

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S).5693 OF 1998@@
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N.H. Ninge Gowda

Appellant(s)

VERSUS

Hon'ble High Court of Karnataka & Ors.
(with office report)

Respondent(s)

DATE: 21-1-2003 This matter was called on for hearing today.@@
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CORAM :
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s) : Mr. SN Bhat, Adv.
Mr. KM Prakash, Adv.

For Respondent(s) : Mr. Siddharth Dave, Adv.
Mr. Satya Mitra, Adv. for
Mr. Sanjay R Hegde, Adv.

UPON hearing counsel the Court made the following
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Mr. SN Bhat, learned counsel for the appellant started his arguments at 11.05 am and concluded at 11.50 a.m. Thereafter Mr. Siddharth Dave, learned counsel for the respondent made his submissions upto 11.55 a.m.

The appeal is dismissed in terms of the signed order with no order as to costs.

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(D.L. Chugh) (Shelly Sen Gupta)
Court Master Court Master

Signed order is placed on the file

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5693 OF 1998@@

N.H. Ninge Gowda

....Appellant

VERSUS

Hon'ble High Court of Karnataka & ors.

....Respondents

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Heard the learned counsel for the parties.

The appellant was appointed as a peon and during the period of probation, on not being satisfied as to performance of his duties, the District Judge passed order of discharge finding him unsuitable to continue in service, which is evident from Annexure P-2 dated 5-7-1990. On the basis of the proceedings drawn under Annexure P-2 the learned District Judge sought confirmation of the High Court. The High Court, as per Annexure P-3 dated 13-8-1990, conveyed the confirmation and permitted for the discharge of the appellant from services under the Karnataka Civil Services (Probation) Rules, 1977 (for short 'the Rules'). Thereafter, the order terminating the services of the appellant was made on 21-8-1990. The said order came to be challenged in the writ petition by the appellant. The learned Single Judge after consideration of the materials placed before him and having heard the learned counsel for the parties came to the
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conclusion that the order of termination of services of the appellant was not simplicitor but it was stigmatic. For arriving at such a conclusion the learned Single Judge relied on the preamble portion of the proceedings of the District Judge wherein it was stated that the appellant was irresponsible, unreliable and disobedient. In that view, the learned Single Judge allowed the writ petition and set aside the impugned order passed against the appellant. The respondents challenged the order of the learned Single Judge before the Division Bench by filing a writ appeal. The Division Bench of the High Court, after considering the rival submissions did not agree with the order passed by the learned Single Judge. Per contra, the Division Bench was of the view that it was an order of discharge simplicitor terminating the services of the appellant. Dealing with the argument made by the counsel for the appellant, in regard to the observations as to the unreliability, irresponsibility or disobedience on the part of the appellant, the Division Bench took the view that it was only in the preamble portion of the order but as far as the order of termination of services was concerned, it was only simplicitor. The Division Bench was also of the opinion that those observations were necessary to assess the suitability of the appellant to continue in service. In that view the order of the learned Single Judge was set aside. Hence, the appellant is before us in this appeal.

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Learned counsel for the appellant strongly contended

that the very preamble of the order of discharge itself indicates that all was not well with the authorities in passing the order of termination of the services of the appellant. A plain reading of the preamble itself shows that the order terminating the services of the appellant was stigmatic. He also urged that a prospective employer may form an adverse opinion against the appellant, if he were to seek employment elsewhere. He added that the order including the preamble must be read as a whole even though the operative portion of the order as such does not contain any stigma. The learned counsel for the respondents supported the impugned order in his arguments.

We have perused the proceedings at Annexure P-2, drawn by the learned District Judge on 5-7-1990. The learned District Judge sought confirmation from the High Court to terminate the services of the appellant, who was on probation. From the letter dated 13-8-1990 of the Registrar of the High Court addressed to the District Judge it is clear that confirmation was given to terminate the services of the appellant under Section 5(1) of the Rules. Ultimately, the order of discharge was passed on 21-8-1990 which was extracted in the order of the learned Single Judge. The same reads as under:

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"As the order No.62/1990 dated 5-7-1990 passed by the undersigned discharging Sri N.H. Ningagowda, Peon, Court of the Prl. Munsiff and JMFC, Chickmagalur from service is confirmed by the High Court of Karnataka, Bangalore as required Rules, 1977, he is discharged from service with immediate effect."

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A perusal of this order clearly shows that the order of discharge is simplicitor issued under the Rules. This order does not indicate, in any way, any stigma attached to the appellant. The thrust of the argument of the learned counsel for the appellant that the use of the words in the Preamble of the proceedings drawn by the District Judge as per Annexure P-2 that he was unreliable, irresponsible and disobedient itself should be sufficient to hold that the stigma was attached to the appellant. The Division Bench of the High Court on an overall assessment and on consideration of the material placed on record concluded that the order of discharge was simplicitor and it took note of the fact that in the operative portion of Annexure P-2 there was nothing to indicate to make it stigmatic against the appellant. We may add that the order of discharge, which is extracted in the order of the learned Single Judge, clearly shows that it was an order of discharge simplicitor. In this view, the argument based on Preamble of the proceedings drawn by the District Judge does not help the appellant. It only after the proceedings were drawn, the confirmation was sought from

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the High Court. After confirmation was given order of discharge was passed on 21-8-1990 as indicated in the order of learned Single Judge. The question of prospective

employer forming adverse opinion against the appellant also does not arise when the order does not contain any stigmatic remarks. In these circumstances, in our view, the Division Bench of the High Court was right in setting aside the order of the learned Single Judge. No fault can be found with the impugned order. The appeal has no merits and consequently it is dismissed. No costs.

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(SHIVARAJ V. PATIL)@@
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(ARIJIT PASAYAT)@@
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New Delhi,
January 21, 2003