

PETITIONER:
INDER PAL GUPTA

Vs.

RESPONDENT:
THE MANAGING COMMITTEE, MODEL INTER COLLEGE THORA

DATE OF JUDGMENT 03/05/1984

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)

CITATION:
1984 AIR 1110 1984 SCR (3) 752
1984 SCC (3) 384 1984 SCALE (1) 714
CITATOR INFO :
D 1987 SC1422 (13)
F 1987 SC1833 (2)
R 1989 SC 341 (15)

ACT:
Termination of the services of a Principle on probation-Procedure prescribed under section 16 G and regulations 35 to 38 being the same as provided by Article 311(2) of the Constitution of India, the principles which govern such cases of termination should be the same as those underlying Article 311(2) of the Constitution-Interpretation of Statutes-Absence of enquiry contemplated under Regulations 35 & 36 before the termination of the provision casting a stigma is illegal.

HEADNOTE:

The appellant was appointed on probation as the Principal of the Model Inter College, Thora on August, 28, 1967. His period of probation was extended by one year and thereafter by a letter dated June 30, 1969 addressed to him with a copy of a resolution dated 27th April, 1969 passed by the Managing Committee wherein various allegations were made regarding his conduct, his services were terminated by the respondent. Aggrieved by the said orders of termination of his services, the appellant filed a writ petition No. 4823 of 1970 on the file of the High Court of Allahabad. The said writ petition was allowed on January 23, 1973 and the order of termination was quashed. However, the special Appeal No. 31 of 1973 filed by Respondent was accepted and allowed by the Division Bench. Hence the appeal by special leave of the Court.

Allowing the appeal, the Court,

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HELD: 1. Section 16 of the Uttar Pradesh Intermediate Education Act, (Act II of 1921) provides that every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and that the Regulations inter alia may be made in respect of the period of probation, the conditions of confirmation and the procedure for the imposition of punishment Regulations 35 to 38 relate to the procedure to

be followed before imposing the punishment of dismissal or removal from service and they being virtually the same as provided by Article 311(2) of the Constitution, the principles which should govern this instant case should therefore be the same as those underlying Article 311(2). Admittedly here no enquiry was held as provided for in Regulation 35 and 36. Therefore the non-compliance with the

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provisions of Section 16 of the Act and Regulations 35 to 38 vitiates the termination order. [747F-G; 759G; 760E]

Parshotam Lal Dhingra v. Union of India [1958] S.C.R. 828; Shamsher Singh and Anr v. State of Punjab. [1975] 1 S.C.R. 814; Anoop Jaiswal v. Government of India and Anr. [1984] 1 Scale 105; referred to.

2. If the order of termination carried a stigma it has to fall to the ground unless it is preceded by an enquiry as contemplated by law. A reading of the letter of termination of the service and the resolution which forms part of that letter clearly shows that they bear a mark of disgrace and infamy and the appellant is visited with evil consequences. The order of the Division Bench is therefore unsustainable. [762D-E].

[The Court declared that the appellant continues to be in the service of the College with entitlement to all consequential benefits including the salary and allowances as if there was no break in his service.] [762G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 571 of 1975

Appeal by Special leave from the judgment and Order dated the 14th March, 1973 of the Allahabad High Court in Special Appeal No. 1 of 1973.

R.K. Garg and D.K. Garg for the Appellant.

S. Rangaran and N.N. Sharma for Respondent.

S. Markandeya for Respondent.

Gopal Subramaniam and Mrs. Shobha Dikshit for Respondent.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. The appellant was appointed on probation as the Principal of the Model Inter College, Thora, District Bulandshahr (hereinafter referred to as 'the College') on August 28, 1967 in accordance with the procedure prescribed by the Intermediate Education ACT, 1921 (U.P. Act No. II of 1921) (hereinafter referred to as 'the Act') and the Regulations made thereunder. The period of probation prescribed was one year. Shortly before the expiry of the period of probation on August 25, 1968, the Managing Committee of the Collage passed a resolution extending the period of probation of the appellant by one year. Thereafter on April 27,

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1969, the Managing Committee met to consider the question of confirmation of the appellant in the post of the principal. As the Managing Committee was not satisfied with the services of the appellant, it resolved to terminate his services and after obtaining the approval of the District Inspector of Schools wrote a letter dated June 30, 1969 to the appellant communicating its decision to terminate the services of the appellant enclosing therewith a copy of its resolution dated April 27, 1969. The letter dated June 30, 1969 reads thus:

2. The report of the Manager was read. Sri I.P. Gupta, who was present in the meeting also heard it. He was asked by the Committee to have his say in respect of the report. At first he refused to say anything but when the Committee requested him to consider it seriously. and let the Committee have the benefit of his views, he said that he had nothing to say in that respect since he wanted to quit himself due to circumstances. on this the Committee again requested him to put some such

suggestion in consultation with the manager as may be helpful for the Committee to arrive at some conclusion. In the absence of any satisfactory sugges-

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tion the Committee took the decision. At this stage the Principal retired out of courtesy.

On the basis of the Service Book of the Principal, the manager told that last year his confirmation was due on 28.8. 1968 but in the meeting of the Committee held on 25.8 68 in which the Principal was also present, the report of the Manager, dated 4.7.68 was put as desired by the President. Resolution 3 dated 25.8.68 under the head "Consideration on confirmation of Shri I.P. Gupta, Principal" incorporates the decision of the Committee as "According to the Manager's report the period of probation of the Principal extended by one year. " The proceedings book contains signatures of Sri I.P. Gupta for receiving a copy of the said resolution At the end of the proceedings the minute book contains signatures of Sri I.P. Gupta alongwith other members of the Committee present.

The facts contained in the report of the Manager being serious and not in the interests of the institution, this Committee unanimously resolves that the period of probation of Sri I.P. Gupta, Principal, be terminated without waiting for the period to end and the manager is empowered to take necessary steps in this respect. Any thing done by him in this respect shall be considered to have been done by this Committee. The manager is also authorised to hand over charge to Sri D.D. Gupta when necessary.

Sri I.P. Gupta also came in 'With a Vote of thanks to the Chair the meeting ended."

The English translation of the relevant part of the report of the Manager on the basis of which the above resolution was passed which is incorporated in the counter affidavit filed on behalf of the Managing committee reads thus:

"It will be evident from the above that the Principal's stay will not be in the interest of the institution. It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take all

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this botheration. As such my suggestion is that our purpose will be served by termination of his services. Why, then, we should enter into any botheration. For this, i.e. for termination of his period of probation, too, the approval of the D.I.O.S. will be necessary. Accordingly any delay in this matter may also be harmful to our interests.

Accordingly I suggest that instead of taking any serious action, the period of probations of Sri Inder Pal Gupta be terminated without waiting for the period to end."

Aggrieved by the order of termination of his services referred to above, the appellant filed a petition under article 226 of the Constitution in Writ Petition No. 4823 of 1970 on the file of the High Court of Allahabad challenging its correctness and praying for appropriate reliefs. The learned Single Judge who heard the writ petition allowed it by his order dated January 2, 1973 by quashing the order of termination. The Managing Committee of the College preferred

an appeal against that decision to the Division Bench of High Court in Special Appeal No. 31 of 1973. The Division Bench allowed the appeal and dismissed the Writ Petition filed by the appellant by its order dated March 14, 1973. This appeal is filed by the appellant against the Judgment of the Division Bench after obtaining the special leave of this Court under Article 136 of the Constitution.

The College is an institution recognised under the Act and is governed by the provisions of the Act. Section 16-G of the Act provides that every person employed in a recognised institution shall be governed by such conditions of service as may be prescribed by Regulations and that the Regulations inter alia may be made in respect of the period of probation, the conditions of confirmation and the procedure for the imposition of punishment. The Board of High School and Intermediate Education is authorised to make Regulations in respect of all matters which by the Act are to be provided for by Regulations with the previous sanction of the State Government. Under the Regulations so made under the Act, the period of probation prescribed is one year whether a person is a direct recruit or has been promoted from a lower grade in service of the institution to a higher grade. The period of probation of a Principal or Head Master may be extended by a maximum period of twelve months. At least six weeks before the date of which the

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confirmation of a Principal or a Head Master is due, the Manager of the institution is required to prepare his confirmation papers and place them before the Committee of Management and the decision of the Committee of Management in each case is required to be recorded in the form of a resolution. Regulation 10 provides that a person placed on probation shall be confirmed if he fulfils the requirements of regulation 9, has worked with diligence and other wise proved himself fit for the post for which he was recruited and his integrity is certified. Whenever the punishment of dismissal, removal or discharge, reduction in rank or diminution in emoluments is imposed, prior approval of the Inspector should have to be obtained. Regulations 35 to 38 of the Regulations made under the Act which prescribe the procedure for termination of the services of an employee by way of punishment read thus:

"35. On receipt of a complaint or an adverse report of facts of a serious nature of the Committee may in the cases of teachers appoint the Headmaster or Principal or Manager as the Inquiry-officer (or the Manager may himself set up the enquiry if such power has been delegated to him by the Committee under rules) and in the case of the Head master or Principal, a small sub-committee, with instructions to submit the report as expeditiously as possible.

36. (1) The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the employee charged and which shall be so clear and precise as to give sufficient indication to the charged employee of the facts and circumstances against him. He shall be required within three weeks of the receipt of the charge-sheet to put in a written statement of his defence and to state whether he desired to be heard in person. If he or the inquiring authority so desires, an oral enquiry shall be held in respect of such of the allegations as are not admitted. At that enquiry such oral evidence will be heard as the inquiring authority considers necessary. This person charged shall be

entitled to cross-examine the witness, to give evidence in person, and to have such witnesses called as he may wish, provided that the inquiring authority conducting the enquiry may, for sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient

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record of the evidence and statement of the findings and the grounds thereof. The inquiring authority conducting the enquiry may also, separately from these proceedings, make his own recommendation regarding the punishment to be imposed on the employee.

(2) Clause (1) shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him.

(3) All or any of the provisions of clause (1) may for sufficient reasons to be recorded in writing be waived where there is difficulty in observing exactly the requirements thereof and those requirements can in the opinion of the inquiring authority be waived without injustice to the person charged.

37. Soon after the report of the proceedings and recommendation from the inquiring authority are received, the Committee of Management shall meet to consider the report of the proceedings and recommendation made and take decision on the case. The employee shall, however, be allowed, if he so desires, to appear before the Committee in person to state his case and answer any question that may be put to him by any member present at the meeting. The Committee shall then send a complete report together with all connected papers to the Inspector or Regional Inspectress as the case may be, for approval of action proposed by it.

38. If it is felt at any stage that the matter can be more properly dealt with by action to terminate service with notice, this may be done with the approval of the Inspector or Regional Inspectress, as the case may be."

It is seen from the foregoing that the above provisions relating to the procedure to be followed before imposing the punishment of dismissal or removal from service are virtually the same as provided by Article 311 (2) of the Constitution and the principles which should govern this case should, therefore, be the same as those underlying Article 311 (2). The decisions in *Parshotam Lal Dhingra v. Union of India*, *Shamsher Singh & Anr. v. State of*

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Punjab and Anoop Jaiswal v. Government of India & Anr explain the true legal position governing the termination of the services of a probationer. In *Parshotam Lal Dhingra's* case (supra), this Court observed at page 862 thus:

"In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with."

The above rule applies to probationers too.

Admittedly no enquiry was held in this case as provided in Regulations 35 and 36 of the Regulations made under the Act. Apparently in the light of the principles enunciated in Parshotam Lal Dhingra's case (supra) the learned Single Judge who decided the Writ Petition at the first instance in the High Court observed in the course of his order thus:

"In this petition under Article 226 of the Constitution the petitioner questions the validity of the so-called termination of his service by the resolution passed by the Managing Committee on 27.4.1969. His case is that the termination in the circumstances in which it has been made by the Managing Committee amounts to punishment of removal or dismissal from service and the punishment having been imposed upon him without following the procedure prescribed under sec. 16-G of the Intermediate Education Act and the regulations framed thereunder becomes vitiated. Indeed it has not been denied or controverted in the counter affidavit that the action against the petitioner was taken by

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the Managing Committee on serious charges of mismanagement brought against the Principal by the Manager. But it has submitted by the learned counsel for the opposite parties that a reasonable opportunity was afforded to the petitioner by the Managing Committee when he was faced with the charges and asked to explain on 27.4.69, at the meeting of the Managing Committee. But the learned counsel for opposite parties when faced with the relevant regulations and Sec. 16-G of the Intermediate Education Act found it difficult to justify that what was done at the meeting of the Managing Committee on 27.4.1969 complies with those provisions. The attack made by the petitioner based on non-compliance of the relevant regulations and the provisions of Sec. 16-G of the Act on the validity of the action taken, appear to be sound and sustainable. No matter the petitioner was not a permanent Principal yet he was entitled to a regular show cause notice against the charges brought and an opportunity to be heard as required by the regulations. The impugned order of termination thus was a mere camouflage and cannot be regarded in the circumstances as having been passed by the Managing Committee in the normal course. The District Inspector of Schools was in error in approving the termination in those circumstances."

But the Division Bench of the High Court took a contrary view. The first error in the judgment of the Division Bench lies in its observation:

'Firstly the order of termination is innocuous. It does not refer to any allegations or even to the report of the Manager.'

It is seen from the letter dated June 30, 1969 by which the services of the appellant were terminated that the resolution of the Managing Committee dated April 27, 1969 is made a part of it by treating it as an enclosure to that letter. The resolution actually begins with a reference to the report of the Manager, and slates that the facts contained in the report were 'serious' and 'not in the interests of the institution'. It further refers to the fact that the appellant was asked to give his explanation to the allegations made in the said report. That report stated:

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"It is also evident that the seriousness of the

lapses is enough to justify dismissal but no educational institution should take that botheration."

The above report was the real foundation on which the decision of the Managing Committee was based. This is a case where the order of termination issued is merely a camouflage for an order imposing the penalty of termination of service on the ground of misconduct. Secondly, the Division Bench has tried to justify the action of the Management by observing that since the management had to secure the approval of the District Inspector to its action, it was necessary for it to give its assessment of the work of the appellant as Principal and, therefore, in the context of the statutory requirements, it cannot be said that merely because the Manager's report or the resolution of the Managing Committee refers to the various aspects of the assessment of the performance of the Principal in terms unfavourable to him, it would in law, amount to casting a stigma upon the Principal'. It is difficult to engraft an exception of the above type to the well-settled rule that if the order of termination carries a stigma, it has to fall to the ground unless it is proceeded by an enquiry as contemplated by law. A reading of the letter of termination of the service and the resolution which forms part of that letter clearly shows that they bear a mark of disgrace or infamy and that the appellant is visited with evil consequences as explained in Parshotam Lal Dhingra's case (supra). The Division Bench, therefore, erred in holding that on the facts and in the circumstances of the case, the order of termination was an innocuous one and did not carry any stigma. The order of the Division Bench is, our opinion, an unsustainable one and is liable to be set aside.

In the result, we allow this appeal, set aside the judgment of the Division Bench of the High Court and restore the judgment of the learned Single Judge. We hereby declare that the appellant continues to be in the service of the College. He is entitled to all the benefits flowing from this declaration including the salary and allowances as if there was no break in his service. The respondent College shall also pay the costs of this appeal to the appellant.

S.R. Appeal allowed.