

Unit Trust Of India And Ors. vs T. Bijaya Kumar And Anr. on 14 August, 1992

Equivalent citations: JT1992(6)SC82, (1993)ILLJ240SC, (1993)1UPLBEC561, AIRONLINE 1992 SC 44, (1993) 1 SCT 236, (1993) 1 LAB LJ 240, (1992) 2 CUR LR 964, (1992) 2 ANDH WR 90, (1993) 1 UPLBEC 561, (1993) 66 FAC LR 79, (1992) 2 LAB LN 1015.1, (1992) 5 SERV LR 855, (1992) 6 JT 82, 1993 LAB LR 153, (1992) 6 JT 82 (SC), AIRONLINE 1992 SC 21

Bench: A.M. Ahmadi, Kuldip Singh, N. Venkatachala

ORDER

1. By a letter dated 5th April, 1984, the first respondent was offered the post of Manager 40 (Finance) on the terms and conditions set out therein. The letter of offer says that the first respondent will be placed on probation for one year extendable upto two years at the discretion of the Trust. Pursuant to the said offer, the first respondent joined service on 16th May, 1984. He was placed on probation and it appears from the letter of 15th May, 1985 that his performance was reported to be below average. He was advised to show improvement in the next six months, 45 by which period his probation was extended. The assessment reports made during this period on 14.12.84, 10/13.5.85 and 25.10.85 also disclose that his performance was not satisfactory and, therefore, the Management took the decision to terminate his service by the order of 29th October, 1985 which reads as under:

Shri T.B. Patra, Manager (Finance) on probation attached to Calcutta Regional Office would cease to be in the employment of the Trust with effect from close of business on 15th November, 1985.

It appears from the plain reading of this order that it is an order of discharge simpliciter attaching no stigma whatsoever. It also appears from the office note which was prepared prior to the making of this order that the Deputy General Manager (Personnel and Administration) found that the work of the first respondent was reported to be unsatisfactory and hence he was not recommended for confirmation. This decision was based on the confidential reports called 10 for assessing the 'suitability' of the first respondent. On the basis of this note which was produced at the behest of the first respondent, a further note dated 28th October, 1985 was put up recommending termination of his service on the ground of unsatisfactory performance. This note was approved by the Chairman of the appellant-Trust also. As stated above, this note was based on the earlier assessment reports made by different officers of the Trust.

2. The first respondent challenged the order of termination of his service by a Writ Petition filed in

the High Court of Calcutta. A learned Single Judge upheld his challenge on the ground that the impugned order was stigmatic in character and this was confirmed in appeal by the Division Bench of the High Court. The appellant-Trust feeling aggrieved by and dissatisfied with this order has moved this Court by special leave under Article 136 of the Constitution.

3. We have extracted the order of termination passed against the first respondent on 29th October, 1985 which is *ex-facie* an order of discharge simpliciter. It is evident from the facts placed on record that as the performance of the first respondent was not found to be satisfactory, he was informed about the same by the letter of 15th May, 1985, with a view to giving him an opportunity to show improvement. The probation period was, therefore, extended by another 25 six months to enable him to do so. Unfortunately, the subsequent assessment report shows that he did not show any improvement in performance and was not suited for the job and hence the Management was constrained to terminate his services. The first respondent contends before us that the impugned order is penal and stigmatic in character and springs from bias on the part of officers of the appellant-Trust. In support of this contention he has placed reliance in 30 the case law which was placed before the High Court. We have carefully considered this submission of the first respondent but we are afraid, we do not find any material on record to conclude that the impugned order smacks of bias or is in anyway *malafide*. As stated earlier from the language of the order, we do not think that any stigma attaches to the first respondent. In fact, the Management showed sensitivity in not stating the reason for termination of service but in order that the first respondent may know the reason of termination, the same was separately communicated to him by confidential letter of even date i.e. 29th October, 1985.

4. The first respondent contends that the Court ought not to go by the plain language of the termination order but must lift the veil to ascertain the true reason which promoted the Management to put an end to his service. We have examined the back-drop in which this Order 40 came to be passed. As stated earlier even on close scrutiny of the material on record, we are not in a position to persuade ourselves to the view taken by the High Court. In the first place there is nothing on record to support the first respondent's contention that the order suffers from the vice of bias, prejudice or *malafides*. Secondly there is nothing in the order to conclude that it is penal or that it stigmatises the first respondent. Thirdly the reason which weighed 45 with the Management was his unsuitability for the job based on his unsatisfactory performance during the probation period. This is obvious from the office note on which the decision was taken. The confidential assessment reports were called from different officers to assess his suitability for the job. The decision on suitability could only be taken from his work or performance during the probation period. We have also perused the confidential office note which preceded the decision to terminate his services and we are satisfied that no consideration which can be said to be extraneous or irrelevant had entered the decision-making. Having perused the record carefully, we do not think that the order of termination suffers from any bias as alleged by the first respondent. In the State of Orissa v. Ram Narayan Das (1961) 15 SCR 606, this Court held that the services of a probationer can be terminated in accordance with the rules because a probationer has no right to the post held by him. The very purpose of placing a person on probation is to try him during the probation period to assess his suitability for the job in question. It is settled law that an order of discharge is not an order of punishment and, therefore, there was no question of giving a hearing before termination of service.

The decisions reported Madan Mohan Prasad v. State of Bihar and Ors. , Shamsheer Singh and Anr. v. State of Punjab and Anoop Jaiswal v. Govt. of India And Anr. do not take any different view. The decision in Ajit Singh and Ors. v. State of Punjab has no relevance or application to the facts of the present case. The facts here are simple, namely, during the probation period the performance of the first respondent was watched and was not found to be satisfactory, despite he having been given an opportunity to show improvement. Hence the Management was constrained to put an end to his service by an order of discharge simpliciter. We are, therefore, of the view that the Management had acted within the framework of the rules and law and its decision ought not to have been upset by the High Court.

5. For the above reasons, we allow this appeal, set aside the order of the High Court and direct that the first respondent's Writ Petition be taken as dismissed. In the facts and circumstances of the case, we make no order as to costs.