T. C. M. Pillai vs Indian Institute Of Technology, ... on 29 April, 1971

Equivalent citations: 1971 AIR 1811, 1971 SCR 555, AIR 1971 SUPREME COURT 1811, 1971 (1) LABLJ 530, 1971 SERVLR 679, 1971 SCD 763

Author: A.N. Grover

Bench: A.N. Grover, K.S. Hegde

PETITIONER:
T. C. M. PILLAI

Vs.

RESPONDENT:
INDIAN INSTITUTE OF TECHNOLOGY, GUINDY, MADRAS

DATE OF JUDGMENT29/04/1971

BENCH:
GROVER, A.N.
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GROVER, A.N.
HEGDE, K.S.

CITATION:
1971 AIR 1811 1971 SCR 555
1971 SCC (2) 251

ACT:
Institutes of Technology Act, 1961-Statute 13, cl. (9) framed under s. 27-Probationer-Termination of Service-Attitude or tendency displayed by employee valid consideration-Termination based on such considerations not punishment.

HEADNOTE:
The appellant, a scientist, was appointed to the staff of the respondent institute on probation. He had executed a bond to serve the Kerala University but this fact was never disclosed by him. He adopted an attitude questioning the Rules and Regulations of the Institute as well as every order made by the superior authorities, he even threatened legal proceedings at every stage. He had barely been in the service of the Institute for a short time when he wanted to

take up service elsewhere. When the question of his confirmation came up before the Board of Governors it was recorded that the Board had come to know for the first time that while the appellant had executed a bond to serve the Kerala University he did not disclose that fact when he applied to the Institute. 'Ibis, in the opinion of the Board was "serious transgression of well known convention and etiquette". The Board, after considering all the aspects and perusing the confidential reports came to the conclusion that it would not be desirable in the interest of the Institute to retain the services of the appellant. It was therefore resolved that his services be terminated with a month's notice in terms of the order of appointment. The appellant filed a petition under Art. 226 of the Constitution challenging the order of termination. He relied on cl. 9 of Statute 13 framed under s. 27 of the Institutes of Technology Act, 1961 which provided that no order imposing any penalty shall be passed without giving a reasonable opportunity of showing cause against the action proposed to be taken ill regard to a member of the staff. The High Court held that although the Board of Governors took note of the fact that the appellant had committed a breach of a Covenant with the Kerala Government and that he had insisted on certain benefits which he was not entitled to it could not be said that his services had been terminated by way of punishment. Dismissing the appeal to this Court,

HELD: A probationer or a temporary servant can be discharged if it is found that he is not suitable for the post which he is holding. Suitability does not depend merely on the excellence or proficiency in work. A particular attitude or tendency displayed by an employee can well influence the decision of the confirming authority while judging his suitability or fitness for confirmation. In the present case, if the Institute thought that a person of the appellant's type would not be suitable for being confirmed as a member of the staff of the Institute the order dispensing with his services could not be regarded as penal action taken with the object of inflicting punishment. [559H-560B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2263 of 1968.

Appeal from the judgment and order dated August 4, 1964 of the Madras High Court in Writ Appeal No. 337 of 1963. M. C. Chagla and R. Gopalakrishnan, for the appellant. S. T. Desai, C. N. S. Chengalverayan and A. V. Rangam, for the respondent.

The Judgment of the Court was delivered by Grover, J.--This is an appeal by certificate from a judge- ment of a division bench of the Madras High Court affirming the decision of a learned single judge rejecting the petition filed by the appellant under Art. 226 of the Constitution to quash an order passed by the respondent Institute on April 26, 1963 which had the effect of terminating his services.

The appellant had a distinguished academic career. After passing the Master's degree in Organic Chemistry from the Lucknow University he obtained a Doctorate from the Royal School of Mining of the University of London. He got a Post Graduate Diploma from the Imperial College of Science and Technology, London. He worked for sometime and was employed successively in some of the Universities in the United States of America. Since the year 1960 the appellant had been making efforts to get employment in the respondent Institute. This Institute is one of the four Institutes of Science and Technology which have been declared to be institutions of national importance. It has a Board of Governors, the Chairman and Members of which are distinguished educationists, scientists and teachers. By a letter dated January 8, 1962 the appellant was offered the post of the Assistant Professor of Extracting Metallurgy at the Institute. Condition No. 2 was as follows:

> "The post is permanent. Your appointment how- ever is made on probation for a period of one year. Subject to satisfactory completion of probation, you will be confirmed in the post. During the period of probation your services may be terminated by one month's notice on either side."

This offer was accepted by the appellant. By a resolution of the Board of Governors dated March 1, 1962 the action of the Chairman in according approval to the appointment of the appellant was confirmed. The appellant joined the staff of the Institute on May 23, 1962.

It is somewhat unfortunate that a distinguished scientist of the caliber of the appellant did not commence his career in a happy manner. It appears that he had executed a bond to serve the Kerala University. According to the Institute this fact was never disclosed by him. It has been noticed in the judgment of the High Court that according to the statement of the Director of the Institute in his affidavit to which no exception was taken by the appellant in his reply the latter adopted an attitude questioning the Rules and Regulations of the Institute as well as every order made by the superior authorities; he even threatened legal proceedings at every stage. In spite of that, on January 31, 1963 the Director gave an assurance to the appellant that he did not want members of the staff to quit the Institute on differences of opinion on matters which were completely non-academic. On March 21, 1963 a report on the work done by the appellant was called for with a view to placing it before the Board of Governors. That report was submitted by the appellant. A meeting of the Board of Governors was held on April 15, 1963. Item 27 of the agenda of that meeting related to the consideration of certain representations made by the appellant. The Board rejected the appeal against the decision of the Director in the matter of allotment of a C type quarter. It also confirmed the Director's decision that the application submitted by the appellant for a post in the Benaras Hindu University be withheld. The Board made a note of the fact that there was no provision in the Institute Medical Attendance Rules for charges of X-ray done in a private Radiological Institute and reimbursement of charges relating to taxi hire incurred by the appellant in taking his wife to and

from the hospital in the absence of a certificate from the authorised medical attendant. Item 28 related to the question of the satis- factory completion of probation of Assistant Professors and their confirmation. It was recorded that the Board had come to know for the first time that while the appellant had executed a bond to serve the Kerala University he did not disclose that fact when he applied to the Institute. This, in the opinion of the Board, was " serious transgression of well known convention and official etiquette". The Board, after considering all the aspects and pursuing the confidential reports by the Head of the Department in respect of the work of the appellant, came to the conclusion that it would not be desirable in the interest of the Institute to retain the services of the appellant. It was, therefore, resolved that his services be terminated with a month's notice. The Secretary of the Board of Governors thereafter sent a letter to the appellant dated April 23, 1963 informing him that the Board had decided to terminate his services and a month's notice was being given to him in view of clause 2 of the order of appointment. The appellant filed a petition under Art. 226 of the Consti- tution. His main plea was that no reasonable opportunity had been afforded to him to show cause against the order terminating his services and therefore the same was illegal and invalid. The allegations made by the appellant were controverted on behalf of the Institute.

The learned single judge, who heard the writ petition con- sidered the question of the applicability of Art. 311 of the Constitution to the case of the appellant. It was held by him that the appellant was not in the civil service of the Union and could not claim the benefit of the aforesaid Article. Even otherwise the learned judge was not inclined to agree that the circumstances in which the services of the appellant were terminated warranted the conclusion that he had been discharged by way of punishment. The appellant filed an appeal under clause 15 of the Letters Patent of the High Court. Before the division bench the correctness of the decision of the learned single judge with regard to the applicability of Art. 311 was not contested. Reliance was sought to be placed on the provisions of Statute 13 framed under S. 27 of the Institutes of Technology Act, 1961 under which the respondent Institute had been incorporated as a body corporate. Clause 5 of that Statute conferred power on the appointing authority to terminate the services of any member of the staff without notice and without any cause being assigned during the period of probation. Clause 9 gave the penalties which could be imposed on a member of the staff. Removal and dismissal from service were included among those penalties. It was provided that no order imposing any penalty shall be passed without giving ?a reasonable opportunity of showing cause against the action proposed to be taken in regard to a member of the staff. The division bench was satisfied that Statute 13 prescribed the terms and conditions of permanent employees of the Institute. Statute 14 related to the conditions of service of temporary employees. Although probationers could not be termed as permanent employees the conditions of their tenure were also governed by Statute 13. If the services of a probationer were, therefore, terminated by way of punishment without following the procedure prescribed by clause 9 of Statute 13 it would be competent for the High Court to issue an appropriate writ. The division bench proceeded to examine the circumstances which led to the resolution of the Board by which his services were terminated. The conclusion which was arrived at was that although the Board of Governors took note of the fact that the appellant had committed a breach of a covenant with the Kerala Government and that he had insisted on certain benefits to which he was not entitled it could not be said that his services had been terminated by way of punishment. It was possible that the dissatisfaction of the Board with the conduct of, the appellant formed the motive for the ultimate order passed-by it but that was quite different from terminating his services as a measure of

punishment.

Mr, M. C. Chagla for the appellant has forcefully emphasised the background and the circumstances which prompted the making of the order terminating the services of the appellant. According to him the appellant was a distinguished and promising scientist whose services would have been of immense advantage to the Institute and merely because he insisted on certain benefits which he conceived to be his just dues and wanted to advance and further his prospects in the Benaras Hindu University by getting an assignment there, his services were dispensed with without his being told what the charges against him were and without his having any opportunity of giving an explanation or satisfying the Board that whatever he had done was fully justified and did not merit any action being taken against him. Mr. Chagla pointed out that it is such treatment meted out to our scientists and technologists that there was so much brain drain from this country. Indeed the appellant has now taken up a highly remunerative and important assignment in the United States. It is true that every one who has good of the country at heart should endeavor to retain the services of scientists and technologists of high repute so that the institutions in this country could take advantage of their scholarship and research. At the same time the scientists or scholars who have distinguished themselves in foreign countries should also consider it a part of their duty and obligation to contribute to the imparting of education and advancement of research in their own country even though it be at a sacrifice of monetary and other benefits which foreign countries can offer but which it is not possible to obtain here. The present case is a typical one of a scientist who started making complaints about reimbursement charges of x-ray and taxi fare and other small matters as soon as he joined the Institute and even though he had entered into a bond with the Kerala Government to serve the Kerala University he did not apparently take the permission of the Kerala Government or University for working elsewhere. He had barely been in the service of the Institute for a short time when he wanted to take up service with the Banaras Hindu University when a vacancy arose there. No one can blame the appellant for his natural desire to improve his prospects but if the Institute thought that a gentleman of his type would not be suitable for being confirmed as a member of the staff of the Institute the letter dispensing with his services could not be regarded as a penal action taken with the object of inflicting punishment on him.

It is well settled that a probationer or a temporary servant can be discharged if it is found that he is not suitable for the post which he is holding. This can be done without complying with the provisions of Art. 311(2) unless the services are terminated by way of punishment. Suitability does not depend merely on the excellence or proficiency in work. There are many factors which enter into consideration for confirming a person who is on probation. A particular attitude or tendency displayed by an employee can well influence the decision of the confirming authority while judging his suitability or fitness for confirmation.

In the present case the Board of Governors consisted of a number of distinguished and well known academicians and teachers. Although there is a mention in the resolution about the confidential reports by the head of the department and the Director but they have not been placed on the record. Even assuming that those reports were favourable so far as the academic work of the appellant was concerned the Board was entitled to take into consideration the other matters which have already been mentioned for the purpose of deciding whether he should be confirmed or whether he should

be given a notice of one month as per the terms of the letter of appointment. The Board decided to adopt the latter course. By no stretch of reasoning can it be said that the appellant had been punished and that his services had been dispensed with as a penal measure.

It has been pointed out to us by Mr. Chagla that subsequ- ently also wherever an inquiry has been made from the Institute about the work and conduct of the appellant the certificate which has been sent is in such terms that the appellant cannot expect to get any gainful employment in this country. This, it is submitted, shows what the approach of the Institute was. We are not directly concerned with this matter in the present appeal but we have no doubt that the Institute will not adopt any such attitude which may stand in the way of the appellant getting any other employment in this country or in any other country. The appeal fails and it is dismissed. There win, however, be no order as to costs throughout.

K.B.N. Appeal dismissed.-