

Supreme Court of India

Hari Singh Mann vs The State Of Punjab & Ors on 20 August, 1974

Equivalent citations: 1974 AIR 2263, 1975 SCR (1) 774

Author: A Ray

Bench: Ray, A.N. (Cj)

PETITIONER:

HARI SINGH MANN

Vs.

RESPONDENT:

THE STATE OF PUNJAB & ORS.

DATE OF JUDGMENT 20/08/1974

BENCH:

RAY, A.N. (CJ)

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RAY, A.N. (CJ)

MATHEW, KUTTYIL KURIEN

CITATION:

1974 AIR 2263

1975 SCR (1) 774

1975 SCC (3) 130

ACT:

Punjab Civil Services (Punishment and Appeal) Rules, 1952, Rules 8(b) and 9--Termination of service of probationer on ground of unfitness for appointment to State Service--Expression "unfit to be appointed", if carries stigma.

HEADNOTE:

The appellant was appointed on 20 May, 1965, on two years' probation. On 1 July, 1967 there was an order extending the period of probation by one year. On May 20, 1968, there was an order terminating the services of the petitioner. On July 20, 1968 there was an order revoking the order of termination and extending the period of probation for six months from 20th May, 1968. The order of termination was on Jan. 30, 1969. This order recited that, having considered him unfit for appointment to the State Police Service the services of the appellant are dispensed with on the expiry of his extended period of probation. Two contentions were raised by the appellant in the High Court. First, the order of termination was passed on Jan. 30, 1969, when the petitioner. by reason of expiry of 3 years stood confirmed on 19/20 November, 1968 and Second, the order of termination was one of punishment and the appellant should have been

given an opportunity to show cause against the order of termination under Rule 9 of the Punjab Civil Service (Punishment and Appeal) Rules, 1952. These contentions were rejected by the High Court. Hence the appeal to this Court by Special Leave.

Dismissing the appeal,

HELD: The object of extending the period of probation is to find out whether the appellant was a fit person. The appellant could not be confirmed, till the period of probation expired. It cannot, therefore, be held that the appellant stood confirmed on 19/20 November, 1968 before the period of probation expired in January, 1969. [776A-B]

(2) Termination on account of unsatisfactory record will attract rule 9 of the Punishment Rules. Fitness was a matter to be considered at the time of confirmation. The order terminating the services is unfitness for appointment and not on the ground of any turpitude to attract Rule 9 of the Punishment Rules, 1952. To hold that the words "unfit to be appointed" mentioned in the order of termination, are a stigma, would deprive the authorities to judge fitness 'for work or suitability to a post at the time of confirmation. Termination of services on account of inadequacy for the job or for any tompramental or other defect not involving moral turpitude is not a stigma which can be called discharge by punishment. Fitness for the job is one of the most important reasons for confirmation. The facts and circumstances do not show that there was any stigma attached to the order of termination and therefore, Rule 9 of the Punjab Civil Service (Punishment & Appeal) Rules, 1952 is not attracted in the present case. [7760-777B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1955 of 1970. Appeal by Special Leave from the judgement & other dated the 5th November, 1969 of the Punjab & Harayana High Court in Civil Write No. 309 of 1969.

R. K. Garg, S. C. Agarwala and V. J. Francis, for the appellant.

V. C. Mahajan and O. P. Shorma, for the respondents. The Judgment of the Court was delivered by RAY, C.J. This is an appeal by special leave from the judgment dated 5 November, 1969 of the High Court of Punjab and Haryana. The only person is whether the order of termination of the service of the appellant who was a probationer is in violation of Rule 9 of the Punjab Civil Service (Punishment & Appeal) Rules, 1952. The appellant was selected by the Public Service Commission as a direct recruit on 20 May, 1965. He was appointed on 26 May, 1965. He joined as a probationer. The period of probation was two years.

Rule 8(b) of the Punjab Police Service Rules 1959 states that the services of a member recruited by direct appointment may be dispensed with by the Government on his failing to pass the final examination at the end of his period of training, or on his being reported on during or at the end of his period of probation, as unfit for appointment.

The order terminating the services of the appellant was as follows:-

The President of India is pleased to dispense with the service of Shri Hari Singh Mann, Probationary Deputy Superintendent of Police, Amritsar on the expiry of his extended period of probation with effect from 2-2-1969(A.N.) under rule 8(b) of the Punjab Police Service Rules 1959, having considered him unfit for appointment to the State Police Service. The period from 20-5-68 to 2-8-68 which has been treated as leave of the kind due has been excluded from the period of trial (Probation)."

The two contentions which have been advanced before the High Court were repeated here. First, the order of termination was passed on 30 January, 1969 when the petitioner by reason of expiry of three years stood confirmed on 19/20 November, 1968. Second the order of termination was one of punishment and the appellant should, therefore, under Rule 9 of the Punjab Civil Service (Punishment and Appeal) Rules have been given opportunity to show cause against the order of termination.

Under the aforesaid (Police Service) Rule 8(b) proviso, the Government could extend the period of probation by not more than one year. The appellant was appointed on 20 May, 1965 on two years probation. On 1 July, 1967, there was an order extending the period of probation by one year. On 20 May, 1968, there was an order terminating the services of the petitioner. on 20 July, 1968 there was an order revoking the order of termination and extending the period of probation for six months from 20 May, 1968. The order of termination was on 30 January, 1969. The appellant was on leave from 20 May, 1968 to 2 August, 1968. The Government excluded the period of leave from the period of probation.

The object of extending the period of probation is to find out whether the appellant was a fit person. The appellant could not be confirmed till the period of probation to find out the fitness of the appellant expired. It cannot therefore be held that the appellant stood confirmed on 19/20 November, 1968 before the period of probation expired in January, 1969.

The appellant relied on Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952. Rule 9 is as follows "Where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of the un-

satisfactory record or unfavourable reports implying the unsuitability for the service, the probationer shall be ,apprised of the grounds of such proposal, and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the appointment".

If (Punishment) Rule 9 applies the services of the appellant could not be terminated without complying with the provisions thereof.

The appellant contended that the order of termination stated that the appellant was considered unfit for appointment and therefore it amounts to punishment to attract rule 9. The appellant extracted a statement from the affidavit of the Inspector General of Police in answer to the appellant's petition in the High Court that the appellant's record during the period of probation was unsatisfactory. Reliance is placed on rule 9 where it is said that if the termination of the Services of a probationer be on account of unsatisfactory record he shall be given an opportunity to show cause against it.

The respondent relied on rule 11 of the Punjab Police Service Rules where it is stated that in matters relating to discipline, penalties and appeals, members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules. Therefore, it is said by the respondent that Rules 8 and 11 of the Punjab Police Service Rules show that termination of probation which is dealt with in rule 8 is different from matters relating to penalties which are dealt with in rule II of the Punjab Police Service Rules.

Termination on account of unsatisfactory record will attract rule 9 of the Punishment Rules. It is obvious that at the time of confirmation fitness is a matter to be considered. The order terminating the services is unfitness for appointment at the time of confirmation, it is not passed on the ground of any turpitude like misconduct or inefficiency. To hold that the words "unfit to be appointed" are a Stigma would rob the authorities of the power to judge fitness for work or suitability to the post at the time of confirmation.

Termination of services on account of inadequacy for the job or for any temperamental or other defect not involving moral turpitude is not a stigma which can be called discharge by punishment. Fitness for the job is one of the most important reasons for confirmation. The facts and circumstances do not show that there is any stigma attached to the order of termination.

For these reasons, the appeal fails and is dismissed. Parties will pay and bear their own costs.

V.M.K.

Appeal Dismissed.