

CASE NO.:
Appeal (civil) 9470 of 2003

PETITIONER:
State of Haryana & Anr.

RESPONDENT:
Satyender Singh Rathore

DATE OF JUDGMENT: 08/09/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

State of Haryana and Director General, Health Services, Haryana call in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court holding that the order of termination passed by the authorities was without legal sanction.

The background facts in a nutshell are as follows:

Respondent (hereinafter referred to as the 'employee') was appointed as Medical Officer in the Directorate of Health Services, Haryana by an order dated 6.11.1997 on a fixed salary of Rs.8,000/- per month for a period of six months from the date of joining. It was clearly indicated in the letter of appointment that the services of the employee being on contractual basis could be terminated at any time without assigning any reason with 24 hours notice from either side. By order dated 25.3.2002 services of the employee were terminated. The same was challenged before the High Court by filing a writ petition.

Before the High Court it was urged by the writ petitioner that the order of termination, though in the face of it appears to be termination simpliciter, was relatable to alleged misconduct and, therefore, was penal in nature. Reference was made to a decision of this Court in A.P. State Federation of Coop. Spinning Mills Ltd. and Anr. v. P.V. Swaminathan (2001 (10) SCC 83) to contend that the order of termination was founded on the alleged misconduct as stated in the order dated 25.3.2002. The formal order of termination involved adverse civil consequences. The stand of the opposite parties before the High Court (appellants herein) was that the misconduct may have provided a motive for the order of termination but not a foundation. The High Court by the impugned judgment held that the misconduct referred to was the foundation and not the motive. As the order involved civil consequences, therefore, the same could not have been passed without complying Principles of Natural Justice. The order was according to the High Court stigmatic. In the order passed by the State Government dated 25.3.2002 reference was made to the alleged misconduct of the employee and on the basis thereof the order of termination dated 11.4.2002 was passed. It was accordingly held that the employee was entitled to all the consequential benefits along with re-instatement. Liberty was, however, given to proceed further after complying with statutory

rules governing service of the employees or the rules of natural justice as the case may be.

Learned counsel for the appellants submitted that the order of termination as passed did not refer to any misconduct. It was a case of termination simpliciter. The reference to the misconduct of the employee as contained in the order dated 11.4.2002 was in relation to the allegations made against the employee, and no inquiry was conducted or finding of guilt arrived at. After perusing the appointment order and the entire record the Government took the decision to relieve the employee from suspension for termination in terms of appointment order with immediate effect. The misconduct alleged and referred to at the most can be treated as the motive for the order of termination but it was not the foundation.

Learned counsel for the respondent on the other hand submitted that though the order of termination was on the face of it appeared to be termination simpliciter, in reality, it was outcome of the deliberations made and, therefore, was the foundation for the order of termination. It is submitted that allegations were made to the police as well as the Public Grievance Committee. Report was lodged with the police and considering the police report and without affording any opportunity to the employee, the proceedings were abandoned midway and the services of the respondent were terminated.

In what situation the allegation of misconduct will be the motive and in what cases they will be foundation has to be adjudged in the factual background of each case. The issue has been examined in several decisions including several Constitution Bench judgments and a judgment of 7-judges. An elaborate analysis of the various decisions was made by this Court in *Radhey Shyam Gupta v. U.P.State Agro Industries Corpn. Ltd. and Anr.* (1999(2) SCC 21). The matter was examined elaborately by 7-Judges in *Samsher Singh v. State of Punjab and Anr.* (1974 (2) SCC 831). In the said case it was noted in paragraphs 79 and 80 as follows:

"79. The Enquiry Officer nominated by the Director of Vigilance recorded the statements of the witnesses behind the back of the appellant. The enquiry was to ascertain the truth of allegations of misconduct. Neither the report nor the statements recorded by the Enquiry Officer reached the appellant. The Enquiry Officer gave his findings on allegations of misconduct. The High Court accepted the report of the Enquiry Officer and wrote to the Government on June 25, 1969 that in the light of the report the appellant was not a suitable person to be retained in service. The order of termination was because of the recommendations in the report.

80. The order of termination of the services of Ishwar Chand Agarwal is clearly by way of punishment in the facts and circumstances of the case. The High Court not only denied Ishwar Chand Agarwal the protection under Article 131 but also denied itself the dignified control over the subordinate judiciary. The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order

terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity. That is exactly what has happened in the case of Ishwar Chand Agarwal. The order of termination is illegal and must be set aside."

In Gujarat Steel Tubes Ltd. and Ors. v. Gujarat Steel Tubes Mazdoor Sabha and Ors. (1980(2) SCC 593) it was observed as follows:

"53: Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus, scrutinized, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.

54. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here."

(SC) the factual position was as follows:

"A charge memo was issued, explanation was received and an enquiry officer was also appointed but before the enquiry could be completed, the proceedings were dropped stating that "departmental proceedings will take a much longer time and we are not sure whether after going through all the formalities, we will be able to deal with the accused in the way he deserves."

In that case, order of termination was held not to be punitive. The ratio was adopted in *State of Punjab v. Sukh Raj Bahadur* (AIR 1968 SC 1089) and it was concluded as follows:

"The departmental enquiry did not proceed beyond the stage of submission of a charge sheet followed by the respondent's explanation thereto. The enquiry was not proceeded with; there were no sittings of any enquiry officer, no evidence recorded and no conclusion arrived at on the equity."

We find that the High Court did not consider the question of stigma or the effect of any enquiry held before the order of termination was passed. The question whether the enquiry purportedly held provided the motive or the foundation was required to be considered by the High Court in detail. That has not been done. The question whether termination of service is simpliciter or punitive has been examined in several cases e.g. *Dhananjay v. Chief Executive Officer, Zilla Parishad, Jalna* (2003 (2) SCC 386) and *Mathew P. Thomas v. Kerala State Civil Supply Corporation Limited and Ors.* (2003 (3) SCC 263). An order of termination simpliciter passed during the period of probation has been generating undying debate. The recent two decisions of this Court in *Dipti Prakash Bamerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta* (1999 (3) SCC 60) and *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences* (2002 (1) SCC 520) after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of *Dipti Prakash Banerjee* (supra) after referring to various decisions it was indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as a motive for passing such a simple order of termination. In para 21 of the said judgment a distinction is explained thus:

"If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is

to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid. From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service."

When the factual scenario of the present case is considered in the background of legal principles set out above, the inevitable conclusion is that the High Court was not justified in interfering with the order of termination.

The judgment of the High Court is set aside and the appeal is allowed with no order as to costs.