

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL No.6435/1998@@
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Rajasthan Financial Corporation Appellant (s)

VERSUS

Gautam Chandra Banthia Respondent (s)

Date : 22.03.2001 This appeal was called on for hearing today.@@
AA

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAİK
HON'BLE MR. JUSTICE S.N. PHUKAN
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. A.P. Dhamija,Adv.for
Mr. Sushil Kumar Jain,Adv.

For Respondent(s) Mr. A. Subba Rao,Adv.

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....J.
.SP2

The appeal is allowed.
There will be no order as to costs.

.SP1

(Y.P.Dhamija) (Suneet Bala Sharma)@@
AA
COURT MASTER Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6435/1998@@
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Rajasthan Financial Corporation ..Appellant

Vs.

Gautam Chandra Banthia ..Respondent

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

Defendant - Rajasthan Financial Corporation is in appeal against the judgment of the learned Single Judge of Rajasthan High Court dismissing the second appeal of the appellant. The respondent was appointed as Deputy Manager (Finance) on probation by order dated 19.3.1983 and the period of probation was for only one year. On 6.3.1984, the screening committee adjudged the suitability of the respondent, but found the services not to be satisfactory, and accordingly recommended extension of the probation, which thus stood extended till 31st December, 1984. While he was continuing on probation, the screening committee further scrutinised the case of the respondent, but did not find the performance justifying him for continuance any further, and accordingly recommended not to confirm the respondent on the post of Deputy Manager, and instead to terminate his services in accordance with the provisions of the Staff Regulation. This recommendation was placed before the Board and the Board accepted the same by resolution dated 12.2.1985. The services of the respondent having thus been terminated, it

- 2 -

was sought to be communicated to the respondent, but having failed in their attempt, it was published in the newspaper on 20th February, 1985. On 23rd February, 1985 the respondent filed the suit for a declaration that the order of termination is illegal, invalid and inoperative, and prayed for quashing of the same. Before the Civil Court, the defendant - appellant filed his written statement refuting the allegations made in the plaint. It was averred that the plaintiff, a probationer not having been found suitable by the screening committee, the termination order passed by the Board is legal and justified and cannot be interfered with. The learned Trial Judge decreed the suit on findings (1) that the continuance of the plaintiff beyond the period prescribed under the rules for probation would tantamount to confirmation, (2) since he was confirmed employee in the eye of law, the order of termination could not have been passed without following the prescribed procedure, (3) even the order, on the face of it, must be held to be stigmatic, and as such the same is vitiated, and cannot be sustained, (4) the regulation, as provided in sub-rule (4) of Regulation 16 not having been complied with, the order of termination is vitiated. With these conclusions, the suit having been decreed, the defendant approached the lower appellate court in appeal. The lower appellate court affirmed all the findings of the learned Trial Judge and dismissed the appeal

filed by the Corporation. The Corporation then approached

- 3 -

the High Court in second appeal. The High Court on consideration of the relevant provisions of the Corporation dealing with the question of probation came to hold that since no maximum period has been prescribed for continuance of a probationer as on probation and under regulation 14, a person could be continued of probation even after expiry of 2 years, the status of the plaintiff on the date of termination was that of a probationer. The High Court, thus, reversed the conclusion of the Trial Judge that plaintiff must be held to be confirmed employee. But the High Court further came to the conclusion that even if the status was that of a probationer, but since his services stood terminated on account of unsatisfactory nature of the work, the same cannot be held to be a termination simpliciter, and must be held to be penal in nature, and therefore the same is invalid and inoperative as there had been no enquiry. With this conclusion, the second appeal having been dismissed, the Corporation is in appeal before us.

Mr. Sushil Kumar Jain, the learned counsel appearing for the Corporation contended that the conclusion of the High Court that the order is penal in nature on the face of it is erroneous, and cannot be sustained in law. According to him, if a probationer services stood terminated on finding him unsuitable for continuation and the order of termination on the face of it does not indicate any thing to hold that the

- 4 -

order was passed on account of any misconduct, the order cannot be held to be penal in nature, and therefore conclusion of the High Court on this score cannot be sustained. Mr. Subba Rao appearing for the plaintiff respondent, though initially resisted the aforesaid contentions, but later on fairly stated that this conclusion of the High Court cannot be supported in the facts and circumstances of the present case. Mr. Subba Rao, however, further contended that the judgment of the High Court can, otherwise, be sustained inasmuch as on the admitted facts the provisions of section 16 (4) of the Regulation not having been complied with.

.....L.....J.....

The law relating to the rights of a probationer has been indicated by a three Judge judgment of this Court in the case of State of Punjab and Anr. Vs. Sukh Raj Bahadur - 1968 (3) SCR - 234, thus "On a conspectus of these cases, the following propositions are clear:-

(1) The services of a temporary servant or 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.

- 5 -

(2) The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

(3) If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a

mere probationer or a temporary servant.

(4) An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.

(5) If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

Applying the test to the case in hand, it is

- 6 -

difficult for us to sustain the conclusion of the High Court, inasmuch as adjudging suitability of a probationer for being confirmed or not can never be held to be penal, more so the order of termination does not cast any stigma.

So far as the contention of Mr. Subba Rao is concerned, it depends upon the interpretation of Regulation 16(4) which reads thus -

.....L.....J.

"(4) The Corporation may determine the service of an employee after expiry of the period of his probation on giving him--

(a) three month's notice, or substantive pay in lieu thereof, if he is an employee in class A and

(b) one month's notice or substantive pay in lieu thereof, if he is an employee in any other class.

The power to determine the service of an employee

- 7 -

shall be exercised by the Managing Director, subject in the case of officers to the prior approval of the Board."

According to Mr. Subba Rao, though in the eye of law, the status of the plaintiff has rightly been held that of a probationer, but yet Regulation 16(4) would apply the moment the employer continues the employee after the extended period of 2 years, as provided under rule 14, and therefore sub-rule (4) of Regulation 16 has to be complied with in case of termination of such employee. On a plain reading of the sub-rule (4) of regulation 16, we are unable to accept this contention. Sub-rule (4) unequivocally indicates the procedure to be followed when an order of termination is passed after expiry of the period of his probation. There cannot be two concepts for determining the status of an employee, one for the purpose of confirmation and the other for the purpose of termination. In view of the provisions contained in Regulation 14, the continuance of the employee after expiry of maximum period of 2 years of probation, as contained in Regulation 14, the status continues to be that

of a probationer, and the termination of such a probationer will not attract the provisions of sub-rule (4) of Regulation 16. Consequently, the contention of Mr. Subba Rao on this score cannot be sustained. Necessarily therefore the suit is bound to be dismissed. We therefore set aside the impugned

- 8 -

judgments of the High Court as well as that of the lower appellate court and that of the Trial Court and the suit stands dismissed. This appeal is allowed.

The respondent, if has been re-instated in service because of the order in question not having been stayed, the period of services rendered by him may not be nullified and he may not be required to pay back amount he has received as remuneration during that period. But he cannot be continued in service any further.

There will be no order as to costs.

.SP1

.....J.
(G.B. PATTANAİK)

.....J.
(S.N. PHUKAN)

New Delhi,
March 22, 2001

.....J.
(B.N. AGRAWAL)