

07. 30.03.2018 Heard learned counsel for the petitioner and learned Addl. Government Advocate.

2. This Writ Petition has been filed by the petitioner challenging the order dated 29.01.2013 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No.1183 (C) of 2012 refusing to interfere with the order of termination.

3. Learned counsel for the petitioner submitted that law is well settled that where the services of a probationer are terminated without anything and it was only reflected found to be unsatisfactory to continue, in such event, the Court has power to lift the veil. However, in the present case the Tribunal has not considered the same and on an erroneous impression recorded a finding that the order of termination is not found to be penal in nature. Hence the same need to be interfered with.

4. Learned Addl. Government Advocate however, supported the impugned order and submitted that the Tribunal has considered the materials available on record and come to a conclusion that there was no express words in the order of termination, which itself throw a stigma on the applicant, thus no further roving and fishing enquiry is necessary.

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5. We have heard learned counsels at length and gone through the materials available on record. Learned counsel for the petitioner relied on the decisions reported in *AIR 1974 SC 2192*, *AIR 1986 SC 1626*, (1991) 2 SCC 335, (2000) 3 SCC 239 and (2000) 5 SCC 152 wherein it was held that when an allegation is made by the employee assailing the order of termination as one

based on misconduct, though couch the innocuous terms, it is incumbent on the Court to lift the veil and see the real circumstances as well the basis and foundation of the order complained of. In other words the Court in such a case will lift the veil and will see that whether order was made on the ground of misconduct / inefficiency or not.

6. Admittedly the service of the petitioner is governed under Odisha Finance Service Rules, 2011 and the order of termination was passed under Rule 15 of the said Rules, which stipulates as under:

“15. Probation and Confirmation :-

(1) On appointment against a substantive vacancy, an officer shall be placed on probation for a period of two years, if he/she is a direct recruit, or one year, if he/she is a recruit by promotion from the date of joining in the post;

Provided that Government may extend the period of probation or terminate the appointment on the ground of unsatisfactory performance in case of direct recruit or revert to feeder grade in case of promote as the case may be;

Provided further that Government may exempt or reduce the period of probation of an officer, if he/she has already worked against a vacancy of temporary nature for a period of two years or more or a portion thereof, if he/she is a direct recruit or one year or more or a portion thereof, if he/she is a recruit by promotion by the time a substantive vacancy occurs for his/her absorption.

(2) On successful completion of probationary period and on passing the prescribed Departmental Examination an officer shall be confirmed against a substantive post.”

7. Law is well settled that no straightjacket test can be laid down to distinguish “motive and foundation” with regard to a temporary employee or an officiating employee and an assessment of the service is necessary, merely because the authority proceeds to make an assessment and records its views. It will not be available to be utilized to make the order of termination, following such assessment, punitive in character. In relationship of master and servant there is moral obligation to act fairly. There should be an assessment of the work of the employee and if any defect is noted in his working, the employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiency, indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, it would be arbitrary to give a movement order to the employee on the ground of unsuitability. Termination of service of a temporary employee may have the motive but motive by itself does not make the order punitive unless the order was founded on those factors or other disqualifications. The Apex Court in the case of *Rajesh Kohli Vs. High Court of J & K and another* reported in 2010 SCSR 820 held that it is well settled that even if an order of termination refers to unsatisfactory service of the persons concerned, the same cannot be said to be stigmatic. The opinion

expressed in the order of termination that the performance of the petitioner is found to be unsatisfactory was an ex facie stigmatic, in such circumstances the question to apply the principles of natural justice does not arise. In the case of *I.N.Saksena Vs. State of Madhya Pradesh* reported in *AIR 1967 SC 1264* the Court held that when there was no express words in the impugned order itself which throw a stigma on the government servant, court would not delve into secretariat file to discover whether some kind of stigma would be inferred such research.

8. In the case of *State of Uttar Pradesh and another Vs. Km. Prem Lata Misra and others* reported in *AIR 1994 SC 2411* the Apex Court held that it is settled law that the Court can lift the veil of the innocuous order to find whether it is the foundation or motive to pass the offending order. Where a person was appointed to a post temporarily by direct recruitment by selection committee constituted by the Government in this behalf; the appointment order mentioned that the appointee could be terminated from service on one month's notice or one month's pay; the appointee's work was supervised by the higher officers, who had submitted their reports concerning the performance of the duties by the appointee xxx. Xxx the competent authority found that the person was not fit to be continued in service as his work and conduct were unsatisfactory, when such termination order was passed for his unsuitability or unfitness but not by way of punishment as a punitive measure and was in terms of the order of appointment and also the Rules, the order of termination cannot be set aside on the ground that the Departmental Enquiry was not held.

9. Taking into consideration the settled principles of law and the provisions of Odisha Finance Service Rules, 2011 as quoted above, since the petitioner is a probationer the impugned order was passed in terms of the said Rules. Hence, we are not inclined to interfere with the impugned order in exercise of the jurisdiction under Article 227 of the Constitution of India.

This Writ Petition is accordingly dismissed.

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S.Panda, J.

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K.R.Mohapatra, J.