

WP(C) 478/2001
BEFORE
THE HON'BLE MR. JUSTICE I. A. ANSARI

(1) By making this application under article 226 of the Constitution of India, the petitioner, who was a teacher in the department of education, Govt. of arun achal Pradesh, has approached this court with prayers, inter-alia, to issue writ / writs, commanding the respondent No. 2 to withdraw the memorandum, dated 11. 12. 97 (Annexure 31 to the writ petition), whereby petitioner's service stands terminated, and restore the service of the petitioner, giving him place of posting , pay and dues etc. from the year 1990 along with interest and/or set aside and quashing the memorandum, dated 11. 12. 97 aforementioned.

(2) In a nutshell, petitioner's case may be stated as follows :-The petitioner was appointed temporarily as junior teacher and posted to Govt. Secondary School, Daporijo, vide letter bearing memo N.o. ED/2/apt/478/ 85, dated 16. 09. 85 (Annexure 1 to the writ petition). Pursuant to the letter of appointment, the petitioner joined, on 06. 11. 85, at the Govt. Secondary School, daporijo, district Upper Subansiri. At daporijo, the petitioner was allotted an obt hut to live, which was made of bamboo. This hut got destroyed during the rainy season and having no accommodation, the petitioner was then, transferred to Govt. Middle School, Dong, upper Subansiri District. Even there the situation was no better and the petitioner was made to live in OBT hut, which too got collapsed. Though the petitioner was facing these difficulties, his wages for the month of November, 1989 were withheld. On his representation, the petitioner was re-transferred to the Govt. Secondary school, Daporijo, and was allowed to share a quarter occupied by another teacher, namely Sri R. D. Tathod, by order, dated 01. 02. 90 (Annexure 4 to the writ petition). However, respondent No. 3 continued to withhold the salary of the petitioner and no reason was assigned for withholding of the salary . The petitioner submitted several representations in this regard, on such representation being dated 12. 03. 90 (Annexure 5 to the writ petition). The respondent No. 3 vide letter dated 14. 03. 90 directed the petitioner to submit a leave application for his alleged period of absence. The petitioner informed Direction of Public Instructions vide letter dated 28. 3. 90 (Annexure 7 to the writ petition) that he was never absent. The petitioner requested to DPI to give appropriate instructions to the respondent No. 3, to pay his dues. The petitioner in one of his letters addressed to the respondent No. 3 wrote about some undesirable practices carried out by respondent No. 4, Consequently, on 26. 04. 90, the Dy. Director of Public instructions, suddenly, released the petitioner from his district and placed his service at the disposal of the DPI for further posting. The petitioner accordingly reported to the DPI, at Naharlagun, on 07. 05. 90 and requested for necessary orders. On 08. 05. 90, the petitioner once again, called upon the DPI and the DPI showed the petitioner a letter from the respondent No. 4, which contained some allegations against the petitioner. The petitioner denied the allegations and requested that an enquiry be made into the allegations. No enquiry was, however, carried out. On 08. 05. 90, the petitioner submitted a representation (Annexure 8 to the writ petition) to the DPI in respect of non-receipt of his salary from November 1989. On 08. 05. 90, the DPI gave verbal direction/ order to the petitioner to rejoin his duties at the Govt. Secondary School at Daporijo. The verbal instruction was, later on, supplemented by a written order, dated 11. 05. 90 However, by this time, the summer vacation had started and on 02. 07. 90, at the end of the vacation, the petitioner reported for duty at the School, but the respondents No. 4 prevented the petitioner from joining his duty and put an endorsement in this regard on the joining report of the petitioner, whereupon the petitioner took his report with the written endorsement of the Head Master to the DPI and requested for further orders/ instructions. The DPI endorsed the joining report to the Joint Director (Establishment) with the remarks \please examine\ and the petitioner, then, duly reported to the Joint director (Establishment) with the document aforementioned. The Joint director, vide, letter, dated 13. 07. 90, transferred the petitioner to Tawang in the interest of public

service. On receipt of this order, the petitioner requested for instructions as to from the establishment he should draw his wages for the period from 26. 04. 90 to 13. 07. 90. He also drew the attention of the Joint Director to his representation, dated 08. 05. 90, with regard to withholding of his emoluments from 01. 11. 89. The Joint Director, then, endorsed on transfer order on 17. 07. 90, thus: \his joining at Daporijo may be accepted. Please release him after giving all dues. \ (Annexure 10). The petitioner personally met respondent No. 3 on 1. 8. 90 and requested for payment of his dues and for advance due to the petitioner on account of his transfer. This was followed by letter, dated 2. 8. 90. The petitioner, on 3. 8. 90, received the letter, dated 4. 5. 90, through the dispatch register of the government Secondary School, Daporijo. In this letter, it was stated that the petitioner pay from 19. 1. 90 to 30. 4. 90 was regularly drawn by the respondent No. 3 but the same was not drawn by the petitioner from the office of the respondent No. 3. It was also stated therein that the salary for the month of March and April were sent to the school for disbursement, but the same were not drawn by the petitioner. It was further stated therein that the salary for the month of November, 1989, to 18. 1. 90 would be released if the petitioner submits a leave application (Annexure 12). The petitioner, on 3. 8. 90, replied to this letter, on 27. 8. 90, stating that according to the respondent No. 3's own showing, petitioner's salary was drawn regularly, but was not sent along with that of the other teachers of the School in Daporijo. It was also made clear by the petitioner that he was never absent and that he had managed to perform his duty inspite of all the difficulties that he had faced. The petitioner, once again, requested for release of his dues to enable him to leave for his new place of posting. Instead of making payment to the petitioner of his dues, the respondent No. 3 issued yet another order, dated 21. 8. 90, releasing the petitioner, which was received by the petitioner on 6. 9. 90. Along with the cover containing the release order, the respondent No. 3 also issued another memorandum of the same date directing the petitioner to draw his pay and allowance w. e. f. 19. 1. 90 onwards from his office. After receipt of the aforesaid memorandum, the petitioner personally met the respondent No. 3 on 10. 9. 90 and complained that neither all his dues nor the advance he was entitled to had been paid to him and a considerable amount of money had been withheld for no reason at all. The respondent No. 3 replied that the petitioner's balance due has been withheld on the orders of the Deputy Commissioner, upper Subansiri District, and his transfer advance would be paid after vacation of the quarter. However, when the petitioner made enquiries from the Deputy commissioner, the Deputy Commissioner denied having issued such orders. By memorandum, dated 10. 9. 90, received by the petitioner on 13. 9. 90, the Circle officer, Daporijo, directed the petitioner to collect his pay for the months of January, 1990 to August 1990, from his office, but made no mention about the due advances. By letter, dated 1. 10. 90, the DPI, once again, ordered the respondent No. 3 to clear petitioner's pay and allowances for the period of November, 1989, to 18. 1. 90 immediately and also the home town LTC for the session 1987-88 to enable the petitioner to report for duty to the Deputy director of Public Instructions, Tawang. In defiance of this order, the petitioner was paid only his salaries for the period from 19. 01. 90 to August 1990 by the Circle officer, Daporijo. The petitioner was also paid his salary for the month of September, 1990 on 10. 10. 90. However, the petitioner was not paid his dues from 01. 11. 89 to 18. 01. 90. The petitioner was not paid LTC for the session 1987-88 in contravention of the specific orders of the DPI. He was also not paid his transfer allowance/ advance. When the respondent No. 3 was appraised of the situation of the petitioner regarding the difficulties that he had been facing in the matter of his transfer to Tawang, respondent No. 3 directed the petitioner to stay at Daporijo. On 13. 12. 90, when the petitioner was away from Daporijo, his wife and children were evicted forcefully and illegally from his quarter and all his belongings were seized. Against his forceful eviction from the quarter, the petitioner moved this Court in civil Rule No. 991/91 and this Court vide order, dated 08. 05. 91, directed the authorities concerned to comply with the order, dated 01. 10. 90, of the DPI, wherein the DPI had directed the Deputy Director of Public Instruction, i. e. , the respondent no. 3 to clear the du

es of the petitioner to enable him to join his duty at Tawang. However, the dues were still not paid and instead, the respondent No. 3 asked the petitioner to join as junior teacher at government Secondary School, Maio, which the petitioner joined on 15. 11. 91. Subsequently, a contempt petition was also filed by the petitioner before this Court, wherein this Court by its order, dated 09. 03. 92, directed the respondents to return the said seized goods of the petitioner. Thereafter, the DPI issued a fresh order, dated 04. 06. 92, transferring the petitioner to Anini. This was done in contradiction to the DPI's earlier letter, dated 04. 02. 91, wherein it was stated that the petitioner should be released from Daporijo only after making payments due to him. Subsequently, the DPI sent a letter, dated 24. 02. 93, asking the petitioner to join duties immediately failing which his service would be terminated. The petitioner on receipt of the letter, dated 24. 02. 93, aforementioned wrote a letter, dated 06. 03. 93, to the DPI stating that the said seized articles had not been returned to him and his outstanding dues had not been cleared and as such, it would not be possible on his part to join his duty at his new place of posting. The outstanding dues for the period from November, 1989 to 18. 01. 90 for which this Court had given the direction as far back as on 08. 05. 91 were paid to the petitioner in the month of March 1996 vide letter, dated 19. 02. 96 of respondent No. 3 after a gap of nearly five years from the date of the direction given by the Court. The petitioner acknowledged receipt thereof on 11. 03. 96 and requested the respondent No. 3 to inform him of his place of posting so that he could join his duties immediately. The petitioner was paid his outstanding dues only for the period from November, 1989 to 18. 01. 90 and he was not paid his dues from October 1990 till the date. It was in these circumstances that the respondent No. 2 issued an order, dated 11. 12. 97, terminating the service of the petitioner w. e. f. 1. 4. 92 (Annexure 31, page 84) Thereafter, the petitioner submitted representation, dated 01. 01. 98, against the said order of termination, but there was no response and, hence, the petitioner has, once, again, approached this court.

(3) The respondents have contested this case by filing their affidavit-in-opposition. Their case, being, in brief thus: The service condition of the petitioner did not make it mandatory for the respondents to provide him with official accommodation etc. The petitioner has left his place of posting, namely, Government Middle School, Dong without any leave application/ permission during the period, in question, i. e. , November 1999 and did not perform his duties and it was for this reason that his salary was withheld. On one pretext or another the petitioner has not been performing his duties and remained absent from duties without applying for leave and without intimation to the authorities concerned. The period from 01. 11. 89 to 18. 01. 90 was not regularized as the petitioner remained absent from duties with leave. Left with no alternative, his service has been terminated by the impugned order, dated 11. 12. 97 as per the CCS (temporary services) Rules 1965 as well as in terms of his appointment order under FR 18 in as much as no employee can be allowed to continue in service for remaining absent with or without leave for more than five years. The order of termination so passed is legal and valid. The writ petition, may, therefore, be dismissed.

(4) I have perused the materials on record including the memorandum of termination of petitioner's service. I have heard Mr. P. K. Tiwari, learned counsel for the petitioner, and Mr. B. L. Singh, learned sr. Govt. Advocate, appearing on behalf of the respondents.

(5) It was stated in *Bishan Lal Gupta Vs. State of Haryana* (1978) 1 SCC 202, that if the order terminating service is stigmatic, the termination would be bad for the individual must suffer a substantial loss of reputation, which may affect his future prospects. \

(6) As to what amounts to stigma has been considered in *Kamal Kishore Laxman Vs Pan American World Airways Inc. ,* (1987) 1 SCC 146, wherein the Court explained the meaning of 'stigma' by quoting from the Webster's New World dictionary as

\something that detracts from the character or reputation of a person, a mark, sign etc. indicating that something is not considered normal or standard. \ Reference was made to legal thesaurus by Burton, which defines 'stigma' as blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Court also to the webster's New International Dictionary, which defines the stigma as a mark of label indicating a deviation from a norm. The court also defined the stigma as a matter of moral reproach. Similar observations were made in Allahabad Bank Officer's association Vs Allahabad Bank, (1996)4 SCC 504. All these cases were referred to with approval by the Supreme Court in the case of D. P. Banerjee Vs Satyendra nath Bose National Centre for Basic sciences, (1999) 3 SCC 60.

(7) In State of Bihar Vs. Gopal Kishore prasad (AIR 1960 SC 689) a show cause notice was given seeking a reply to the allegation regarding the officer's bad reputation and in regard to certain perverse decisions given by him in his judicial functions during the period of probation. The termination order stated that certain facts were brought to the notice of the government about his unsatisfactory work and conduct and that gave doubts had arisen about his integrity, which indicated that he was a corrupt and unreliable officer. The Constitution Bench of the supreme Court in this case held that it was a clear case of stigma and the matter, indeed, required a full fledged departmental enquiry.

(8) In Jagdish Mitter Vs. Union of india, AIR 1964 SC 449, the case of the words \undesirable to be continued\ in service was held by the Constitution Bench of the Supreme Court to amount to stigma. The law laid down in this case was followed in the State of U. P. Vs. Madan mohan Nagar, AIR 1967 SC 1260, where the order stated that the officer had \outlived his utility\; such an order was held to amount to a stigma, Jagdish Mitter (supra) was approved by the seven Bench judge in Samser Singh Case, (1974) 2 SCC 831 on this point. In two cases arising under industrial law, one is Chandulal Vs. Pan American World Airways, (1985) 2 scc 727 and Kamal Kishore Laxman Vs. Pan American World Airways, Inc. , (supra), where the termination order used the word \loss of confidence\; the said orders were held to contain a stigma and, therefore, punitive. In Jagdish Prasad Vs. Sachiv Zilla Ganna Committee, (1986) 2 scc 338, the termination order stated that the officer had concealed certain facts relating to his removal from an earlier service on the charge of corruption and, therefore, not suitable for appointment . This was held to amount to a stigma. Copious reference to the aforesaid cases were made by the Supreme Court in DP banerjee's case (supra).

(9) In the above backdrop, the crucial question, which is required to be decided in the present writ petition is as to whether the impugned order (Annexure 31 to the writ petition) terminating the service of the petitioner, which has been passed in exercise of powers under the proviso to sub-rule (1) of Rule 5 of the CCS (Temporary Service Rules, 1965) can be treated to be an order of termination simpliciter without attaching any stigma to the petitioner or it is, in substance and in fact, an order of termination of service by way of punishment based on misconduct, but without holding an enquiry.

(10) In order to decide this issue, it is necessary to look into the language of the order of termination. The order of termination accuses the petitioner not only of unauthorised absence, but also deserting his post. It also accuses the petitioner of a conduct, which is unbecoming on the part of the Government servant. The order also makes an allegation that the petitioner did not perform the important national duty and willfully remained absent ignoring the government order. The order further accuses the petitioner of not obeying various orders of transfer and holds him guilty of continuous willful unauthorised absence from duty . Language of the order of termination makes it clear that the impugned order casts stigma on the petitioner. In the matter of stigma, the supreme Court has, as indicated hereinabove, held that the effect, which an order of termination may have on a person's future prospect of employment, is a matter of relevant consideration.

(11) In view of the interpretation of the expressions 'stigma' or \stigmatic in nature\, by the Apex Court in its various pronouncements, it is apparent that the expressions used against the petitioner in the order of termination were stigmatic and such an order could not have been passed without holding an inquiry and providing an opportunity of hearing to the petitioner.

(12) It may be made clear that the reference of FR 18 in the order of termination cannot be used as a cover up for hiding stigmatic nature of the order passed in the instant case, when it is clear from a bare reading of the order thereof that the order of termination is not that of a termination simpliciter-within the meaning of Rule 5 Sub-rule (4) of CCS (Temporary Service) Rules. Merely because of the fact that the reference was made to FR 18, the same would not dilute the stigmatic nature of the order. Hence, the order of termination is liable to be set aside and quashed with a direction to the respondents to reinstate the petitioner in service with all consequential benefits.

(13) In the result and for the reasons discussed above, this writ petition partly succeeds. The impugned order of termination of petitioner's service is hereby set aside and quashed and the respondents are directed to reinstate the petitioner in service with full financial benefits including pay and allowances. Upon such reinstatement, the petitioner shall remain free to take such actions, disciplinary or otherwise, as may be permissible under the law for any act/ conduct of the petitioner which forms the basis for termination for petitioner's service.

(14) With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.