

KAMAL NAYAN MISHRA
v.
STATE OF M.P. & ORS.
(Civil Appeal No. 8317 of 2009)

DECEMBER 7, 2009

[R.V. Raveendran and K.S. Radhakrishnan, JJ.]
[2009] 16 (ADDL.) S.C.R. 238

The following Order of the Court was delivered

O R D E R

R.V. RAVEENDRAN J. 1. Leave granted. Heard the parties.

2. Appellant was appointed as a Peon in the Water Resources Department (Bansagar Project) in the State of Madhya Pradesh on 24.7.1980. Nearly a decade later, on 22.8.1989, the appellant was charge-sheeted in a criminal case for the offences under sections 148, 324/149, 326/149 and 506 IPC. He was acquitted by judgment dated 9.9.2004 passed by Judicial Magistrate First Class, Rewa, MP.

3. In the year 1994, the appellant was required to submit an attestation form giving his personal data in regard to his educational qualifications, antecedents etc. He filled up and submitted the said form on 27.10.1994. Column 12 of the said form relevant for our purpose contained three queries. The said queries and appellant's answers thereto are extracted below :

Sl. No.	Query	Answer
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12(a)	Have you ever been arrested, prosecuted, kept under detention or bounded down/finde, convicted by a Court of law for any offence of debarred/disqualified by any public service commission, from appearing at its examinations/selections or debarred from taking any examination rusticated by any University or any other educational authority institution?	No
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12(b) Is any case pending against you in Court of law, University of any other educational, authority/institution at the time of filling up this attestation form?

12(c) If the answer to 12(a) or 12(b) is 'yes' full particulars of the case, arrest detention, fine, conviction sentence etc, and the nature of the case pending in the Court/University/Educational authority, etc. at the time of filling up this or should be given. No

The form also required the appellant to certify that the information given by him in the said form was correct and that if any information was found to be false or incomplete in any material respect, the appointing authority may terminate him from the service without giving notice or showing cause.

4. The Chief Engineer, Bansagar Project (second respondent), referred the attestation form for verification of particulars. After such verification, the Deputy Inspector General of Police, Special Cell, Bhopal, by letter dated 14.7.1995 informed the second respondent that appellant had furnished wrong information in regard to the queries in column 12 of the attestation form. On receipt of such report, no show cause notice or charge sheet was issued to the appellant. The appellant continued to work. Nearly seven years later, abruptly the second respondent issued an office order dated 7.3.2002 terminating the services of appellant forthwith "for giving wrong information and concealment of facts *in attestation form at the time of initial recruitment* and therefore unfit for Government service". The appellant challenged his termination. A learned Single Judge of the High Court dismissed the writ petition by order dated 11.10.2007, upholding the termination, relying upon the decision of this Court in *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* - 2003 (3) SCC 437. The writ appeal filed by the appellant was dismissed on 1.5.2008. Appellant has challenged the said order by this appeal by special leave.

5. The appellant submitted that there was no intentional suppression or misrepresentation in the attestation form. He claims that he has only basic education, that he was given to understand that he should answer the queries in column No.12 with reference to the position as on the date of his appointment in the year 1980; that he therefore answered truthfully all the three queries in column 12 in the negative; and that he did not realise that clauses (b) and (c) of column 12 required him to state the particulars as on the date of filling up of attestation form. He also contended that being a regular confirmed employee, his services could not have been terminated without an enquiry under the relevant service rules, and the termination is violative of Article 311 of the Constitution of India. On the other hand, the respondents contend that the matter is squarely covered by the decision of this Court in *Ram Ratan Yadav*. The respondents contend that the said decision recognised the right of the employer to terminate any employee without an enquiry, if it is found that he had given false or incorrect information in the personal attestation form. On the contentions urged, two questions arise for consideration:

(i) Whether the ratio decidendi of the decision in *Ram Ratan Yadav* apply to this case? Does it hold that state government could dismiss or remove the holder of a civil post, without any enquiry or opportunity to show cause, once it is found that he has given incorrect/false information in the personal attestation form?

(ii) Whether the termination of the appellant is valid?

Re: Question (i)

6. We may first refer to the context in which the issue was examined in *Ram Ratan Yadav* (supra). Yadav who possessed the degrees of BA, B.Ed. and M.Ed. was appointed as a Physical Education Teacher by the Kendriya Vidyalaya Sangathan vide the appointment order dated 16.12.1997. Clause (4) of the offer of appointment stated that he would be on a probation for a

period of two years. Clause (8) of the offer of appointment required him to submit an attestation form, after duly filling it with the required particulars. Clause (9) of the offer of appointment provided that suppression of any information will be considered a major offence for which the punishment may extend to dismissal from service.

(6.1.) Yadav submitted an attestation form dated 26.6.1998, wherein he answered two of the queries thus :

“12. Have you ever been prosecuted/kept under detention or bound down/fined, convicted by a court of law for any offence? – ‘No’;

13. Is any case pending against you in any court of law at the time of filling up this attestation form? – ‘No’.”

On the said attestation form being referred for verification, it was found that the information furnished by him was false and that a criminal case under section 323, 341, 294 and 506-B read with section 34 IPC was pending against him. He was therefore terminated from service, by the Sangathan, by memorandum dated 7/8.4.1999, as being unfit for employment. The Tribunal upheld the termination. The High Court set aside his termination on the ground that the criminal case against him was subsequently withdrawn by the Government and the offences alleged did not involve any moral turpitude so as to disqualify him for employment. The said decision was reversed by this Court. This Court held that the purpose of requiring an employee to furnish information under clauses 12 and 13 of the attestation form was to assess his character and antecedents for continuation in service; that suppression of material information and making a false statement in reply to queries (12) and (13) had a clear bearing on the character, conduct and antecedents of a person employed as a teacher in a school; and therefore the employer was justified in terminating his service during the period of probation. This court did not accept Yadav's claim that he did not understand the contents of the questions which were in English, as it found that the Tribunal had recorded a

finding of fact, after examination of the record, that Yadav was highly qualified and was aware of the significance and meaning of the said queries, and had deliberately entered false responses. This court also pointed out that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer who *suppresses* a material fact (of his being involved in a criminal case, in the personal information furnished to the employer), is fit to be continued as a probationer.

(6.2.) Therefore, the *ratio decidendi* of *Ram Ratan Yadav* is, where an employee (probationer) is required to give his personal data in an attestation form in connection with his appointment (either at the time of or thereafter), if it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. The decision dealt with a probationer and not a holder of a civil post, and nowhere laid down a proposition that a confirmed employee holding a civil post under the State, could be terminated from service for furnishing false information in an attestation form, without giving an opportunity to meet the charges against him.

Re: Question (ii)

7. A confirmed government servant is the holder of a civil post entitled to the benefits of the safeguards provided by Article 311 of the Constitution. On the other hand, a probationer does not have any substantive right to hold the post, and is not entitled to the protection under Article 311. A probationer's services can be dispensed with during the period of probation, or at the end of the probation period, if his service is found to be unsatisfactory or if he is found to be unfit for appointment. In *Ajit Singh vs. State of Punjab* – 1983 (2) SCC 217, this Court explained why termination of a probationer is permissible an inquiry:

“If a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master servant relationship puts the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of prohibition was devised. To guard against error of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of *locus penitentiae* to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to. (See *Purshotam Lal Dhingra v. Union of India* – 1958 SCR 828). The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service.”

8. *Ram Ratan Yadav* (supra) held that the services of a probationer who gave wrong information in regard to material particulars having a bearing on his fitness or suitability for appointment, can be terminated without giving any opportunity to show cause against the proposed termination. But once a probationer is confirmed in the post, his position and status becomes different

as he gets the protection of Article 311. If it is found that the government servant who is holder of a civil post, has given any false information during the course of employment, that will have to be treated as a misconduct, and punishment can be imposed only after subjecting him to an appropriate disciplinary proceedings as per the relevant service Rules.

9. There are also several other features in this case which distinguish it from *Ram Ratan Yadav*. First is that *Ram Ratan Yadav* related to an employee of Kendriya Vidyalaya Sangathan, who did not have the protection of Article 311 of the Constitution of India, whereas in this case we are concerned with a government servant protected by Article 311. Second is that the attestation form in this case, was required to be furnished by the employee, not when he was appointed, but after fourteen years of service. The third is that while action was promptly taken against the probationer, in the case of *Ram Ratan Yadav*, within the period of probation, in this case even after knowing that appellant had furnished wrong information, the respondents did not take any action for seven long years, which indicated that the department proceeded for a long time on the assumption that the wrong information did not call for any disciplinary or punitive action. The belated decision to terminate him, seven years later was unjustified and violative of Article 311.

10. If the appellant had been issued a charge sheet or a show cause notice he would have had an opportunity to explain the reason for answering the queries in column 12 in the manner he did. He could have explained that he did not understand the queries properly and that he was instructed to furnish the information as on the date of appointment. In fact his contention that he was required to answer the queries in column (12) with reference to the date of his appointment, finds support from the termination order, which says that the appellant was terminated for giving wrong information and concealment of facts in the attestation form *at the time of initial recruitment*. This clearly implies that he was expected to reply the queries in column 12

with reference to his initial appointment, even though clauses 12(b) and (c) of the form stated that the information should be as on the date of signing of the attestation form. The explanations given by the appellant, would have certainly made a difference to the finding on guilt and the punishment to be imposed. But he could not give the said explanations as there was no show cause notice or enquiry. The termination order is also unsustainable, as the statement therein that the appellant had given wrong information and concealed the facts *at the time of initial recruitment*, is erroneous.

11. The learned counsel for respondents drew our attention to the Instructions to the Employees in the preamble to the Attestation Form and the undertaking contained in the verification certificate by the employee at the end of the attestation form, which puts him on notice that any false information could result in termination of his service without enquiry. It is contended that as the attestation form stated that an employee could be terminated without notice, if he furnishes false information, the employee is estopped from objecting to termination without notice. The said contention may merit acceptance in the case of a probationer, but not in the case of a confirmed government servant. No term in the attestation form, nor any consent given by a government servant, can take away the constitutional safeguard provided to a government servant under Article 311 of the Constitution. A seven Judge Bench of this Court held in *Moti Ram Deka v. General Manager, N.E. Frontier Railway*, [1964 (5) SCR 683], observed as follows while negating a contention that a person who enters service by executing a contract containing a rule contrary to Article 311, with open eyes, cannot be permitted to challenge the validity of the said rule or the contract:

“In our opinion, this approach may be relevant in dealing with purely commercial cases governed by rules of contract; but it is wholly inappropriate in dealing with a case where the contract or the Rule is alleged to violate a constitutional guarantee afforded by Article 311(2);...
..... Let us then test this argument by reference to the

provisions of Art. 311(1). Art. 311(1) provides that no person to whom the said article applies shall be dismissed or removed by an authority subordinate to that by which he was appointed. Can it be suggested that the Railway Administration can enter into a contract with its employees by which authority to dismiss or remove the employees can be delegated to persons other than those contemplated by Art. 311(1) ? The answer to this question is obviously in the negative, and the same answer must be given to the contention that as a result of the contract which embodies the impugned Rules, the termination of the railway servant's services would not attract the provisions of Art. 311(2), though, in law, it amounts to removal."

12. We also find from an examination of the terms of the attestation form that termination without notice or inquiry was contemplated only in the context of furnishing false information in and around the time of the appointment. Note (1) of the preamble warns that "the furnishing of false information or suppression of any factual information in the attestation form would be a *disqualification and is likely to render the candidate unfit for employment*. Similarly the certificate at the end of the attestation form states that "I am not aware of any circumstances which might *impair my fitness for employment under government*. I agree that if the above information is found false or incomplete in any material respect, *the appointing authority will have a right to terminate my services without giving notice or showing cause*." Be that as it may.

13. The termination of appellant without an inquiry or hearing was illegal and invalid. In the normal course, we would have set aside the termination and directed reinstatement with consequential benefits, reserving liberty to the employer to initiate disciplinary proceedings. But the peculiar facts of this case require us to adopt a slightly difference approach to do complete justice between the parties. We have already pointed out that there are clear indications that the appellant was bonafide under the impression that he was

required to give the particulars sought in column (12) of the form with reference to the date of his appointment. Further, the entire matter relates to an attestation form given in 1994 and appellant has already been out of service for more than seven years on account of the illegal termination from service without inquiry on 7.3.2002. We are therefore of the view that interests of justice would be served if the appellant is reinstated with continuity of service and other consequential benefits, dispensing with any further disciplinary action. The appellant will not entitled to any salary for the period 7.3.2002 till today.

14. We accordingly allow this appeal, set aside the judgments of the learned Single Judge and the Division Bench. The writ petition filed by the appellant before the High Court is allowed, setting aside the termination order dated 7.3.2002. Respondents are directed to reinstate the appellant with continuity of service and other consequential reliefs (except salary for the period 7.3.2002 till date).

