

A DHANANJAY
v.
CHIEF EXECUTIVE OFFICER, ZILLA PARISHAD, JALNA

JANUARY 30, 2003

B [SHIVARAJ V. PATIL AND ARIJIT PASAYAT, JJ.]

Service Law:

C *Temporary government servant—Termination of services—Delinquent committed defalcation—Placed under suspension—Inquiry directed to be held—Criminal case filed against him culminated in acquittal—Pursuant to Government order dated 24.11.1987 that a temporary servant could be discharged within a period of one year, services of delinquent terminated without holding an inquiry—Writ petition filed by delinquent on the ground*
D *that termination order was stigmatic as it referred to factum of suspension—Dismissed by High Court—Held, it cannot be said that termination of services was not simpliciter or the misconduct was the foundation of passing the order—Acquittal of delinquent in criminal case is also not a factor to indicate that Department wanted to take action against him on his misconduct, to remove*
E *him from service—High Court rightly dismissed the writ petition.*

Union of India v. Bihari Lal Sidhana, [1997] 4 SCC 385, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 726 of 2001.

F From the Judgment and Order dated 25.2.1999 of the High Court of Bombay in W.P. 444/88.

S.K. Dholakia and C.G. Solshe for the Appellants.

G Shivaji M. Jadhav for the Respondent.

The following Order of the Court was delivered

The appellant was appointed in Zilla Parishad, Jalna on May 13, 1985 on temporary basis for a period of one year. After expiry of that period, he was again given a fresh appointment for one more year with effect from May

14, 1986, after giving a break for one day. He was placed under suspension on July 1, 1987 on the ground that he had paid an amount of Rs. 18,000 to a contractor when the actual cost of repairs was only Rs.8,000. In the very suspension order, an enquiry also was directed in regard to the allegation of payment of Rs. 18,000 as against the actual cost of Rs. 8,000 spent towards repairs. A complaint also was made against him on criminal side in respect of the same allegation. Ultimately, after trial, he was acquitted. The respondent passed an order terminating the services of the appellant. Aggrieved by this order of termination of services, the appellant filed a writ petition in the High Court. A Division Bench of the High Court, after considering the respective contentions of the parties, finding no merit in the writ petition, dismissed the same. Hence, the appellant is before us in this appeal.

Shri S.K. Dholakia, the learned senior counsel for the appellant, urged that the order of termination of services of the appellant though in terms is stated to be simpliciter, but, in fact, it is a result of the alleged misconduct against the appellant and, in other words, is stigmatic. In support of this submission, the learned counsel stated that the very order of suspension shows that an enquiry was directed against the alleged misconduct with a view to initiate disciplinary proceedings against the appellant to remove him from services; even a criminal complaint was filed to proceed against him and, in fact, he was prosecuted also pursuant to the complaint. Learned counsel submitted that the High Court committed an error in placing reliance on the decision of this Court in *Union of India v. Bihari Lal Sidhana*, [1997] 4 SCC 385. He added that whether the order of termination of services in a given case is simpliciter or stigmatic depends on the facts of each case and, according to him, on the facts of the present case, the order of termination of services was not simpliciter but it was punitive attaching stigma to the appellant.

In opposition, the learned counsel for the respondent made submissions supporting the impugned order and reiterated the very submissions that were made before the High Court.

It is not in dispute that the appellant was appointed on a temporary basis; his services could be terminated without notice and without assigning any reason within a period of one year. In fact, his services were terminated within a period of one year under Rule 5(1) of the Central Civil Services (Temporary Service) Rules. The only question that is required to be answered is: whether the order of termination of services is simpliciter or is punitive attaching stigma to the appellant. No doubt in the order of suspension passed

A on July 1, 1987 keeping the appellant under suspension, an enquiry was directed against the appellant in regard to the alleged misconduct. But, no enquiry was held pursuant to the said order, having regard to the Government Order dated November 24, 1987 that service of a temporary servant could be discharged within a period of one year without keeping him under suspension and without holding an enquiry. Although initially the enquiry was ordered, B in view of this Government Order, the respondent did not proceed to hold any enquiry. In the criminal case filed against the appellant, he was acquitted.

Para 2 of the impugned order of termination of services makes a mention of the fact that the appellant was suspended. The learned counsel for the C appellant, pointing out this paragraph, submitted that it would cast stigma on the appellant and it would adversely affect his prospects. The High Court, in dismissing the writ petition, relied on the decision of this Court in the case of *Bihari Lal* afore-mentioned. Para 5 of the said judgment reads thus:

D "5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Service (Classification, Control & Appeal) Rules or under the E Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee F does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available G under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would, be a charter for him to indulge with impunity H in misappropriation of public money."

If we look to the paragraph extracted above, it becomes clear that the facts of that case are almost similar to the facts of the present case. Although a distinction was sought to be made to contend that that judgment has no application to the facts of the present case, we are unable to agree with the submission. Merely because the appellant was kept under suspension, that, by itself, is not indicative that the respondent had intended from the beginning to get rid of the services of the appellant by holding an enquiry. It is not the case of the appellant that inspite of the fact that his services were needed, the order of termination of services was passed. Even though the appellant was acquitted in the criminal case launched against him on the basis of the complaint made by the respondent, is also not a factor to indicate that the respondent wanted to take action against the appellant on his misconduct to remove him from service.

In our view, having regard to the facts and circumstances of the case, it is not possible to hold that the order of termination of services was not simpliciter or the misconduct was the foundation for passing such order. Even if an enquiry was ordered to find out or verify the truth or otherwise and the allegation by itself does not establish that the respondent had any such design to some-how remove the appellant from services, in our view, the High Court was right in dismissing the writ petition in the light of the facts of the present case and the judgment of this Court, referred to above.

We find no merit in the appeal. The Appeal is dismissed.

R.P.

Appeal dismissed.