

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7479 OF 2004

KRUSHNAGANPAT DUHIJOD  
...APPELLANT

VERSUS

STATE OF MAHARASHTRA & ANR.  
RESPONDENTS

...

ORDER

This appeal is directed against the impugned order dated 18.12.2003 of the High Court of Judicature at Bombay dismissing the writ petition filed by the appellant.

We have heard the parties at length.

The briefly stated facts leading to the filing of the present appeal are as follows:

The appellant was appointed on probation for a period of six months to the post of Farm Manager (Grade II) by an order dated 09.03.1990. Having not satisfactorily completed the period of probation, the services of the appellant were extended from time to time and last extension order was passed on 17.10.1995 extending the period of probation upto 30.11.1995. Thereafter, the services of the appellant came to be terminated by an order dated 29.11.1995.

The sole contention of the appellant is that although the order of the termination appears to be in the guise of termination simplicitor, in fact, the same is passed by way of punitive action. The learned counsel, therefore, would contend that without an enquiry

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contemplated under Article 311(2) of the Constitution the respondent Authority could not have terminated the services of the appellant by way of termination simplicitor.

To answer the aforesaid question it would be necessary to examine the terms and conditions of the appointment of the appellant. Clause No.1 of the order of appointment dated 09.03.1990 is as follows :

"1.Your appointment will be on probation for the period of six months which may be extended, if deemed necessary. During the period of probation, your services are liable to be terminated by giving fourteen day's notice in writing or payment of fourteen day's salary in lieu of such notice on either side. After satisfactory completion of your probation period, you will be considered for confirmation for the post, by the company. After confirmation your services are liable to be terminated by giving one month's notice in writing on either side or on payment of compensation equal to one month's gross salary in lieu of

such notice."

Then, comes to the order of termination dated 29.11.1995.  
The order of termination reads :

" You are appointed as Farm Manager, Class II Officer on probation vide this office order No. mmvsvm/Est/KGD/3444/90, dated 9.3.1990. The said period of probation was extended upto 30.11.1995, as per this office letter No. (Marathi) MMV SVM/EST/CNF/KGD/74/95, dated 17.10.1995. The said period expires on 30th November, 1995. We are enclosing herewith D.D. No. 148711 dated 29.11.1995

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towards your salary for the month of November 95 and 14 days notice pay. You are directed to handover the charge to Dr. R. M. Ingale, Farm Manager, on 30th

November, 1995 A.N. You are further also directed to vacate the quarter occupied by you immediately."

In our view, therefore, it would thus appear that the order terminating the services of the appellant does not cast any stigma either on the service dossiers or his character or the integrity of the appellant. The order thus would clearly show that service of the appellant was done away with as his performance during the period of probation extended was not satisfactory.

Mr. Vinay Navare, learned counsel appearing for the appellant, however, has drawn our attention to the counter-affidavit filed on behalf of Respondent No.2 and pointed out that although the order of termination appears to be innocuous is actually by way of punitive action. He particularly refers to the charge alleged to have been issued to the appellant in respect of the report in part (1) and part (2). According to him since a charge was levelled against the appellant a preliminary enquiry was conducted and, therefore, it was incumbent upon the respondent Authority to conduct a regular enquiry against the appellant and the services of the appellant ought to have been terminated after regular enquiry and after affording a reasonable opportunity to defend himself as required under Article 311(2) of the Constitution.

We are unable to countenance with the aforesaid submission of the appellant for more than one reason. Firstly, it is admitted position that the services of the appellant are done away with during the extended period of probation. Secondly, the preliminary inquiry and show cause notice issued to the appellant are only the attending circumstances on the basis of which the competent authority

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formed an opinion that the appellant has not satisfactorily worked during the period of probation and he is unfit to be in service. Thirdly, as already noticed in the order impugned no stigma either on the service record of the appellant or against his integrity has been mentioned.

The Learned counsel appearing for the appellant has referred to the decision of this Court in the case of Jarnail Singh and others vs. State of Punjab and others, (1986) 3 SCC 277. In that case the facts are that the appellant was appointed on probation and he has

successfully completed the period of probation. When the Selection Committee met for considering the regularisation of the services of the employee there was an allegation of misconduct and adverse entry resulting termination. In that context this Court held that the termination order appears to be punitive and violative of Article 311(2) of the Constitution. The facts of that case is distinguishable with the facts of the case at hand. As already noticed, in his case the appellant has failed to satisfactorily complete the period of probation and his services were terminated by way of termination simplicitor during the period of probation.

That apart, in *Jarnail Singh* case (supra) this Court also referred to various decisions rendered by this Court. In the case of *State of Punjab vs. Sukh Raj Bahadur*, (1968) 3 SCR 234, this Court held that the services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

We have already noticed the terms and conditions of appointment of the appellant particularly Clause (1) as quoted above. We have also noticed the order of termination is in consonance with Clause (1) of the appointment order. Therefore, in such a situation the

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termination of the appellant is simplicitor and the same would not attract the operation of Article 311 of the Constitution.

In *Shamsher Singh vs. State of Punjab*, (1975) 1 SCR 814, the seven- Judge of this Court amongst others held :

" No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution."

In the case at hand, the facts and circumstances considered by the competent authority before the order of termination is passed are of attending circumstances on the basis of which the competent authority formed an opinion that the appellant has not satisfactorily completed the period of probation and he was unfit to retain in the Corporation. This was one of the conditions of appointment. The intendment of the Authority is clearly reflected in the order of termination itself.

For the reasons aforesaid, we are unable to countenance to the submission of the learned counsel for the appellant that the termination of the services of the appellant is not simplicitor but is by way of punitive and violative of the requirement of the Article 311(2) of the

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Constitution.

For the reasons aforesaid, we see no merits in this appeal

