Krishnadevaraya Education Trust And ... vs L.A. Balakrishna on 15 January, 2001

Equivalent citations: AIR 2001 SUPREME COURT 625, 2001 (9) SCC 319, 2001 AIR SCW 253, 2001 LAB. I. C. 642, 2001 AIR - KANT. H. C. R. 2152, 2001 (1) UJ (SC) 385, 2001 UJ(SC) 1 385, 2001 (2) SRJ 248, 2001 (1) SCALE 196, 2001 (2) SERVLJ 185 SC, 2001 (2) LRI 1248, 2001 LAB LR 260, (2001) 1 JT 617 (SC), 2001 (1) JT 617, (2001) 1 CURLR 534, (2001) 1 SERVLR 635, 2002 SCC (L&S) 53, (2001) 98 FJR 342, (2001) 88 FACLR 753, (2001) 1 LAB LN 856, (2001) 1 SCT 784, (2001) 1 SCJ 702, (2001) 3 SUPREME 503, (2001) 1 SCALE 196, (2001) 1 UC 399

Bench: B.N. Kirpal, Ruma Pal

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           CASE NO.:
Appeal (civil)  628 of 2001

PETITIONER:
KRISHNADEVARAYA EDUCATION TRUST AND ANR.

RESPONDENT:
L.A. BALAKRISHNA

DATE OF JUDGMENT: 15/01/2001

BENCH:
B.N. KIRPAL & MRS. RUMA PAL

JUDGMENT:
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JUDGMENT 2001 (1) SCR 387 The following Judgment of the Court was delivered : Special Leave granted.

The respondent was appointed to the post of Assistant Professor on 22nd September, 1990 on probation. Within the probationary period, by order dated 16th June, 1991, his services were teminated. In the order terminating the services, it was mentioned as follows:

> "As a matter of policy, as usual, a committee was constituted to go into the general performance of each staff. The committee after having gone through the records of each individual right from the date of his/ her inception into the Institute is of the opinion that your on the job proficiency is not upto the mark. Hence, the Institution feels that your services are no longer required"

The aforesaid order was challenged before the Educational Tribunal on the ground that the order terminating, the appointment cast a stigma and, therefore, such an order could not be passed without holding a departmental inquiry.

Before the Tribunal, the appellants herein conceded and the said order of termination was set aside. Subsequently again, within the period of probation, a fresh order of termination was passed which was as follows :

> "Sri L.A. Balakrishna, Assistant Professor, Department of Mechanical Engineering will be relieved of his duties with effect from 1.8.1991, he may be paid his dues if any."

This order was again challenged and the Tribunal came to the conclusion that the real reason for passing this order was that his services were found to be unsuitable and, therefore, this was by was of punishment, The order was set aside and the high Court upheld the decision of the Tribunal. Hence, this appeal.

There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job than the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order Would be sought to be challenged on the ground of being arbitrary. Therefore, normally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

If such an order is challenged, the employer will have to indicate the grounds .on which the services of a probationer were terminated. Mere fact that in response to the challenge, the employer states that the services were. not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services.

In the instant case, the second order which was passed terminating the services of the respondent was innocuously worded. Even if we take into consideration the first order which was passed which mentioned that a Committee which had been constituted came to the conclusion that the job proficiency of the respondent was not upto the mark, that would be a valid reason for terminating the services of the respondent. That reason cannot be cited and relied upon by contending that the termination was by way of punishment.

We, accordingly, allow this appeal and set aside the decision of the Tribunal as well-as that of the High Court No costs.