

Lalita Kumari vs Delhi Social Welfare Board & Anr on 25 February, 2021

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 944/2020, CM Nos. 3048/2020 & 25385/2020
LALITA KUMARI

Through: Mr. Anuj Aggarwal,
versus
DELHI SOCIAL WELFARE BOARD & ANR.

Through: Mohd. Shahan Ulla a
Ali, Advocates for
Mrs. Avnish Ahlawat
Counsel GNCTD with
and Ms. Palak Rohmet
for R-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 25.02.2021 This matter is being heard through video-conferencing. CM No. 25385/2020 (by petitioner for taking on record additional documents) For the reasons stated in the application, the same is allowed. The additional documents are taken on record. Application is disposed of. W.P.(C) 944/2020

1. This petition is filed by the petitioner with the following prayers:-

"In the premise aforesaid, the petitioner most humbly prays that this Hon'ble Court may be pleased to:-

(i) issue an appropriate writ, order or direction thereby setting aside that the impugned Order No. DSWB/Pers/2019 dated 30.12.2019 passed by the Delhi Social Welfare Board, respondents herein, whereby the services of the petitioner were illegally terminated with immediate effect;

(ii) issue an appropriate writ, order or direction thereby declaring that the termination of service of the petitioner by the respondents is illegal, unjustified and in violation of the principles of natural justice;

(iii) issue an appropriate writ, order or direction thereby directing the respondents to reinstate the petitioner in service with continuity of service, full back wages/salary and with all consequential benefits (monetary as well as non-monetary);

(iv) Allow the present writ petition with exemplary compensation, cost and litigation expenses in favour of the petitioner; and

(v) Pass any such other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice and in favour of the petitioner."

2. The challenge in these proceedings is, primarily to an order dated December 30, 2019 whereby the services of the petitioner has been terminated under Rule 5(1) of the CCS (Temporary Service) Rules, 1965 ('Rules of 1965', in short) inter-alia on the ground that the petitioner, who is working as a Senior Stenographer, is in the habit of taking photographs of the office records in her mobile phone unauthorizedly and keeping these records in her possession in digital form.

3. The only submission made by Mr. Anuj Aggarwal, learned counsel for the petitioner is, that assuming that the respondents could have invoked Rule 5(1) of the Rules of 1965, the order, not being an order simplicitor but based on a misconduct, could not have been passed without complying the principles of natural justice. In support of his submission, Mr. Aggarwal has relied upon the judgments of the Supreme Court in the cases of State Bank of India and Ors. vs. Palak Modi and Ors 2013 (3) SCC 607 and Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Ors. 2015 (15) SCC 151.

4. On the other hand, learned counsel for the respondent No.1 has tried to justify the order on the ground that the allegations against the petitioner are of very serious nature.

5. Mrs. Ahlawat, who appears for respondent No.2 states that this petition is primarily directed against the respondent No.1, as the action has been taken by the said respondent. If that be so, I have perused the impugned order passed by the respondent No.1. It is not contested by Mr. Aggarwal that the appointment of the petitioner is governed by the Rules of 1965. If that be so, the respondent No.1 was within its right to invoke the said Rule. But the fact remains that the impugned order reveals that the termination of the petitioner under Rule 5(1) of the Rules of 1965 is based on misconduct that the petitioner is in the habit of taking photographs of the office records in her mobile phone unauthorizedly and keeping these records in her possession in digital form surely suggest that the foundation of the termination is the alleged misconduct committed by the petitioner. The Supreme Court in terms of the judgment in Ratnesh Kumar Choudhary (supra) by relying upon its earlier judgment in the case of State Bank of India and ors.(supra) very clearly has held as under:-

"22. In Chandra Prakash Shahi v. State of U.P. and Ors. MANU/SC/0329/2000 : (2000) 5 SCC 152 after addressing the history pertaining to "motive" and "foundation" and referring to series of decisions, a two-Judge Bench had held that:

28. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

29. "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action? If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary inquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary inquiry.

23. A three-Judge Bench in *Union of India and Ors. v. Mahaveer C. Singhvi* MANU/SC/0546/2010 : (2010) 8 SCC 220, dwelled upon the issue whether the order of discharge of a probationer was simpliciter or punitive, referred to the authority in *Dipti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences* MANU/SC/0101/1999 : (1999) 3 SCC 60 and came to hold thus:

It was held by this Court in *Dipti Prakash Banerjee* case that whether an order of termination of a probationer can be said to be punitive or not depends on whether the allegations which are the cause of the termination are the motive or foundation. It was observed that if findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, a simple order of termination is to be treated as founded on the allegations and would be bad, but if the enquiry was not held, and 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's services, it would only be a case of motive and the order of termination of the employee would not be bad.

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26. In Palak Modi's case, the ratio that has been laid down by the two-Judge Bench is to the following effect:

The ratio of the above noted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice.

27. In the facts of the case, the Court proceeded to state that there is a marked distinction between the concepts of satisfactory completion of probation and successful passing of the training/test held during or at the end of the period of probation, which are sine qua non for confirmation of a probationer and the Bank's right to punish a probationer for any defined misconduct, misbehaviour or misdemeanour. In a given case, the competent authority may, while deciding the issue of suitability of the probationer to be confirmed, ignore the act(s) of misconduct and terminate his service without casting any aspersion or stigma which may adversely affect his future prospects but, if the misconduct/misdemeanour constitutes the basis of the final decision taken by the competent authority to dispense with the service of the probationer albeit by a non-

stigmatic order, the Court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished the employee for an act of misconduct."

6. Hence, the termination of the petitioner needs to be set aside. It is ordered accordingly

7. The petitioner shall be reinstated in service and shall also be entitled to full back wages, as the termination is held to be illegal and the petitioner has to be put in the same position as if, the termination has not been effected. But at the same time, the allegations against the petitioner are of very serious nature, liberty is with the respondent No.1 to proceed against the petitioner in accordance with the principles of natural justice. The order of reinstatement and payment of full back wages shall be complied within eight weeks from today.

7. The petition is disposed of. No costs.

Dismissed as infructuous.

V. KAMESWAR RAO, J FEBRUARY 25, 2021/ak