

A WAINGANGA BAHUDDDESHIYA VIKAS SANSTHA THROUGH
PRESIDENT B.B. KARANJEKAR & ORS.

v.

KU. JAYA & ORS.

B (Civil Appeal No. 6226 of 2019)

AUGUST 09, 2019

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

C *Service law: Termination – Appointment of respondent No. 1 as temporary full time Lecturer on ad-hoc basis – Termination of services since performance was unsatisfactory – Challenge to – Tribunal and the Single Judge of the High Court upheld the termination, however the Division Bench set aside the same – On appeal, held: Order of termination of services is simpliciter without any stigma noticing that the work is not satisfactory – Appointment of respondent No. 1 was not on probation but, was on ad-hoc basis – Such temporary appointment pending filling up of a vacancy on regular basis does not confer any right at par with the candidate appointed on regular basis – Management had right to terminate the services during ad-hoc period on account of unsatisfactory work – Decision to arrive at the unsatisfactory work is motive and not the foundation of termination of services – Furthermore, the opinion of the Principal, does not contain any adverse comments but the comments in relation to the work of respondent No. 1 which cannot be made basis for setting aside the termination – Thus, the order by the Division Bench of the High Court not sustainable and is set aside – Maharashtra Universities Act, 1994 – s. 59.*

Allowing the appeal, the Court

G **HELD:** It is found that the Division Bench has travelled much beyond the controversy involved in the writ petition. The appointment of respondent No. 1 is categorically on ad-hoc basis till such time full time Lecturer is appointed. The order of termination of services is simpliciter without any stigma noticing that the work is not satisfactory. The appointment of respondent No. 1 was not on probation but, it was purely ad-hoc appointment and the Management has kept right to terminate the services

H

during ad-hoc period on account of unsatisfactory work. The temporary appointment pending filling up of a vacancy on regular basis does not confer any right at par with the candidate appointed on regular basis. The appointment of the respondent No.1 was not on probation as there is no such condition in the letter of appointment. The services of an employee can be dispensed with on account of unsatisfactory work. The decision to arrive at the unsatisfactory work is motive and not the foundation of termination of services. The opinion of the Principal, which does not contain any adverse comments but the comments are in relation to the work of the respondent No. 1, such comments cannot be made basis for setting aside the termination of an adhoc employee. The order passed by the Division Bench of the High Court is clearly unsustainable in law. The same is set aside. [Para 9, 13, 15][721-E; 724-C-D, G]

Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd. & Anr. (1999) 2 SCC 21 : [1998] 3 Suppl. SCR 558; Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences & Anr. (2002) 1 SCC 520 : [2001] 5 Suppl. SCR 41; Rajesh Kohli v. High Court of Jammu and Kashmir & Anr. (2010) 12 SCC 783 : [2010] 11 SCR 699; Wainganga Bahu-uddeshiya & Ors. v. Diwakar & Ors. Wainganga 2012 SCC OnLine Bom 1414; Bahu-uddeshiya Vikas Sanstha & Ors. v. Anil & Ors. 2011 SCC OnLine Bom 1233 – referred to.

Case Law Reference

[1998] 3 Suppl. SCR 558	referred to	Para 10	
[2001] 5 Suppl. SCR 41	referred to	Para 11	F
[2010] 11 SCR 699	referred to	Para 12	

CIVIL APPELLATE JURISDICTION: Civil Appeal No.6226 of 2019.

From the final Judgment and Order dated 21.12.2017 of the High Court of Judicature at Bombay, Bench at Nagpur, Nagpur in L.P.A. No.235 of 2010.

Dhruv Mehta, Sr. Adv., Gagan Sanghi, Rameshwar Prasad Goyal, Advs. for the Appellants.

H

A Pavani Mahalaxmi, Sr. Adv., Satyajit A. Desai, Ms. Anagha S. Desai, Anshuman Singh, Kishor Ram Lambat, Sachin Pahwa, M/s Lambat And Associates, Amol Chitale, Nishant R. Katneshwarkar, Advs. for the Respondents.

The Judgment of the Court was delivered by

B **HEMANT GUPTA, J.**

1. Leave granted.

2. Challenge in the present appeal is to an order passed by the Division Bench of the High Court of Judicature at Bombay, Nagpur
C Bench, whereby an order passed by the learned Single Bench on November 3, 2009 was set aside.

3. Respondent No. 1 was appointed as Lecturer of Home Economics on ad-hoc basis till such full time Lecturer is appointed, vide appointment letter dated February 24, 1999. There was also a condition
D in the appointment order that if her performance is found to be unsatisfactory, services can be terminated without giving any notice. The relevant clauses of the appointment order read as under:

“1. With reference to your application, this is to inform you that you are appointed as a purely temporary full time lecturer in the subject Home Economics in Rajiv Gandhi Mahavidyalaya, Sadak
E Arjuni, on ad hoc basis.

xx xx xx

5. In case your performance is found to be unsatisfactory, your services shall be terminated at any time during the temporary
F services without any notice.”

4. The services of respondent No. 1 were terminated on February 20, 2001, *inter alia*, for the reason that her services in the academic year 1999-2000 and 2000-2001 were found to be unsatisfactory. Therefore, as per terms and conditions mentioned in the order of
G appointment, the services of respondent No. 1 were terminated and salary for one month was paid to her.

5. The respondent No. 1, aggrieved against the termination order, filed an appeal before the College Tribunal under Section 59 of the Maharashtra Universities Act, 1994. The said appeal was dismissed by
H the Presiding Officer of the College Tribunal.

6. Again, aggrieved against the said order passed by the Presiding Officer, Respondent No. 1 invoked the jurisdiction of the High Court of Judicature at Bombay, Nagpur Bench. The writ petition was dismissed by the learned Single Bench of the High Court. However, the intra-court appeal was allowed vide order impugned in the present appeal. A

7. The Division Bench of the High Court found that the order of termination is not innocuous or harmless without casting stigma on respondent No. 1. The Management Committee took the decision of termination of services of respondent No. 1 prior to the completion of period of probation. Such finding was arrived at for the reason that the report of the Principal casts stigma which is the basis of the order of termination. B
C

8. The Division Bench relied upon the service conditions of teachers which are governed by Statute 53 of the University which contemplates that a Teacher shall be appointed in a clear vacancy in the first instance on probation for two years from the date of appointment. Therefore, in the absence of confirmation or notice of termination, satisfactory completion of probation is presumed. D

9. We find that the Division Bench has travelled much beyond the controversy involved in the writ petition. The appointment of respondent No. 1 is categorically on ad-hoc basis till such time full time Lecturer is appointed. The order of termination of services is simpliciter without any stigma noticing that the work is not satisfactory. The appointment of respondent No. 1 was not on probation but, it was purely ad-hoc appointment and the Management has kept right to terminate the services during ad-hoc period on account of unsatisfactory work. E

10. Learned counsel for the appellants referred to the judgment in *Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd. & Anr.*¹ wherein, it was held as under: F

“33. It will be noticed from the above decisions that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the *motive* and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer, G

¹ (1999) 2 SCC 21

- A as stated by Shah, J. (as he then was) in *Ram Narayan Das case* [AIR 1961 SC 177 : (1961) 1 SCR 606 : (1961) 1 LLJ 552]. It is done only with a view to decide whether he is to be retained or continued in service. The position is not different even if a preliminary enquiry is held because the purpose of a preliminary enquiry is to find out if there is prima facie evidence or material to initiate a regular departmental enquiry. It has been so decided in *Champaklal case* [AIR 1964 SC 1854 : (1964) 1 LLJ 752]. The purpose of the preliminary enquiry is not to find out misconduct on the part of the officer and if a termination follows without giving an opportunity, it will not be bad. Even in a case where a regular departmental enquiry is started, a charge-memo issued, reply obtained, and an enquiry officer is appointed — if at that point of time, the enquiry is dropped and a simple notice of termination is passed, the same will not be punitive because the enquiry officer has not recorded evidence nor given any findings on the charges. That is what is held in *Sukh Raj Bahadur case* [AIR 1968 SC 1089 : (1968) 3 SCR 234 : (1970) 1 LLJ 373] and in *Benjamin case* [(1967) 1 LLJ 718 (SC)]. In the latter case, the departmental enquiry was stopped because the employer was not sure of establishing the guilt of the employee. In all these cases, the allegations against the employee merely raised a *cloud* on his conduct and as pointed by Krishna Iyer, J. in *Gujarat Steel Tubes case* [(1980) 2 SCC 593 : 1980 SCC (L&S) 197] the employer was entitled to say that he would not continue an employee against whom allegations were made the truth of which the employer was not interested to ascertain. In fact, the employer by opting to pass a simple order of termination as permitted by the terms of appointment or as permitted by the rules was conferring a benefit on the employee by passing a simple order of termination so that the employee would not suffer from any stigma which would attach to the rest of his career if a dismissal or other punitive order was passed. The above are all examples where the allegations whose truth has not been found, and were merely the *motive*.”

11. In *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences & Anr.*² wherein, the inquiry conducted to assess the

H ² (2002) 1 SCC 520

fitness of an employee for continuing on probation was not found to be A
punitive, the Court held as under:

“21. One of the judicially evolved tests to determine whether in
substance an order of termination is punitive is to see whether
prior to the termination there was (a) a full-scale formal enquiry
(b) into allegations involving moral turpitude or misconduct which B
(c) culminated in a finding of guilt. If all three factors are present
the termination has been held to be punitive irrespective of the
form of the termination order. Conversely if any one of the three
factors is missing, the termination has been upheld.

xx xx xx C

31. Returning now to the facts of the case before us. The language
used in the order of termination is that the appellant’s “work and
conduct has not been found to be satisfactory”. These words are
almost exactly those which have been quoted in *Dipti Prakash
Banerjee case*[(1999) 3 SCC 60 : 1999 SCC (L&S) 596] as clearly D
falling within the class of non-stigmatic orders of termination. It
is, therefore safe to conclude that the impugned order is not ex
facie stigmatic.

32. We are also not prepared to hold that the enquiry held prior to
the order of termination turned this otherwise innocuous order E
into one of punishment. An employer is entitled to satisfy itself as
to the competence of a probationer to be confirmed in service
and for this purpose satisfy itself fairly as to the truth of any
allegation that may have been made about the employee. A charge-
sheet merely details the allegations so that the employee may F
deal with them effectively. The enquiry report in this case found
nothing more against the appellant than an inability to meet the
requirements for the post. None of the three factors catalogued
above for holding that the termination was in substance punitive
exists here.”

12. In *Rajesh Kohli v. High Court of Jammu and Kashmir & G
Anr.*³, again this Court held that order of termination is a fallout of
unsatisfactory service adjudged on the basis of overall performance.
The Court held as under:

³ (2010) 12 SCC 783

- A “28. In the present case, the order of termination is a fallout of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such satisfaction even if recorded that his service is unsatisfactory would not make the order stigmatic or punitive as sought to be submitted by the petitioner. On the basis of the aforesaid resolution, the matter was referred to the State Government for issuing necessary orders.”
- B

13. In the present case, respondent No.1 was appointed on ad-hoc basis. Such temporary appointment pending filling up of a vacancy on regular basis does not confer any right at par with the candidate appointed on regular basis. The appointment of the respondent No.1 was not on probation as there is no such condition in the letter of appointment. The services of an employee can be dispensed with on account of unsatisfactory work. The decision to arrive at the unsatisfactory work is motive and not the foundation of termination of services. We have seen the opinion of the Principal, which does not contain any adverse comments but the comments are in relation to the work of the respondent No. 1, such comments cannot be made basis for setting aside the termination of an ad-hoc employee.
- C
- D

14. Ms. Mahalaxmi, learned senior counsel for the respondents, has referred to the orders of the High Court of Judicature at Bombay in *Wainganga Bahu-uddeshiya & Ors. v. Diwakar & Ors.*⁴ and *Wainganga Bahu-uddeshiya Vikas Sanstha & Ors. v. Anil & Ors.*⁵ to contend that the appellant has been taking punitive action against the members of the teaching faculty. However, we find that both the cases pertain to disciplinary action after conduct of regular inquiry which has no relevance with the termination of an employee appointed on ad-hoc basis.
- E
- F

15. Consequently, we find that the order passed by the Division Bench of the High Court is clearly unsustainable in law. The same is set aside. The appeal is allowed. No costs.
- G

Nidhi Jain

Appeal allowed.

⁴ 2012 SCC OnLine Bom 1414 : (2013) 2 Mah LJ 804 : (2012) 114 (5) Bom LR 3237

⁵ 2011 SCC OnLine Bom 1233 : (2012) 3 Bom CR 788