

RAJESH KUMAR SRIVASTAVA
v.
STATE OF JHARKHAND & ORS.
(Civil Appeal No. 2419 Of 2011)

MARCH 10, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

SERVICE LAW:

Judicial Officer – Probationer Munsif – Discharged from service – Held: A person is placed on probation so as to enable the employer to adjudge his suitability for continuation and confirmation in the service – While taking a decision in this regard neither any notice is required to be given to the Probationer nor is he required to be given any opportunity of hearing – In the instant case, the order of termination was a fall out of the unsatisfactory service of the incumbent adjudged on the basis of his overall performance and the manner in which he conducted himself – This is a case of termination of service simpliciter and not a case of stigmatic termination – Natural Justice.

A complaint was made against the appellant, a Probationer Munsif, that while functioning as Judicial Magistrate I Class, he discharged all the accused in a case involving offences punishable u/ss 406, 408, 420, and 120-B IPC despite rejection of revision application by High Court earlier. The matter was referred to the Standing Committee of the High Court and was, ultimately, considered by the Full Court, which resolved that continuation of the service of the appellant was no longer required and that he should be discharged. Consequently, the State Government issued order stating that the services of the appellant were no longer required

A in public interest and, therefore, he stood discharged with effect from 31-7-2003. The writ petition of the appellant was dismissed by the High Court.

B In the instant appeal it was contended for the appellant that the order challenged, being an order of removal passed without holding an inquiry, was not only in violation of principle of natural justice but it also amounted to casting a stigma on the career of the appellant and, as such, the order passed by the High Court was liable to be set aside.

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Dismissing the appeal, the Court

D HELD: 1.1. A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the probationer are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. [Para 10] [828-B-D]

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F 1.2. In the instant case, the order of termination of services of the appellant is a fall out of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. In the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and, therefore, he was not suitable for the job. The decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a

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decision in this regard neither any notice is required to be given to the probationer nor is he required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal on grounds of indiscipline or misconduct as sought to be made out by the appellant. Such decision cannot be said to be stigmatic or punitive. This is a case of termination of service simpliciter and not a case of stigmatic termination and, therefore, there is no infirmity in the impugned judgment and order passed by the High Court. [Para 10 and 12] [828-D-G; 829-A-D]

Rajesh Kohli vs. High Court of J & K & Anr. 2010 (11) SCR 699 = (2010) 12 SCC 783; 2010 (10) JT 276 – relied on.

Case Law Reference:

2010 (11) SCR 699 relied on Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2419 of 2011.

From the Judgment & Order dated 4.4.2008 of the High Court of Jharkhand at Ranchi in W.P. (S) No. 5213 of 2003.

S.R. Singh, Pramod Dayal, Nikunj Dayal, Sahdev Singh for the Appellant.

Ratan Kumar Choudhuri, Akshay Shukla, Krishnanand Pandeya for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

2. The appellant herein submitted his application offering himself as a candidate for the post of Munsif to be recruited by the respondents for which an advertisement was also issued. Pursuant to the aforesaid application filed by the appellant, he was called to appear in the various tests held, including the

A interview conducted by the High Court. He successfully completed his tests and consequently was declared successful in the year 2001.

B 3. After completing his training period, a notification was issued on 21.05.2002, appointing him as a Probationer Munsif. The said notification was issued by the Government of Jharkhand. He was posted at Dhanbad by a notification issued by the High Court. On 04.06.2002, he assumed the charge as Probationer Munsif at Dhanbad. On 15.07.2002, he was conferred with the power of Judicial Magistrate 1st Class. While C he was discharging his duties as such, he passed an order on 06.01.2003, discharging all the accused under Section 239 Cr.P.C. in G.R. No. 4698 of 1995 under Sections 406, 408, 420, 120-B IPC.

D 4. A complaint from one Ram Kumar was received by the High Court on 04.03.2003, wherein it was alleged that the appellant had discharged the said accused persons, despite rejection of revision application by the High Court earlier. It was also alleged that the aforesaid order discharging the accused E was passed for extraneous consideration. The High Court on receipt of the aforesaid complaint called for a report from the District & Sessions Judge, Dhanbad. On receipt of the said communication, the District & Sessions Judge, Dhanbad, sent F a letter to the appellant directing him to offer his remarks which were submitted by the appellant. The said remarks and report along with confidential report of the appellant were submitted by the District & Sessions Judge, Dhanbad, before the High Court. On 28.04.2003, the concerned Zonal Judge referred the matter to the Standing Committee for further action. In terms G of the decision of the Zonal Judge, the then Chief Justice of the High Court also referred the matter to the Standing Committee by way of recording an order on 01.05.2003. The matter was considered in the meeting of the Standing Committee held on 08.07.2003.

H 5. After considering the performance and the suitability of

the appellant, it was resolved that the matter be referred to the Full Court for consideration, and a decision as to whether or not the continuation of the service of the appellant was required. Consequent thereupon the matter was placed before the Full Court meeting held on 18.07.2003, wherein it was resolved by the Full Court that the continuation of the service of the appellant was no longer required and that he should be discharged. Consequent thereupon the resolution of the Full Court was sent to the Government. The Government of Jharkhand issued an order dated 31.07.2003, stating that the services of the appellant are no longer required in public interest, and therefore, the appellant stands discharged from service with effect from 31.07.2003.

6. Challenging the said order passed by the State Government, the appellant filed a Writ Petition before the High Court which was dismissed by the Division Bench of the High Court by a detailed order giving reasons for its decision dated 04.04.2008.

7. The appellant being aggrieved by the aforesaid order passed by the High Court filed the present appeal in this Court, on which we heard learned counsel appearing for the parties, who had also taken us painstakingly through the records of the case. Having considered the same, we proceed to dispose of the present appeal by recording our reasons for our conclusion.

8. The counsel appearing for the appellant submitted that the order challenged by way of the Writ Petition was an order of removal and the same having been passed without holding an enquiry amounts to, not only violation of principles of natural justice but also amounts to casting a stigma in the career of the appellant and, therefore, the order passed by the High Court is illegal and liable to be set aside.

9. The Counsel appearing for the respondents, however, refuted the aforesaid submissions. He submitted that the appellant was on probation when a notification removing him

A from the service in public interest was issued and that the order passed was just and proper. He denied that the impugned order is stigmatic or in any way punitive or that there was any violation of the principles of natural justice.

B 10. The records placed before us disclose that at the time when the impugned order was passed, the appellant was working as a Probationer Munsif. A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the appellant are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was not suitable for the job. The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not.

H 11. In a recent decision of this Court in *Rajesh Kohli vs.*

RAJESH KUMAR SRIVASTAVA v. STATE OF 829
JHARKHAND [DR. MUKUNDAKAM SHARMA, J.]

High Court of J & K & Anr. reported at (2010) 12 SCC 783: A
2010 (10) JT 276, almost a similar issue cropped up for
consideration, in which this Court has held that the High Court
has a solemn duty to consider and appreciate the service of a
judicial officer before confirming him in service and for this not B
only judicial performance but also probity as to how one has
conducted himself is relevant and important. It was also held
in the same decision that upright and honest judicial officers
are needed in the district judiciary, which is the bedrock of our
judicial system.

12. The order of termination passed in the present case C
is a fall out of his unsatisfactory service adjudged on the basis
of his overall performance and the manner in which he
conducted himself. Such decision cannot be said to be
stigmatic or punitive. This is a case of termination of service
simpliciter and not a case of stigmatic termination and therefore D
there is no infirmity in the impugned judgment and order passed
by the High Court.

13. We do not find any merit in this appeal, therefore, we
dismiss the same, but leaving the parties to bear their own E
costs.

R.P.

Appeal dismissed.