard followed by positive act of either confirmation of the probation or discharge from service or reversion to the substantive post within a reasonable time after the expiry of the period of probation. If the rules do not empower the appointing authority to extend the probation beyond the prescribed period, or where the rules are basent about confirmation or passing of the prescribed test for confirmation of probation then inaction for a very long time may lead to an indication of the satisfactory completion of probation. But in this case Rule 8 expressly postulates otherwise. The period of probation is subject to extension by order in writing for another period of one year. Passing the prescribed examinations and successful completion of probation and to make an order of confirmation are condition precedent. Mere expiry of the initial period of probation does not automatically have the effect of the deemed confirmation and the status of a deemed confirmation of the probation. An express order in that regard only confers the status of an approved probationer. Note to Sub-rule (2) read with Sub-rule (6) of Rule 8 manifests the legislative intent that confirmation of the probation of the respondent would be made only on successful completion of the probation and the passing of the prescribed examinations. It is not the respondent's case that he passed all the examinations. He shall be deemed to be continued on probation. Before confirmation the appointing authority is empowered to terminate the service of the probationer by issuing one calendar month's notice in writing and on expiry thereof the service stands terminated without any further notice. Within three months from the date of expiry of original two years period of probation and within one year's period, the order of termination was made. In this view the question of conducting an enquiry under the Classification, Control and Appeal

(Rules) after giving an opportunity and that too for specific charges does not arise.

15. Thus, I do not find any merit in this argument of the learned Counsel and the same is rejected.

16. Mr. Mridul, learned Counsel for the petitioner next submitted that the order rejecting representation of the petitioner against the adverse entries vide Annex. 10 is not a speaking order. In this connection, reference may be made to Para 17 of the reply given by the High Court in which it has been clearly mentioned that the representation of the petitioner against the adverse entries was placed before the Committee consisting of 3 Hon'ble Judges and every aspect of the matter was considered and a detailed report was submitted to the Full Court. When the representation of the petitioner against the adverse entries was considered by the Committee the 3 Hon'ble Judges and if the petitioner wanted the reasons he could have applied for the same. But the fact remains that the 3 Hon'ble Judges considered the representation of the petitioner and did not feel inclined to expunge the adverse entries.

17 It is not the case of the petitioner that no detailed reasons were recorded while rejecting his representation against the adverse entries. But his contention is that he was communicated the reasons. It is not the requirement that the reasons should be communicated in every case.

18. Recently, their Lordships of the Supreme Court in Union of India and Ors. v. E.G. Nambudiri : (1991)1ILLJ594SC has taken the view regarding the communication of adverse remarks, representation against this and rejection thereof. In this connection, it was observed as under:

Therefore, in the absence of any statutory rule or statutory instructions requiring the competent authority to record reasons in rejecting a representation made by a government servant against the adverse entries the competent authority is not under any obligation to record reasons. But the competent authority has no licence to act arbitrarily, it must act in a fair and just manner. It is required to consider the questions raised by the government servant and examine the same, in the light of the comments made by the officer awarding the adverse entries and the officer

countersigning the same. If the representation is rejected after its consideration in a fair and just manner, the order of rejection would not be rendered illegal merely on the ground of absence of reasons.

19. It was further observed as under in the aforesaid case:

If such an order is challenged in a court of law it is always open to an administrative authority to produce evidence aliunde before the court to justify its action.

20. It is not the case of the petitioner that reasons have not been recorded. The case of the petitioner is that he has not been communicated the reasons. As stated above, the communication of the reasons is not required. Therefore, this argument of the learned Counsel has no merit and the same is rejected.

21. The result of the above discussion is that the writ petition has no merit and the same is dismissed.

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