

## **The Management Of The Express ... vs The Presiding Officer, Labour Court, ... on 18 December, 1963**

**Equivalent citations: AIR1964SC806, [1964(8)FLR289], AIR 1964 SUPREME COURT 806**

**Bench: P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta**

JUDGMENT

Das Gupta, J.

1. The industrial dispute out of which this appeal has arisen was referred by the Government of Madras in these terms: --

"Whether the discharge of Sri Brian Bobb and Sri C. Sampath is justified and to what relief they are entitled?"

In this appeal we are concerned only with the case of Brian Bobb. This gentleman appears to have been a working journalist for many years. He was employed formerly as News Editor of the Morning News, Dacca, in Pakistan. He had to give up that post on the refusal of the Pakistan Government to renew his visa. He then requested Shri R. N. Goenka, Chairman of the Express News-papers Ltd., Madras, for an appointment on the editorial staff on any of the group of newspapers under his control and ultimately was appointed as Chief Sub-Editor of the Indian Express at Madurai. Mr. Brian Bobb joined the post on February 28, 1957. The appointment was on probation, the term being thus expressed in the appointment letter dated February 11, 1957:

"Your appointment will in the first instance be on probation for six months. If during this period we find you satisfactory and you find the job suitable we will confirm you."

2. Before however six months expired Mr. Bobb received a letter dated July 11, 1957 in these terms: --

"We regret to inform you that we have found your work unsatisfactory and that we are compelled to terminate your probation. Your accounts will be settled forthwith."

3. The Madras Union of Journalists took up Mr. Bobb's case and raised the present dispute on the termination of his service.

4. It is necessary to mention that only six days before this, viz., on July 5, 1957 Mr. Bobb had been elected President of the Madurai Branch of the Madras Union of Journalists.

5. The main contention of the Union was that the termination of Mr. Bobb's services was mala fide and intended really to victimise him for taking a leading part in the formation of the Madurai Branch of Madras Union of Journalists and consenting to be elected President of that Branch.

6. The Management of the Express Newspapers pleaded in reply that Mr. Bobb having been appointed only as a probationer the termination of his services for unsatisfactory work was well within the rights of the Management.

7. The Labour Court came to the conclusion on a consideration of the circumstances that the termination of Mr. Bobb's services was a dear case of victimisation and directed his reinstatement with back wages from the date of termination.

8. Against this order of the Labour Court the High Court of Madras was moved by the Management under Article 226 of the Constitution.

9. The main contentions urged before the High Court in support of the application were : (1) that the finding of the Labour Court regarding victimisation was vitiated by an apparent error, and (2) that as the services of an employee who was on probation for a period of six months could have been terminated at the end of that period without giving rise to any claims, the Labour Court exceeded its jurisdiction by directing the reinstatement of the employee with back wages and should at the most have awarded to the workmen the relief of wages for the period July 11, 1957 to August 28, 1957. Mr. Justice Rajagopala Ayyangar, who heard this petition rejected both these contentions, holding in the first place that the Labour Court had committed no error in the appreciation of either the oral or documentary evidence and further that while the services of the employee might have been terminated at the end of the period of six months if the employer so desired, they would continue as on probation if not put an end to until the employee was confirmed. Accordingly, the learned Judge refused to issue any writ and rejected the application.

10. The appeal preferred against this order under Clause 15 of the Letters Patent was also dismissed.

11. It is against this order of dismissal that the present appeal has been filed by the Management in this Court after obtaining special leave.

12. The main contention urged by Mr. Gupte in support of the appeal is that the High Court was wrong in law in thinking that once the period of six months expired Mr. Bobb still continued to be in service of the appellant as a probationer. According to the learned counsel there would be automatic termination of service as soon as the period of probation of six months had expired unless an order of confirmation was made. This contention is, in our opinion, wholly unsound. There can, in our opinion, be no doubt about the position in law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear to us that without

anything more an appointment on probation for six months given the employer no right to terminate the service of an employee before six months had expired--except on the ground of misconduct or other sufficient reasons in which, case even, the services of a permanent employee could be terminated: At the end of the six months period the employer can either confirm him or terminate his services, because his service is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination, the employee continues to be in service as a probationer. The High Court was therefore right in rejecting the Management's contention that there was an automatic termination of Mr. Bobb's services after August 28, 1957. Mr. Gupte also tried to persuade us to examine the correctness of the High Court's view that the Labour Court's finding on the question of victimisation was not liable to interference. It appears to us clear that when the Labour Court came to the conclusion on a consideration of the evidence that the Management's action was not bona fide but amounted to victimisation of the employee it would not have been open to the High Court to disturb that finding except on the ground of an error apparent on the face of the record or on the ground that there was no evidence at all to support it. The High Court has not only found no such error but has gone further and indicated its support of that finding. It is not open to the Management to challenge the High Court's conclusion on this point.

13. In the result the appeal is dismissed with costs.