

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPASW no. 443/2000
CMP no. 701/2000

Date of order: 07.03.2009

Rita Kumari.

v. Union of India and ors.

Coram:

Hon'ble Mr. Justice Barin Ghosh, Chief Justice

Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge

Appearing counsel:

For Appellant(s) : Mr. D. C. Raina, Sr. Advocate with
F. A. Natnoo, Advocate.

For respondent(s) : Mrs. Neeru Goswami, Dy. A. G.

i) Whether approved for reporting in
Law Journals?

Yes

ii) Whether approved for reporting in
Press?

Optional

Per Barin Ghosh, CJ (Oral):

Petitioner-appellant herein was serving Kendriya Vidyalaya Sangthan, Jammu as a teacher, while supplying temporary vacancies from time to time, for a considerable period of time. Ultimately, on 19th September, 1997, she was appointed as a directly recruited teacher by Kendriya Vidyalaya Sangthan, Jammu and, accordingly, in

terms of the rules, had to undergo probation for a period of two years, which was extendable by one more year.

Sine the petitioner-appellant joined the post on 24th September, 1997, her initial period of probation for two years was up to 23rd September, 1999. By an order dated 17th September, 1997, her period of probation was extended for another one year, i.e., up to 23rd September, 2000, holding out that the work and conduct of the petitioner-appellant was not found satisfactory during the period of probation.

Thereafter, when the extended period of probation of the petitioner-appellant was continuing, by an order dated 30th June, 2000, her appointment was terminated with effect from 3rd July, 2000, contending that on the basis of her work and conduct report, probation of the petitioner-appellant was extended for a period of one year up to 23rd September 2000 and during the extended period she was kept under close observation but inspite of repeated instructions, the petitioner-appellant did not show any improvement.

This order dated 30th June, 2000 led to the filing of the writ petition whereby and under it was contended, among others, that the performance of the petitioner-appellant during the initial period of probation was excellent and there was no just reason for extending such probation. The other contention was that the petitioner-appellant

is a victim of suspected allegiance with one Assistant Commissioner of Kendriya Vidyalaya Sangathan, Jammu in between whom and the respondent no. 2 there was an internal rivalry.

The writ petition was contested by the Kendriya Vidiyalaya Sangathan when it was stated that the petitioner-appellant has been terminated inasmuch as she could not satisfy even during the course of extended probation that she is suitable for the post in which she was to be appointed upon completion of probation.

By the judgment and order under appeal, writ petition of the petitioner-appellant has been dismissed for the reasons mentioned in another writ petition referred to in the judgment and order under appeal, holding out that the said writ petition also raised same questions and challenged similarly worded termination order. Being aggrieved thereby, the present appeal has been preferred.

The learned counsel for the petitioner-appellant submitted that his client was not a party to the writ petition referred to in the judgment and order under appeal, with which the case of petitioner-appellant had been compared, and, accordingly, the petitioner-appellant had and has not no means of knowing why her writ petition was dismissed. The order under appeal, except stating that the termination order was similarly worded, does not at all compare the similarity, if any, of the case made out in the said writ petition and in

the writ petition of the petitioner-appellant. It was submitted that the petitioner-appellant was at least entitled to know whether the points raised by her in the writ petition are sustainable points and, if not, why.

We think that what the learned counsel has submitted, has force and the law on this point is settled that the person losing in the litigation must be made known why he has lost the litigation. We, therefore, endorse the view of the learned counsel for the appellant that the judgment and order under appeal should have communicated to the petitioner-appellant the reasons why she lost before the Writ Court. However, it would not be appropriate on our part to remand the matter for supplying reasons since we are *ad idem* with the conclusion, but we feel it is our responsibility to supply reasons in support thereof.

The rules governing the probation of the petitioner-appellant make it abundantly clear that a probationer may be discharged if, on the basis of his/her performance or conduct during the probation, he/she is considered unfit for retention in the post. Therefore, both performance and conduct in course of probation is required to be considered and, upon such consideration, a conscious decision is taken to the effect that the person concerned is unfit for further

retention and only then the person concerned may be discharged or terminated from service.

A considered decision to that effect, no doubt, is a stigma. In the event the person, who has been discharged in such manner, approaches a prospective employer and discloses before him that though he/she had been appointed but he/she has been discharged during the probation period, the same would tantamount to conveying a message that in course of probation he/she was found unsuitable for retention by considering his/her performance or conduct. However, that being the condition for relieving a person from probation, agreed to by the parties and, a probationer being not an employee, as such, covered by the protections enunciated by Sub-Article 2 of Article 311 of the Constitution of India, if the discharge is based on consideration of performance or conduct during the probation, the same is not interferable, although as aforesaid, the same tantamounts to stigma.

In case, however, while discharging, anything else is considered, i.e., anything more than performance and conduct pertaining to the work assigned to him/her, and thereby the character of the person concerned is assassinated, even slightly, such stigma being not covered by the rules, on the basis thereof, no one can be discharged or terminated. In the instant case, however, while extending the period of probation and also while discharging or

terminating the petitioner-appellant during the period of probation, only performance of the petitioner-appellant in relation to work assigned to her in course of probation and her conduct in relation thereto, had been considered but nothing more. In the circumstances, satisfaction as to performance or conduct being entirely of the employer, there is no scope of interference by the Writ Court.

However, when it was contended in the writ petition that the performance of the petitioner-appellant was excellent and, accordingly, there was no just reason for extending the probation by one year, we think it was necessary to delve into such contention and to satisfy the petitioner-appellant whether such contention was open to be urged at that stage. The contention that there was no just reason for extending the probation is defeated by the acceptance of the extension by the petitioner-appellant, the same could not be re-agitated at a later point of time.

The petitioner-appellant suspected that rivalry between respondent no. 2 and R. D. Vishvakarma resulted in her discharge. First of all, suspicion cannot be a ground for expressing grievance against an action. Secondly, even if materials are available to establish that there are reasons to suspect, the same are not only required to be pleaded but are also required to be established. No such effort was made.

In the circumstances, we do not interfere with the judgment and order under appeal, but for the reasons as above and not for what has been stated in the judgment and order under appeal.

(Mansoor Ahmad Mir)
Judge

(Barin Ghosh)
Chief Justice

Jammu,
07.03.2009
Tilak, Secy.