

PETITIONER:
GOVERNING COUNCIL OF KIDWAI MEMORIAL INSTITUTE OF ONCOLOGY,

Vs.

RESPONDENT:
DR PANDURANG GODWALKAR AND ANR.

DATE OF JUDGMENT 23/10/1992

BENCH:
[S. RANGANATHAN AND N.P SINGH, JJ.]

ACT:
Civil Services :
Termination of service during probation period-Overall performance-Consideration of Termination whether amounts to punishment-Finding out the real nature of order-Tearing of the veil- Applicability of Preliminary inquiry or examination of allegation-Whether vitiates order of termination of service.

HEADNOTE:

The respondent was appointed as a Lecturer in the appellant-Institute and was put on probation for one year. During the probation period his services were terminated. The respondent challenged the same before the High Court by way of a Writ Petition contending that actually order of dismissal has been passed in the garb of an order of termination; and that the Director of the institute instead of initiating a departmental proceeding on the basis of some charges levelled against him, placed the matter before the governing council of the Institute termination of his services.

The High Court gave its finding that since the service of the petitioner had been terminated because of the complaints made against him, it really amounted to his removal for alleged misconduct and so the institute should have initiated a departmental proceeding and only after due enquiry any action should have been taken.

Being aggrieved by the High Courts order, the appellant-Institute has preferred the present appeal.

Allowing the appeal, this Court,

HELD: 1.1. When an appointment is made on probation, it pre-supposes that the conduct, performance, ability and the capacity of the employee concerned have to be watched and examined during the period of probation. He is to be confirmed after the expiry of probation only when his service during the period of probation is found to be satisfactory and he is considered suitable for the post against which he has been appointed. The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment. The appointing authority

at the stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation, is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee. [254-E-H; 255-A]

1.2. Even if such employee while questioning the validity of an order of termination simpliciter brings on the record that some preliminary inquiry or examination of some allegations had been made, that will not vitiate the order of termination. [255-B]

Oil and Natural Gas Commission v. Dr. Mohd S. Iskender Ali [1980] 3 SCR 603; Ravindra Kumar Misra v. U.P. State Handloom Corpn. Ltd., [1987] suppl. SCC 739; State of Uttar Pradesh v. Kaushal Kishore Shukla, [1991] 1 SCC 691 and Triveni Shankar Saxena v. State of U.P., J.T. 1992 (1) S.C. 37, relied on.

Anoop Jaiswal v. Government of India, [1984] 2 SCR 453. distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 3244 of 1988.

From the Judgement and Order dated 8.7.1988 of the Karnataka High Court in W.A. No.560 of 1983.

K.N. Bhat S.K. Kulkarni and Ms. Kiran Suri for the Appellant

S.N Bhat M.Veerappa and K.H Nobin Singh for the respondents.

The Judgment of the Court was delivered by

N.P. SINGH, J. This appeal has been filed against an order passed by the High Court, on a writ application filed by the petitioner-respondent (hereinafter referred to as "the respondent") quashing the order of termination of the service of the respondent.

The respondent was appointed as a Lecturer in Surgical Oncology on 3rd July, 1981. He was to be on probation for a period of one year from the date of his appointment which period could have been extended at the discretion of the competent authority. One of the conditions provided is as follows :

"Failure to complete the period of probation to the satisfaction of the competent authority will render you liable to be discharged from service."

Before the expiry of one year, the impugned order of termination was issued on 30th January, 1982 saying:

"In accordance with the decision of the Governing Council at its meeting held on 28th January, 1982 the services of Dr. Pandurang Godwalkar, Lecturer in Surgical Oncology (on probation), Kidwai Memorial Institute of Oncology, Bangalore are terminated with effect from the afternoon of 30 January, 1982, as per Rule 4 of the Conditions of Service Rules (Annexure - 2 Chapter I) of the Institute.

He is paid one month's salary in

lieu of one month's notice required as per rules."

Although the order under challenge was order of termination simpliciter, the validity thereof was questioned by the respondent on the ground that an order of dismissal had been passed in the garb of an order of termination. According to the respondent, some complaints had been made against him to the Director of the Institute who instead of initiating a departmental proceeding on basis of charges levelled against the respondent, put up the matter before the Governing Council of the Institute for termination of the service of the respondent during the period of probation.

The learned Judge in view of the assertions made on behalf of the respondent directed the institute to produce the original records including certain documents and papers which had been marked as confidential. From the note of the Director it appeared that complaints had been made in respect of performance of the duties by the respondent. In that note it was also mentioned that the respondent was unsympathetic towards the patients. It had also brought to the notice of the Governing Council that the respondent had attempted to obtain the signatures of some of the patients on the petitions stating that he was a good doctor. On one occasion it was reported that the respondent had taken away a girl on his scooter and brought her back late in the night. The said girl was an attendant to a patient in the hospital. The learned Judge came to the conclusion that as the service of the petitioner had been terminated because of the complaints made against him it really amounted to his removal for the misconduct alleged in the note of the Director. According to the learned Judge the Institute should have initiated a departmental proceeding in respect of the alleged charges and only after due enquiry any action should have been taken.

There is no dispute that the service of the respondent had been terminated during the period of probation. The appointment of the respondent was with a clear condition that failure to complete the period of probation to the satisfaction of the competent authority shall render him liable to be discharged from the service. Relevant part of Rule 4 of the Conditions of Service Rules is as follows :

"4. TERMINATION :-

1. All appointments shall be terminable on a notice in writing either by the appointing authority or the employee without assigning any reason as set below :

a) During the period ..one month of probation.

b) After completion of the period 1 of probation..... months.

c) The notice referred to in rule (1) above shall not be necessary if in lieu thereof an amount equal to the pay and allowance for the period of notice is paid.

....."

Generally in connection with an order of termination, a question is raised before the court as to what is the motive behind the termination of the service of the employee concerned - whether the reason mentioned in the order of termination has to be accepted on its face value or the background in which such order of termination simpliciter has been passed should be examined to find out as to whether

an officer on probation or holding a temporary appointment has been, in fact, dismissed from the service without initiating any departmental enquiry. If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of the termination it really amounted to his removal from service on a charge as such penal in nature.

When an appointment is made on probation, it presupposes that the conduct, performance, ability and the capacity of the employee concerned have to be watched and examined during the period of probation. He is to be confirmed after the expiry of probation only when his service during the period of probation is found to be satisfactory and he is considered suitable for the post against which he has been appointed. The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken, to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment. It need not be said that the appointing authority at the stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee.

Even if such employee while questioning the validity of an order of termination simpliciter brings on the record that some preliminary enquiry or examination of some allegations had been made that will not vitiate the order of termination. Reference in this connection may be made to the case of Oil and Natural Gas Commission v. Dr. Mohd. S. Iskender Ali, [1980] 3 SCR 603 where it was pointed out that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained". It was also said that even if misconduct negligence inefficiency may be the motive or the influencing factor which induced the employer to terminate the service of the employee which such employee admittedly had under the terms of the appointment such termination cannot be held to be penalty or punishment. Same view has been reiterated in connection with appointment on temporary or ad hoc basis in the cases of Ravindra Kumar Misra v. U.P. State Handloom Corpn. Ltd, [1987] Suppl. SCC 739; State of Uttar Pradesh v. Kaushal Kishore Shukla, [1991] 1 SCC 691 and Triveni Shankar Saxena v. State of U.P., Judgements Today (1992) 1 S.C. 37.

On behalf of the respondent reliance was placed on the case of Anoop Jaiswal v. Government of India, [1984] 2 SCR 453. In that case the service of the appellant had been

terminated during the period of probation. On the materials on record it was held by this Court that the order of termination really amounted to punishment because the real foundation of the action against the appellant was the act of misconduct on June 22, 1981. The aforesaid judgment is of no help to who respondent because in that case a clear finding was recorded by this Court that the service of the appellant had been terminated because of a particular misconduct alleged against him which had never been enquired into. So far the facts of the present case are concerned the Governing Council examined the different reports in respect of the respondent during the period of probation and considered the question as to whether he should be allowed to continue in the service of the Institute. The decision appears to have been taken by the Governing Council on the total and overall assessment of the performance of the respondent, in terms of the condition of the appointment and Rule aforesaid.

Accordingly the appeal is allowed and the judgment of the High Court is set aside. However, in the circumstances of the case, there will be no order as to costs.

G.N

Appeal allowed.