

**R. Krishnamoorthy Vs. the Director of Technical Education and anr.**

**R. Krishnamoorthy Vs. the Director of Technical Education and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/828174](http://sooperkanoon.com/828174)

**Court :** Chennai

**Decided On :** Sep-18-1996

**Reported in :** (1997)1MLJ602

**Appellant :** R. Krishnamoorthy

**Respondent :** The Director of Technical Education and anr.

**Judgement :**

ORDER

**S.M. Abdul Wahab, J.**

1. This writ petition is for the issue of a writ of certiorarified mandamus to quash the order of the first respondent dated 3.11.1989 and to direct the second respondent to reinstate the petitioner in service with continuity and backwages.

2. The case of the petitioner is that he was appointed in second respondent Institution during 1985-86 in a regular vacancy. Initially, he was appointed as an Instructor. Thereafter, his appointment was also approved by the first respondent on 19.2.1986. He was on probation for two years. On 24.6.1986 he was designated as Associate Lecturer. The said appointment was also approved on 11.12.1986 by the first respondent. On 19.6.1987, his appointment was terminated and no reason was given. The condition contained in the appointment order is unconscionable in nature and opposed to public policy. In spite of the representation dated 13.7.1987, there was no reply. Hence the petitioner had filed

W.P. No. 9741 of 1987. This Court passed an order directing the first respondent to dispose of the appeal filed by the petitioner, after giving an opportunity to the parties. But the appeal was dismissed without complying with the said direction. Hence the present writ petition has been filed.

3. The second respondent has filed a counter-affidavit, in which it is stated that the petitioner was temporarily appointed as an Instructor in July, 1985. He was on probation for a period of two years. On 24.6.1986, he was appointed as an Associate Lecturer in Mathematics. In the second appointment order also, he was placed on probation for two years. It is further stated that if services were not found satisfactory, during the period of probation, the person concerned could be discharged without notice. The petitioner's services were not found satisfactory. Hence, his services were terminated on 19.6.1987. The termination order need not contain any reason. As the petitioner's services were found unsatisfactory, the termination is not opposed to public policy. The power of termination is available in the appointment order itself. The petitioner was relieved from his duties and he has taken up employment in the Annamalai University. In the circumstances, there is no justification for interference by this Court.

4. Learned Counsel for the petitioner contended that the condition contained in Clause 2 of the appointment order is unconscionable and opposed to Section 23 of the Contract Act. He cited a decision reported in *Central Inland Water Transport Corporation v. Biojo Nath Ganguly* : (1986) ILLJ 171 SC, learned Judges of the Apex Court, in paragraph 89, have held as follows:

This principle is that the courts will not enforce and will, then called upon to do so, strike down unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will

apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stranger party or go without them. It will also apply where a man has no choice, or rather, no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract of form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal.

5. In this case, the petitioner is an M.Sc. Graduate. Under what circumstances, he took up the appointment with the second respondent is not clear. In the affidavit also, the petitioner has not stated that he was in disadvantageous position when he accepted the appointment. Further, it is stated in the counter-affidavit of the second respondent that after he was relieved from the second respondent Institution he got employment in the Annamalai University. Therefore, I do not find that the petitioner was in a disadvantageous or unequal position. Hence the decision cited by learned Counsel for the petitioner has no application to the case on hand.

6. The next contention urged by learned Counsel for the petitioner is that the impugned order does not indicate that the petitioner was discharged from service for unsatisfactory performance because the said word 'unsatisfactory' is not mentioned in the order. He cited the decision reported in *Mohinder Singh Gill v. Chief Election Commissioner* : [1978]2SCR272 , In the said case also, the Supreme Court has laid down that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge get validated by additional grounds later brought out. Relying upon the said view, learned Counsel for the petitioner contended that the reasons given by the second respondent in paragraphs 4 and 8 of the counter affidavit will not justify the order of termination or discharge.

7. The above referred to case is not a case relating to service matter. The petitioner was only under probation. The termination in this case tantamounts to only discharge from service. In identical situation, the Supreme Court in *State of Orissa v. Jyoti Ranjan Kar* , held as follows:

Admittedly, the rules permit termination of service during the period of probation on the ground of unsuitability. This fact has been stated to be the reason for termination in response to the notice issued to the State Government when the termination order was challenged before the tribunal. It is, therefore, clear that the termination order was in accordance with rules and the action was not arbitrary. There is no infirmity in the termination order to permit its quashing by the tribunal.

In the aforesaid case, the Administrative Tribunal set aside the order of termination on the ground that the order itself did not disclose the reason for termination. In view of the latest pronouncement of the Supreme Court in an identical situation, I have to rely upon the said judgment rather than the former one. reported in *Mohinder Singh Gill v. Chief Election Commissioner* : [1978]2SCR272 .

8. Learned Counsel for the petitioner further coincided that since the counter-affidavit states that the termination was for unsatisfactory performance, the basis of the order was a stigma. Therefore, he should have been given notice before the termination of service. As stated earlier, the order is discharge from the said service while undergoing probation. If his services were regularised, then such a contention would have carried weight. The order of discharge of the probation simpliciter cannot be termed as an order for any misconduct attracting the notice to be given before termination.

9. The. *Governing Council of Kidwai Memorial Institute of Oncology v. Dr. Pandurang Getwalkar* : (1993)ILLJ308SC , the Supreme Court has held that if the decision is taken to terminate the service of an employee during the period of probation after taking into consideration the overall performance and some action or inaction on the part of such employee, then it cannot be said that it amounts to removal from service as punishment. It need not be said that the appointing authority at the stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the

period of probation is entitled to look into any complaint made in respect of such employee while discharging his duties for the purpose of making assessment of the performance of such employee. Therefore, in the present case, the contention of learned Counsel for the petitioner that the order of termination is vitiated because no notice was given to the petitioner is also untenable.

10. Lastly, learned Counsel for the petitioner contended that the first respondent has not complied with the direction of this court in W.P. No. 9741 of 1987, dated 7.10.1987. It is true that in the order dated 3.11.1987, there is mention about the opportunity to be given to the petitioner before passing the order. Since on that ground if the matter is remitted back to the first respondent, the matter would be pending again for another decade or so. That is way, with the consent of learned Counsel for both sides. I took up the matter for consideration on merits. Since I am satisfied that the petitioner cannot succeed on merits, there is no necessity for remitting the matter back to the first respondent.

For the foregoing reasons, I am of the view that the writ petition has to be dismissed and the same is accordingly dismissed. No costs.