

1. By means of this writ petition, the petitioner has called in question the Annexure-6 order dated 05.10.2009 passed by the Commandant 1st APTF Battalion, Dakurbhita, Dist. Goalpara by which the temporary service of the petitioner as Constable in the Assam Police has been dispensed with.

2. The petitioner, although has not enclosed the copy of the appointment order, but has stated in the writ petition that pursuant to his selection for the post of Constable in the Assam Police Btn., he had joined at 1st APTF Battalion, Dakurbhita, Dist. Goalpara on 23.12.2008. It appears that while the petitioner was undergoing initial training before substantive appointment he left to his village leaving the training on 25.03.2009. As per the own admission of the petitioner (paragraph-4) he left the training without informing his superior officer. However, the story projected by the petitioner in the writ petition, is that he had suffered from mental illness.

3. In paragraph -5 of the writ petition the petitioner has indicated issuance of notice to him on 26.03.2009, 30.03.2009 and 08.04.2009 by which he was directed to join the training/duty immediately. In the notices, it was also stipulated that upon failure to join, he would be liable to be dismissed from service.

4. As stated above, the stand of the petitioner is that he had to leave the training because of his mental illness. According to him he was undergoing medical treatment during the period from 25.03.2009 to 30.10.2009. In paragraph-7 of the writ petition the petitioner has stated that he had gone to his office to know about the position of his service. His purported visit was on 27.10.2009. On the other hand, Annexure-3 series medical certificates on which the petitioner has placed reliance, certify that the petitioner was undergoing treatment for the period from 25.03.2009 to 30.10.2009 and that he was fit to resume his duty on 31.10.2009. The medical certificate is dated 30.10.2009. Thus, the plea of the petitioner in paragraph-7 of the writ petition that he had gone to the office on 27.10.2009 does not tally with his own stand projected in the medical certificates. If the petitioner was undergoing treatment upto 30.10.2009 and was fit to resume his duty on 31.10.2009, it is not understood as to how he could visit his office to know about the position of his service on 27.10.2009.

5. In paragraph-7 of the writ petition the petitioner has stated that he sent a representation dated 31.10.2009 asking for a copy of the order by which his service was dispensed with. Interestingly, in the said representation dated 31.10.2009 the petitioner did not project his case to be one of the mental illness, but projected to be physical illness. It was contended that because of his physical illness he had to leave the station. By the said representation he also acknowledged the receipt of three notices directing him to rejoin duty.

6. From the above, what is seen is that the petitioner has taken recourse to falsehood regarding his illness during the period in which he was unauthorizedly absent from training/temporary service. This is further testified from Annexure-3 series medical certificates annexed to the writ petition. One of the documents bears two dates, i.e. 26.03.2009 and 26.03.2001. The said document is in the form of advice slip purportedly issued by the District Mental Health Programme, Civil Hospital, Goalpara. Same does not speak of any mental illness on the part of the petitioner. The second document is also an advice slip issued by the same authority with two different dates, i.e. 25.04.2009 and 25.04.2001. As in the earlier advice slip, in this slip also only certain medicines have been prescribed. There are two other advice slips by the same authority prescribing certain medicines with variation of dates etc.

7. It is with the above contradictions, the petitioner has projected his case to be one of unauthorized absence because of his mental illness. The originals of the aforesaid advice slips as has been produced by Mr. P.K. Deka, learned counsel for the petitioner do not bear any seal of the hospital. However, the medical certificate referred to above advising the petitioner to undergo rest from 25.03.2009 to 30.10.2009 bears the seal of the Superintendent of the Civil Hospital, Goalpara.

8. In the counter affidavit filed by the respondents the plea of the petitioner has been denied. It has been stated that since the petitioner was in training/temporary service, judging his performance his service was dispensed with. It has been stated that three different notices were served on the petitioner asking him to rejoin his duty. However, in spite of receipt of the said notices the petitioner did not respond to the same and defied the lawful direction of his superior authority. It was in such circumstances, the authority though it prudent to dispense the service of the petitioner, he being not a confirmed employee.

9. Ms. R. Chokraborty, learned Addl. Sr. Govt. Advocate has produced the relevant records which contain the aforesaid controversial advice slips (only the photo copies), but no any representation except the one dated 31.10.2009 and 27.10.2009. There is another representation dated 03.03.2009 made by the petitioner alongwith a representation dated 03.03.2009 made by his sister.

10. In none of the representations the petitioner had stated about his alleged mental illness. As noted above, in his representation dated 31.10.2009 the petitioner stated about his physical illness. In the representation dated 27.10.2009 the petitioner clearly stated about the receipt of the notices and also about his purported visit to the office to enquire about the position of his service. This aspect of the matter has been noted above.

11. In the representation dated 03.03.2009 the petitioner clearly admitted that due to his mistake he had left the training and that the same was a great mistake on his part. By another representation dated 03.03.2009 his sister also furnished an undertaking that her brother, i.e. the petitioner, who escaped from the training centre would not repeat the same mistake in future. After the aforesaid undertaking the petitioner was allowed to resume duty, but thereafter he again escaped from the training centre and remained absent from duty unauthorisedly for the period mentioned above. In the counter affidavit, the respondents have stated that even on earlier occasions also the petitioner was irregular in attending the training/service. It was in such circumstances the authority took the decision to dispense with the service of the petitioner. As the petitioner was not a confirmed employee, the authority was within its competence and jurisdiction to dispense with his service.

12. Mr. Deka, learned counsel for the petitioner submits that although the petitioner was a temporary employee/ trainee and/or was on probation, but he was entitled to the protection as envisaged under Article 311 of the Constitution of India. To buttress his argument he has placed reliance on the following decisions:

- (i) (1969) 3 SCC 603 (Union of India and ors. vs. R.S. Dhaba)
- (ii) AIR 1963 SC 531 (Madan Gopal vs. State of Punjab and ors.)
- (iii) (2006) 4 SCC 348 (A. Sudhakar vs. Postmaster General, Hyderabad and anr.)
- (iv) (2009) 9 SCC 24 (Southern Railway Officers Association and anr. Vs. Union of India and ors.)

(v) (2004) 5 SCC 263 (Dr. Gurjeewan Garewal (Mrs.)
vs. Dr. Sumitra Dash (Mrs.) and ors.)

13. In the case of R.S. Dhaba (supra), the Apex Court noticing the stigma cast on temporary employee towards dispensation of service, held that he was entitled to protection under Article 311 of the Constitution of India. In the case of Madan Gopal (supra), the Apex Court was concerned with the enquiry conducted against the temporary employee. The enquiry was conducted for the purpose of terminating his service. It was in such circumstances, the Apex Court held that reasonable opportunity of being heard ought to have provided to the said employee. In the case of A. Sudhakar (supra), the Apex Court emphasized on the principle of natural justice in conducting a departmental enquiry. In the case of Southern Railway Officers Association (supra), the Apex Court was concerned with the dispensation of the enquiry as per the provision of Article 311 (2) (b) of the Constitution of India. It is not understood as to in what context this judgment has been referred to inasmuch as the present case is not a case of dispensation of enquiry on the ground of not being practicable to hold.

14. In the case of Dr. Gurjeewan Garewal (Mrs.) (supra), the Apex Court defined the term civil post in the context of Article 311 of the Constitution of India towards holding that the said provision cannot be invoked in all cases where the person is not given the opportunity of being heard. Only the persons holding civil post under the State is entitled to the protection granted in the said provision.

15. While there is no quarrel with the proposition of law laid down in the aforesaid cases, what is found is that none of the said decisions are applicable to the present case. It is not the case of holding enquiry to terminate the service of the petitioner. Admittedly the service of the petitioner has been dispensed with judging his suitability to retain in the post. As noted above, although the petitioner has not enclosed the copy of the appointment order, but he had joined the temporary service on 23.12.2008 and immediately thereafter started to remain unauthorisedly absent from training/duties. After the aforesaid undertaking furnished by the petitioner and his sister, he was allowed to continue in service. But thereafter he again remained unauthorisedly absent from the training/duty w.e.f. 25.03.2009.

16. As has been held by the Apex Court in Chandra Prakash Shahi vs. State of U.P. and ors. reported in (2000) 5 SCC 152, it is only in the case of allegation of serious misconduct for which preliminary enquiry is conducted behind the back to ascertain the truth and then termination is brought about, such termination could be said to be founded on misconduct and can be treated as punitive. Judging the test of termination simpliciter and in the touchstone of motive and foundation, the Apex Court held that if the termination is proceeded by a preliminary enquiry and the termination is motivated by employee's general unsuitability, same cannot be said to be punitive in nature.

17. The Apex Court in the case of Pavanendra Narayan Verma v. Sanjay Gandhi P.G.I. of Medical Sciences as reported in AIR 2002 SC 23, held that the language used in the order of termination, work and conduct has not been found to be satisfactory fall within the class of on-stigmatic orders of termination. In that case also the services of the appellant was terminated after due warning by way of extending the period of probation on ground of work and conduct being not satisfactory. Referring to various decisions of the Apex Court and tracing back the history of such cases in which the services of a probationer is terminated, the Apex Court held that an employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about

the employee. The Apex Court observed that whenever a probationer challenges his termination, the court's first task will be to apply the test of stigma or the form test and if the order survives this examination, the substance of the termination have to be found out. The Apex Court further observed that generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for job, whether by reason of misconduct or ineptitude whatever the language used in the termination order may be. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Equally an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order.

18. I may also gainfully refer to the decision of the Apex Court as reported in AIR 2001 SC 625 (Krishna Devaraya Education Trust V.A. Balakrishna). In that case also the services of the probationer was terminated on the basis of the opinion formed by the committee set up for evaluation of the general performance of the probationer. The committee was of the opinion that the probationer's job proficiency was not up to the mark. Making the same explicit in the order of termination, the services of the probationer was dispensed with. The Apex Court held that there can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. The Apex Court pointed out that if the termination during probation period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, normally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged.

19. In the instant case, the service of the petitioner has been terminated on the specified ground of unsatisfactory performance. The petitioner was duly warned pointing out the deficiencies to improve herself. If she failed to improve in her performance, the employer had a right to terminate her services which was exercised by way of issuance of the impugned order. Such an order of termination cannot be said to be stigmatic and must be held to be an order of termination simpliciter.

20. The petitioner himself having admitted the fact of his unauthorized absence from duty, he cannot turn around the said fact so as to contend that there has been violation of the principle of natural justice. Admittedly, the petitioner was in temporary employment and was undergoing training in the 1st APTF Battalion, Dakurbhita, Dist. Goalpara. He fled away from the training campus and thereafter in spite of serving three notices on him, he did not report to his duty. Later on he took the plea of mental illness, although the documents speak otherwise. As noted above, in his representation he had stated that he suffered from physical illness. Thus, it can be safely concluded that the plea of mental illness is an after thought on the part of the petitioner. The documents on which the petitioner has placed reliance are also not reliable. Needless to say that the form in which the order of dispensation of service is passed is not material, but the reason behind is to be taken into consideration. The service of a probationer can be terminated during or at the end of the probation due to his unsuitability for the post.

21. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, it is dismissed. However, there shall be no order as to costs.