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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5173 of 2010 (O&M)
Reserved on: 12.12.2024
Date of Order: 17.01.2025

Peeyush Gakhar **.Petitioner**

Versus

High Court of Punjab and Haryana and another

..Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: **Mr. Rajiv Atma Ram, Sr. Advocate, with**
Mr. Brijesh Khosla, Advocate
Ms. Shreya Kaushik, Advocate, for the petitioner.

Mr. Ashok K. Bhardwaj, Advocate
for respondent no.1.

Mr. Naveen S. Bhardwaj, Addl.A.G., Haryana.

ANIL KSHETARPAL, JUDGE

1. ***BRIEF FACTS OF THE CASE***

1.1 *Inter-alia* the petitioner prays for issuance of a writ in the nature of certiorari to quash the order passed on 08.01.2010, dispensing with his service as Probationer from Haryana Civil Services (Judicial Branch) and the consequential order passed on 15.01.2010. He has also sought quashing of order dated 18.12.2009, wherein Judicial work was withdrawn from him.

1.2 The petitioner after having been selected as HCS (Judicial Branch) (entry level) was issued appointment letter on 03.10.2010. Clause 2(ii) of the appointment letter records that “you will be on probation for a period of two years but this period can be extended from time to time expressly or impliedly so that the total period of probation including

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extension, if any, does not exceed three years." He joined on 25.10.2006, at Bhiwani,. His annual confidential reports are B+(Good). He was engaged (matrimonial alliance) with Ms. Gomati Manocha, Civil Judge (Junior Division), who is also from his batch. Subsequently, the engagement broke. He qualified the departmental examination on 13.07.2007 and successfully completed his training on 31.10.2007. On 01.05.2009, the petitioner and Ms. Gomati Manocha got married in Delhi. She was selected in Delhi Judicial Services and kept seeking extension from time to time to join Delhi Judicial Service.

1.3 It appears that the relationship between the couple became strained. However, this Bench is not expected to go deep into the aforesaid issue. The relevant foundation of the impugned order lies in a complaint made by Ms. Gomati Manocha to the Administrative Judge, on 25.10.2009. Though, she had resigned from HCS(Judicial Branch) on 25.04.2009, however, the Administrative Judge called on the petitioner at his residence on 24.10.2009, where Ms. Gomati Manocha was already present. The Administrative Judge made efforts to reconcile the dispute between the two, however, his efforts did not bring any positive result. Then, the Administrative Judge on 09.12.2009, submitted a report. Before the report was submitted, the Registrar General of the High Court was directed to record the statements of Ms. Gomati Manocha and the petitioner, which were recorded. The detailed report was submitted in which the Administrative Judge indicted the petitioner on various counts. It was concluded in the report that the conduct of the petitioner is unbecoming of a judicial officer and he is a person of depraved nature and has taken undue advantage of a lady on one pretext or the other. Adverse comments were

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also made on the working of the petitioner. The report submitted by the Administrative Judge was considered by Review of work and conduct of probationary Judicial Officer Committee on 10.12.2009, in the following manner:-

> "*The Committee considered the opinion of Hon'ble Mr. Justice Ajai Lamba dated 9.12.2009 on the work and conduct of Shri Peeyush Gakhar. The Committee recommends that services of the officer be terminated by order of termination simpliciter. There being no serious allegation against the other 21 Judicial Officers, they may be considered for confirmation subject to availability of vacancies in accordance with the rules.*"

1.4 The matter was placed before the Full Court on 17.12.2009, and it was decided that the matter be again placed on before the Full Court on 18.12.2009. In between, on 15.12.2009, the petitioner submitted resignation to the Registrar General with a caveat that he has not been granted proper opportunity and has not been supplied documents which have been relied upon by the High Court. However, before the resignation could be accepted, he withdrew the same on 18.12.2009. On the same day, he was summoned by the Administrative Judge, at Chandigarh, and his judicial work was withdrawn vide the impugned order. The Full court on 18.12.2009, resolved that since work and conduct of the petitioner of HCS (Judicial Branch) as Judicial Officer is not satisfactory, his services be dispensed. The recommendations were forwarded to the Haryana Government to dispense with his services which led to the Governor issuing the impugned order dated 08.01.2010.

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1.5 Reply as well as re-joinder to the writ petition has been filed by the parties.

2. ARGUMENTS PUT FORTH BY THE LEARNED COUNSEL REPRESENTING THE PARTIES:-

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

2.2 Though, the learned senior counsel representing the petitioner has submitted that the petitioner will be deemed to have been confirmed after the period of 3 years, the maximum probation period including extension, however, this Bench does not find it appropriate to examine the aforesaid issue in detail because the petitioner succeeds on the other ground. The learned senior counsel while highlighting the aforesaid facts has submitted that the order dispensing with petitioner's service as probationer is not innocuous. He submits that the Court can lift the veil to find out the reality, motive or foundation of the impugned order as its foundation is the complaint submitted by the petitioner's former wife with whom he subsequently got decree of annulment of marriage, on 22.03.2012 by the Tis Hazari Courts, Delhi. While referring to the report of the Administrative Judge, he submits that neither any charge sheet was issued nor any disciplinary inquiry was held against the petitioner and the report of the Administrative Judge which was foundation of the proceedings of Review of work and conduct of Probationary Judicial Officers Committee proves that it is not a case of discharge of a probationer simpliciter. While referring to the petitioner's annual confidential reports, monthly reports and the special report submitted by Sessions Judge, Bhiwani, (Annexure P-16), dated 27.11.2009, he submits that there was no reason to dispense with

petitioner's service as probationer.

2.3 Per contra, the learned counsel representing the respondent has submitted that the petitioner was not discharged on the complaint of his former wife and the marital discord between the petitioner and his wife was not the basis of the impugned order. He submitted that the work and conduct of the petitioner was not good and hence he was discharged. He submitted that in one of the monthly report, it was reported that his work was classified as inadequate.

3. ***ANALYSIS AND DISCUSSION:-***

3.1 This court has considered the submissions of the learned counsel representing the parties.

3.2. The position of a probationer has been subject matter of debate and discussion in various judgments. A seven Judge Bench of the Supreme Court in ***Shamsher Singh vs. State of Punjab and another, 1974 (2) SCC 831***, elaborately discussed the principle of motive and foundation. Two separate concurring opinions were written in this regard. The then Chief Justice of India dealt with the aforesaid issue in para 62 and 63. In a separate opinion, Hon'ble Mr. Justice Krishn Aiyer discussed the matter in the following manner:-

> "158. The third contention, argued elaborately by both sides, turns on the scope and sweep of Article 311 in the background of the rules framed under Article 309 and the pleaser' doctrine expressed in Article 310. The two probationers, who are appellants, have contended that what purport to be simple terminations of probation on the ground of unsuitability' are really and in substance by way of punishment and falling short of the rigorous prescriptions of Article 311 (2), they are bad. Their

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complaint is that penal consequences have been visited on them by the impugned orders and since even a probationer is protected by Article 311 (2), in such situations the Court must void those orders. Naturally, the launching pad of the argument is Dhingra's Case (supra). In a sense, Dhingra is the Manga Carta of the Indian civil servant, although it has spawned diverse judicial trends, difficult to be disciplined into one single, simple, practical formula applicable to termination of probation of freshens and of the services of temporary employees. The Judicial search has turned the focus on the discovery of the element of punishment in the order passed by Government. If the proceedings are disciplinary, the rule in Dhingra's Case is attracted. But if the termination is innocuous and does not stigmatize the probationer or temporary servant, the constitutional shield of Article 311 is unavailable. In a series of cases, the Court has wrestled with the problem of devising a principle or rule to determine this questions' where non-punitive termination of probation for unsuitability ends and punitive action for delinquency begins. In Gopi Kishore (supra) this Court ruled that where the State holds an enquiry on the basis of Complaints of misconduct against a probationer or temporary servant, the employer must be presumed to have abandoned his right to terminate sine pliciter and to have undertaken disciplinary proceedings bringing in its wake the protective operation of Article 311. At first flush, the distinguishing mark would therefore appear to be the holding of an inquiry into the complaints of misconduct Sinha C. J., observed :

> "It is true that, if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could dis- charge him without holding any enquiry

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> into his alleged misconduct. Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and incompetent officer. He had the right, in those circumstances, to insist upon the protection of Article 311 (2) of the Constitution."

The learned Chief Justice summarized the legal position thus:

> "1. Appointment to a post on probation gives the person so appointed no right to the post and his services may be terminated, without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant. or removing him from service.
>
> 2. The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him off any right to a post and is, therefore, no punishment.
>
> 3. But if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or foursome similar reason, the termination of servicers by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Article 311 (2) of the Constitution.
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> 4.....
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> 5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, the

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> probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct, or inefficiency, or some such cause."

159. The fifth proposition states that the real motive behind the removal is irrelevant and the holding of an enquiry leaving an indelible stain as a consequence alone attracts Article 311 (2) Ram Narayan Das (1) dealt with a case where the rules under the proviso to Article 309 provided some sort of an enquiry before termination of probation. In such a case, the enquiry test would necessarily break down and so the Court had to devise a different test. Mr. Justice Shah (as he then was) stated the rule thus :

> "The enquiry against the respondent was for ascertaining whether he was fit to be confirmed. The third proposition in (the Gopi Kishore) case refers to an enquiry into allegations of misconduct or inefficiency with a view, if they were found established, to imposing punishment and not to an enquiry whether a probationer should be confirmed. Therefore, the fact of holding of an enquiry is not decisive of the question. What is decisive is whether the order is by way of punishment, in the light of the tests laid down in Purshottam lal Dhingra's Case."

Thus a shift was made from the factum of enquiry to the object of the enquiry. Madan Gopal (supra) found the Court applying the object of enquiry doctrine to a simple order of termination which had been pre by a show cause notice and enquiry. It was held that if the enquiry was intended to take traumatic action, the innocent

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phraseology of the order made no difference. Then came Jagdish Mitter v.Union of India (supra) where Mr. Justice Gajendragadkar (as he then was) held:

"No doubt the order purports to be one of discharge and, as such, can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers to the fact that the appellant was found undesirable to be retained in Government service, it expressly casts a stigma on the appellant and in that sense, must be hold to be an order of dismissal and not a mere order of discharge."

160. Thus we see how membranous distinctions have been evolved between an enquiry merely to ascertain unsuitability and one held to punish the delinquent-to impractical and uncertain, particularly when we remember that the machinery to apply this delicate test is the administrator, untrained in legal nuances. The impact on the fired' individual, be it termination of probation or removal from service, is often the same. Referring to the anomaly of the object of inquiry, test, Dr. Tripathi has pointed out:

"The object of inquiry' rule discourages this fair procedure and the impulse of justice behind it by insisting that the order setting up the inquiry will be judicially scrutinized for the purpose of ascertaining the object of the inquiry."

Again, could it be that if you summarily pack off a probationer, the order is judicially inscrutable and immune ? If you conscientiously seek to satisfy yourself about allegations by some sort of enquiry you get caught in the coils of law, however harmlessly the order may be phrased? And, so this sphinx-complex has had to give

way in later cases. In some cases the rule of guidance has been stated to be the substance of the matter' and the foundation' of the order. When does motive' trespass into foundation'? When do we lift the veil of form to touch the substance'? When the Course says so. Those Freudian' frontiers obviously fail in the work-a-day world and Dr. Tripathi's observations in this context are not without force. He says:

"As already explained, in a situation where the order of termination purports to be a mere order of discharge without stating the stigmatizing results of the departmental enquiry a search for the substance of the matter' will be indistinguishable from a search for the motive (real, unrevealed object) of the order.

Failure to appreciate this relationship between motive (the real, but unrevealed object) and from (the apparent, or officially revealed object in the present context has led to an unreal interplay of words and phrases wherein symbols like motive', substance' form or direct parade in different combinations without communicating precise situations or entities in the world of facts."

3.3 Even recently the Supreme Court in ***Abhay Jain vs. High Court of Judicature for Rajasthan and another, 2022 (2) SCT 124***, reiterated the aforesaid view. In ***K.H.Phadnis vs. State of Maharashtra (1971) 1 SCC 790***, the Court held that it is the substance of the order that would be decisive and not the form.

3.4 From the facts, which have been already noticed, it is evident that the foundation of the order dispensing with petitioner's service is the complaint filed by his former wife and the report submitted by the Administrative Judge. The relevant Committee has also in its proceedings

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recorded on 10.12.2009, has relied upon the report of the Administrative Judge. It is evident that petitioner was never issued any charge sheet. He claims that he was not even supplied copy of the complaint or the statement of his former wife recorded by the Registrar General. He was called in the office of the Registrar General and was asked to give his response there and then. In the Annual Confidential Reports of the petitioner with respect to years 2007-2008 and 2008-2009, he was rated as 'Good Officer'. The District Judge also rated the petitioner as a 'Good Officer'. The report of Administrative Judge with regard to work and conduct of the petitioner is also without granting him an opportunity of being heard. Substantially, it can be concluded, the report of the Administrative Judge is based on the complaint filed by the petitioner's former wife. Thus, it is evident that the petitioner was deprived of the fair opportunity to defend himself.

4. ***DECISION***

4.1 Keeping in view the aforesaid facts and discussion, this court is left with no choice but to order the petitioner's reinstatement with continuity of service, back wages and seniority. However, the respondent shall have the liberty to initiate disciplinary proceedings, if so advised.

4.2 With these observations, the writ petition is allowed.

4.3 All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

17th January, 2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No