Jai Singh vs Union Of India & Ors on 18 August, 2006

Equivalent citations: 2006 AIR SCW 4835, 2006 (9) SCC 717, (2006) 111 FACLR 12, (2006) 4 LAB LN 190, (2006) 4 PAT LJR 100, (2006) 7 SCJ 588, (2006) 7 SERVLR 12, (2006) 3 UPLBEC 2435, (2006) 8 SCALE 389, (2006) 4 ESC 399, (2006) 4 SCT 66, (2006) 6 SUPREME 482, (2006) 132 DLT 153

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Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (civil)  510 of 2006

PETITIONER:
Jai Singh

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 18/08/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T [With Civil Appeal Nos. 512/2006, 513/2006. 511/2006 and 514/2006] ARIJIT PASAYAT, J.

These appeals involve identical questions and, therefore, are disposed of by this common judgment. Writ Petitions filed by the Appellants were dismissed by a Division Bench of the Delhi High Court holding that termination of their services suffered from no infirmity.

Civil appeal No. 510 of 2006 relates to writ petition no. 4794 of 1995 while other appeals relate to other writ petitions which were disposed of following the view expressed in the common judgment.

Factual background in a nutshell is as follows:

> The appellants were recruited by the respondent No.3 as "Daily Wage Constables" and they were posted in an auxiliary battalion namely 124 Auxiliary Battalion. While the appellants were thus serving on ad-hoc basis, a decision was taken by the respondents to disband the said Battalion and to install a permanent battalion in its place. At that stage the appellants along with others went on a general strike in Moradabad. Subsequently, they withdrew their strike. Cases of all the Daily Wage

Constables including that of the appellants was considered for their regularization and for placing them in a permanent Battalion. The services of the appellants were, however, terminated and similar certificates of service were issued to all the appellants. As against Clause No.10 of the said certificate of service giving reason for termination, it was stated that since the services were no longer required due to disbandment of the unit, the services of the appellants were being terminated. Clause No.12 of the said certificate speaks of the conduct as against which three heads were provide as good, satisfactory and unsatisfactory. The appellants conduct had been shown in the said column as "unsatisfactory".

Being aggrieved by the said orders of termination, the appellants submitted representations, which were considered by the Deputy Inspector (General) of Police, CRPF. By a communication dated 5th April, 1995, representations filed by the appellants were disposed of. In the said order it was stated that the appellants were engaged as auxiliary constable with CRPF purely on ad-hoc basis on daily wages and that they were not found suitable for absorption on regular basis in CRPF on disbandment of Auxiliary Battalion due to misconduct and attitude as reported by the Commandant of the 124 Auxiliary Battalion.

For the aforesaid reasons, the said representations were found to be devoid of merit and were rejected.

Being aggrieved by the same an appeal was also preferred which also came to be disposed of by order dated 4th June, 1994. This order states that the appellants were engaged in 124 Auxiliary Battalion CRPF on daily wage basis and services of such persons could be terminated at any time without assigning any reason. It was observed that Auxiliary Battalion stood disbanded on 31st March, 1994 and only those constables who were fit in all respects were engaged and as the appellants did not fall in the said category, their services were terminated. Consequently, their appeals were rejected.

The appellants preferred three writ petitions before the High Court challenging the orders and actions aforestated of the respondents.

The High Court on consideration of the rival submissions held that conduct for which the appellants were not found suitable for regularization cannot by any stretch of imagination be said to be becoming of members of a disciplined force. Accordingly, the writ petition was dismissed. It was held that the act of the respondents before it finding out the suitability of the appellants did not amount to imposition of any punishment and, therefore, no enquiry was required to be initiated. The writ petitioners were at the relevant point of time members of the CRPF, a disciplined force and higher degree of discipline was called for. The employer passed a simple order of termination as permitted by the terms of appointment and/or permitted by the rules. The indiscipline to which reference was made to find the appellants

unsuitable was not the foundation of the order of termination, but at the most the motive for it.

As noted above, the writ petitions were dismissed.

Learned counsel for the appellants submitted that the termination simpliciter was a camouflage. The alleged indiscipline was the foundation for the termination for the termination and not the motive as noted by the High Court. There was no material to describe the appellants as the ring leaders who allegedly instigated the other ad-hoc Constables of the erstwhile 124 Auxiliary Battalion. There was no full- fledged investigation in this regard. It appears that preliminary enquiry was conducted by a higher ranked officer of the post. According to learned counsel for the respondents the authorities were satisfied that the unwarranted act the appellant rendered them unfit for employment in an organization which demands forbearance, endurance and high order of discipline to serve in the most hostile conditions. The appellants were not recruited in the force as regular cadets and were, in fact, daily wage cadets. It was pointed out that in view of the unsatisfactory conduct they were not considered for absorption.

In what situation the allegation of misconduct will be the motive and in what cases they will be foundation has to be adjudged in the factual background of each case. The issue has been examined in several decisions including several Constitution Bench judgments and a judgment of 7- judges. An elaborate analysis of the various decisions was made by this Court in Radhey Shyam Gupta v. U.P. State Agro Industries Corpn. Ltd. and Anr. (1999 (2) SCC 21). The matter was examined elaborately by 7-Judges in Samsher Singh v. State of Punjab and Anr. (1974 (2) SCC 831). In the said case it was noted in paragraphs 79 and 80 as follows:

"79. The Enquiry Officer nominated by the Director of Vigilance recorded the statements of the witnesses behind the back of the appellant. The enquiry was to ascertain the truth of allegations of misconduct. Neither the report nor the statements recorded by the Enquiry Officer reached the appellant. The Enquiry Officer gave his findings on allegations of misconduct. The High Court accepted the report of the Enquiry Officer and wrote to the Government on June 25, 1969 that in the light of the report the appellant was not a suitable person to be retained in service. The order of termination was because of the recommendations in the report.

80. The order of termination of the services of Ishwar Chand Agarwal is clearly by way of punishment in the facts and circumstances of the case. The High Court not only denied Ishwar Chand Agarwal the protection under Article 311 but also denied itself the dignified control over the subordinate judiciary. The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of

misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside."

In Gujarat Steel Tubes Ltd. and Ors. v. Gujarat Steel Tubes Mazdoor Sabha and Ors. (1980 (2) SCC 593) it was observed as follows:

"53: Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus, scrutinized, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.

54. On the contrary, even if these is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here."

In A.G. Benjamin v. Union of India (1967 (1) LLJ 718 (SC) the factual position was as follows:

"A charge memo was issued, explanation was received and an enquiry officer was also appointed but before the enquiry could be completed, the proceedings were dropped stating that "departmental proceedings will take a much longer time and we are not sure whether after going through all the formalities, we will be able to deal with the accused in the way he deserves."

In that case, order of termination was held not to be punitive. The ratio was adopted in State of Punjab v. Sukh Raj Bahadur (AIR 1968 SC 1089) and it was concluded as follows:

> "The departmental enquiry did not proceed beyond the stage of submission of a charge sheet followed by the respondent's explanation thereto. The enquiry was not proceeded with; there were no sittings of any enquiry officer, no evidence recorded and no conclusion arrived at on the equity."

The question whether termination of service is simpliciter or punitive has been examined in several other cases e.g. Dhananjay v. Chief Executive Officer, Zilla Parishad, Jalna (2003 (2) SCC 386) and Mathew P. Thomas v. Kerala State Civil Supply Corporation Limited and Ors. (2003 (3) SCC 263). An order of termination simpliciter passed during the period of probation has been generating undying debate. The recent two decisions of this Court in Dipti Prakash Bamerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta (1999 (3) SCC 60) and Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences (2002(1) SCC 520) after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of Dipti Prakash Banerjee (supra) after referring to various decisions it was indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as a motive for passing such a simple order of termination. In para 21 of the said judgment a distinction is explained thus:

> "If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad.
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> Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid. From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service."

These aspects were highlighted recently in State of Haryana and Another v. Satyender Singh Rathore [2005 (7) SCC 518].

In the background of facts as noticed by the High Court the order of termination cannot be faulted. The High Court had rightly declined to interfere. We find no reason to take a different view. The appeals are accordingly dismissed.