

Dharmendra Kumar Vs. Commissioner Kendriya Vidyalaya Sangathan

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Court : Delhi

Decided On : May-15-2012

Judge : Badar Durrez Ahmed & V.K. Jain

Appeal No. : W.P.(C) 2843 of 2012

Appellant : Dharmendra Kumar

Respondent : Commissioner Kendriya Vidyalaya Sangathan

Judgement :

Badar Durrez Ahmed, J.

Oral:

CM No. 6147/2012

Allowed, subject to all just exceptions.

WP(C) 2843/2012

1. This writ petition is directed against the order dated 23.03.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 760/2011. The petitioner had filed the said original application challenging the termination letter dated 16.09.2010 which was a termination of his services simpliciter in terms of paragraph 5 of his appointment letter dated 27.07.2009.

2. The petitioner was offered appointment to the post of Trained Graduate Teacher (TGT) Social Science by virtue of the said appointment letter dated 27.07.2009. One of the conditions stipulated in the said appointment letter was set out in paragraph 5 thereof which reads as under:-

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

Pursuant to the said condition, the petitioner's services were terminated by the order dated 16.09.2010 which is in the following terms:-

ORDER

In pursuance of para 5 offer of appointment made to his vide Memorandum No. F.16-2/2009-KVS (BPL)/4096 dated 27/07/2009 the service of Shri Dharmendra Kumar, TGT (Social Studies), Kendriya Vidyalaya, Karera are hereby terminated with immediate effect by making payment of one month pay and allowances in lieu of notice period.”

It is apparent that the termination was a termination simpliciter.

3. The learned counsel for the petitioner submitted that the actual reasons behind the termination were his absence from the school for nearly three months. According to the petitioner this was the result of his ailment and he had medical certificates for the same. The learned counsel for the petitioner submitted that the respondent doubted the authenticity and veracity of the medical certificates and therefore the same ought to have been verified and the petitioner ought to have been given a chance to establish that the medical certificates were genuine. He submitted that the termination letter was bad in law as it had been issued without giving the petitioner any opportunity or chance to substantiate his claim that he could not attend the duty in the school on account of medical reasons.

4. We find that the Tribunal has examined the submissions made on behalf of the petitioner at length and has even reproduced the letter dated 15.07.2010 issued to the petitioner directing him to be present in school and to complete the syllabus of the subjects he was teaching . The said letter dated 15.07.2010 clearly indicates that the petitioner had taken leave to go for the medical examination for the post of Assistant Commandant with the Central Reserve Police Force. This leave was taken on 29.06.2010 till 01.07.2010. Even though the leave ended on 01.07.2010, the petitioner remained absent from school till 15.07.2010, that is, the date on which the letter was written. The letter also indicates that the petitioner remained absent from school earlier also from 15.04.2010 to 25.04.2010. By the letter dated 03.07.2010 the petitioner had been informed that his leave would not be extended and he should be present himself in school so that the students do not suffer. However, no response had been received to that letter dated 03.07.2010. Thereafter, a medical certificate had been sent by the petitioner which was received in the office of the respondent on 08.07.2010 but this was not accompanied by any application for extension of leave or for seeking leave and there was no indication as to how long the petitioner would remain absent. As such no leave was sanctioned. It was also indicated in the letter dated 15.07.2012 that due to the long absence of the petitioner from the school, the syllabus of Social Science was not covered and that the board classes as well as the other classes were suffering. Consequently, by virtue of the said letter dated 15.07.2010 the respondent directed the petitioner to be present in the school and complete the syllabus of the subjects he was teaching.

5. In reply, the petitioner sent a letter dated 21.07.2010 wherein he indicated that he was suffering from hypertension and anxiety. He also indicated that the Doctor has suggested that he should take rest for 30 days. In this letter he stated that due to his illness he was “completely unable to join the school”. However, he sought to give an assurance that he would join the service as soon as he is declared medically fit. And, insofar as his teaching is concerned, he indicated that he would try his best to complete the syllabus within the stipulated time by taking extra classes.

6. However, even after the petitioner sent this letter he did not join the school till he presented himself before the school on 14.09.2010. Two days later the termination order dated 16.09.2010 was issued to him whereby his services were terminated by the Assistant Commissioner, Kendriya Vidyalaya (i.e., the appointing authority) by invoking paragraph 5 of the appointment letter dated 27.07.2009. His services were terminated with immediate effect and one month pay and allowances were given to him in lieu of the one month notice period.

7. In this backdrop, it is evident that the petitioner was away from the school for a long duration and there was no indication on the part of the petitioner as to when he would rejoin his duty. Even the explanation given by the petitioner that he was medically unfit cannot be regarded as sacrosanct. However, without going into those issues, it is an admitted position that the petitioner was holding a temporary post and was on probation for two years. He had been appointed on 27.07.2009 and these incidents with regard to his abstaining from work took place within one year of his being on probation.

8. Whenever there is a termination simpliciter in respect of a person who is on probation there is bound to be some reason or the other as to why the services of such a person is terminated. The Tribunal has rightly placed reliance on the decision of the Supreme Court in the case of Gaganagar Zila Dugdh Utpadak Sahkari Sangh Ltd. v. Priyanka Joshi: AIR 1999 SC 2363, in which case also the person concerned was absent from duty while he was on probation and his termination was also a termination simplicitor. The Supreme Court held that while judging the performance of a person during his probationary period if his services are terminated, there would obviously be some reason or the other for such termination. The Supreme Court also held that if the services are terminated during the probationary period without any reason it would be possible that such an order would be impugned on the ground that it had been passed arbitrarily. Thus, it is evident that the services of a person terminated even on probation has to be on some reason or the other which relates to his suitability for the job. In the present case we find that the petitioner had remained absent from the school for a long duration of time. As a result, students of classes 6 to 10 had suffered, inasmuch as teaching in the subject of Social Science, which the petitioner was

teaching, came to a standstill during that period. The response of the petitioner to the effect that he would make up and cover up the course by taking extra classes would, if permitted, unnecessarily put a heavy burden on the students and is definitely not a recommended method of teaching. It appears that the petitioner was more interested in appearing for the Central Reserve Police Force examination and other competitive examinations such as appearing for the Indian Administrative Services conducted by the UPSC. Annexure- P-3 is a letter dated 11.03.2010 where he had specifically sought permission to appear in the Indian Civil Services Examination 2010 conducted by the UPSC. Perhaps, the petitioner had taken up the job of teaching only as a stop-gap-measure so that he would have enough time to prepare for the other exams, much to the detriment of the students. This clearly shows that the petitioner was unsuitable for a teaching job which requires full time concentration and a dedication so that students of classes 6 to 10, whom he was teaching, had his full attention in respect of the subject which he was teaching. It is absolutely clear that the view taken by the respondent in coming to the conclusion that the petitioner was unsuitable for the job of TGT (Social Science) in the said school cannot be faulted. It is in these circumstances and it is for these reasons that persons appointed are usually put on probation to test their suitability. And, once the respondent came to the conclusion that the petitioner was not suitable for the job, there is nothing wrong in invoking para 5 of the appointment letter by terminating his services by the order dated 16.09.2010 with immediate effect, giving him one month pay and allowances in lieu of the notice period.

9. In a recent decision, in the case of *Rajesh Kohli v. High Court of Jammu and Kashmir and Another*: (2010) 12 SCC 783, the Supreme Court observed as under:-

“23. This position is no longer *res integra* and it is well settled that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. In *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*: 2 (2002) 1 SCC 520: 2002 SCC (LandS) 170, this Court has explained at length the tests that would apply to determine if an order terminating the services of a probationer is stigmatic. On the facts of that case it

was held that the opinion expressed in the termination order that the probationer's "work and conduct has not been found satisfactory" was not ex facie stigmatic and in such circumstances the question of having to comply with the principles of natural justice does not arise."

From the above it is apparent that even where a termination order in respect of a probationer carried remarks such as "work and conduct has not been found satisfactory", the Supreme Court found that such a remark was not stigmatic and in such circumstances the question of having to comply with the principles of natural justice did not arise. In the present case, we find there is no such remark with regard to the suitability and therefore the question of the impugned termination order dated 16.09.2010 being stigmatic does not at all arise.

10. In view of the foregoing, there is no merit in the writ petition the same is dismissed. There shall be no orders as to costs.

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