

*Before Augustine George Masih & Sandeep Moudgil, JJ.*

**SUMIT KUMAR** — *Petitioner*

*versus*

**PUNJAB AND HARYANA HIGH COURT AND ANOTHER** —  
*Respondent*

**LPA No. 706 of 2021**

August 08, 2022

*Constitution of India, 1950—Art. 226—Letters Patent—Clause X—Haryana Subordinate Courts Establishment (Recruitment & General Conditions of Service) Rules, 1997—RI.8—Termination of Service—Probation—Service of Peon in Sessions Division dispensed with during probation—Ground for challenge—foundation—Misconduct reported by Magistrate—Not a simpliciter order, opportunity to defend should have been given—ACR, below average—Termination—Not stigmatic or perverse nor casting aspersions which would adversely affect future appointment prospectus—No enquiry required during probation unless misconduct attributed—Writ petition and appeal dismissed.*

*Held*, that in this Intra-Court Appeal under Clause X of the Letters Patent Act, order of the learned Single Judge dated 14.01.2020 dismissing the writ petition preferred by the appellant-petitioner has been challenged on the ground that the order of dispensing with the services of the appellant during the period of probation was not a simpliciter order in accordance with the rules but was based on the foundation of the misconduct reported by the Judicial Magistrate, 1<sup>st</sup> Class, Hisar and, therefore, the said order cannot sustain and deserves to be set aside as the appellant should have been given an opportunity to defend himself.

(Para 1)

*Further held*, that the Annual Confidential Report of the appellant has been found to be “below average” for the year ending 2015. The immediate officer, with whom the appellant was attached, has found the work and conduct of the appellant to be not satisfactory and, therefore, the decision of the appointing authority to dispense with the services of the appellant in accordance with the terms and conditions of appointment, which is in consonance with the statutory

Rules, cannot be said to be illegal or not in accordance with law.

(Para 12)

*Further held*, that nothing has come on record which would reflect that the order has been passed for ulterior motive or consideration other than what has been mentioned above. There is nothing which would indicate that the termination was stigmatic, perverse or in any manner, casting aspersions which would adversely affect the future appointment prospectus of the appellant.

(Para 13)

*Further held*, that it is a settled proposition of law that during the period of probation, no enquiry is required to be held unless there is misconduct attributed to the employee. In any case, in the present case, there is no such instance which would indicate the same as none has been argued by the counsel for the appellant.

(Para 14)

Satyavir Singh Yadav, Advocate, *for the appellant.*

Rajeev Anand, Advocate, *for the respondents.*

### **AUGUSTINE GEORGE MASIH, J.**

(1) In this Intra-Court Appeal under Clause X of the Letters Patent Act, order of the learned Single Judge dated 14.01.2020 dismissing the writ petition preferred by the appellant-petitioner has been challenged on the ground that the order of dispensing with the services of the appellant during the period of probation was not a simpliciter order in accordance with the rules but was based on the foundation of the misconduct reported by the Judicial Magistrate, 1<sup>st</sup> Class, Hisar and, therefore, the said order cannot sustain and deserves to be set aside as the appellant should have been given an opportunity to defend himself.

(2) Briefly, the facts of the case are that the appellant was appointed as a Peon at Sessions Division, Hisar on 24.03.2015. According to the terms and conditions of appointment, he was on probation for a period of two years which could be increased by one more year. During the period of probation, rather much prior to completion of two years, report was submitted with regard to the work of the petitioner as unsatisfactory by the Civil Judge (Junior Division), Hisar. His Annual Confidential Report for the year 2015-16 was recorded as “below average”. His services were dispensed with on

24.05.2016 during the period of probation.

As per Clause 8 of the appointment letter, he was placed on probation for a period of two years and as per condition No. 2 of the said appointment letter, the services of the employee could be dispensed with, in case the work and conduct was found to be unsatisfactory. The language of the termination order was simpliciter in nature and there was nothing which would indicate that it was stigmatic or casting aspersions which may adversely affect the future prospectus of the appellant. Since the termination of the services of the appellant was as per the terms of appointment during the probation period, nothing more was required to be mentioned.

(3) It is against this termination order that an appeal was preferred before the Administrative Judge of the Sessions Division, which was decided on 04.05.2018 (Annexure P-5) rejecting the same as it was concluded that the order was not punitive but was merely based upon the assessment of his suitability for the post, on which he was appointed and continuation thereon. It was found that the overall assessment of the work and conduct of the appellant was not satisfactory during the period of probation. Accordingly, his services were dispensed with.

(4) It is these orders of termination as also the non-acceptance of the appeal, which was challenged before the learned Single Judge by way of a writ petition by the appellant which writ petition has also been dismissed holding therein that the order of termination of the appellant within the period of probation on the basis of and in accordance with the terms of appointment being based upon unsatisfactory work and conduct, cannot be held to be either punitive or stigmatic and there was no allegation against the appellant which would call for any enquiry or show cause notice to be served upon him prior to proceeding to pass an order of termination.

(5) Learned counsel for the appellant contends that the genesis for termination of the services of the appellant is germane from the fact that dispensing with the services of the appellant is not merely based on the work and conduct of the appellant but is influenced by and on the basis of the opinion of the Civil Judge (Junior Division), Hisar. The independent mind has not been applied by the District Judge and, therefore, the impugned order cannot sustain.

(6) That apart, it has been asserted by the learned counsel for the appellant that in the garb of the order of dispensing with the

services of the appellant, penal action has been taken against the appellant and, therefore, the impugned order being stigmatic cannot be sustained and the Court should lift the veil and find out the truth behind it. Prayer has, thus, been made for setting aside the impugned orders of termination passed by the District Judge as also the Appellate Authority and the learned Single Judge.

(7) We have considered the submissions made by the learned counsel for the parties but do not find ourselves to be persuaded to accept the contentions of the learned counsel for the appellant.

(8) The termination order dated 24.05.2016 (Annexure P-3) reads as follows:-

**“ORDER**

Services of Shri Sumit Kumar, Peon of the Court of Ms. Vandana, Civil Judge (Junior Division), Hisar, are hereby dispensed with, with immediate effect, during the period of probation.

All concerned be informed accordingly.”

(9) Nothing has come on record which would indicate that the order of termination, as recorded above, is not an order simpliciter of dispensing with the services of the appellant during the period of his probation. It is not stigmatic in nature at all nor does it reflect any such aspect. Further, it is an admitted position that the appellant was on probation for a period of two years which was extendable by one year. Since he was appointed on 19.03.2015 as a Peon in Sessions Division, Hisar, order of termination dated 24.05.2016 has been passed during the period of probation.

(10) The terms and conditions of appointment were known to the appellant as conveyed clearly by the appointment letter dated 19.03.2015 (Annexure P-1) to the appellant, who, in pursuance thereto, had joined services on 24.03.2015. The relevant terms and conditions for the purpose of the present case would be (1), (2) and (8), which read as follows:-

“1. That this appointment is purely on temporary basis and your services can be terminated at any time without assigning any reason whatsoever, without prior notice.

2. That your appointment and other conditions of service will be regulated by the Haryana Subordinate Courts

Establishment (Recruitment & General Conditions of Service) Rules, 1997, and Haryana Civil Services Rules and Regulations, as amended from time to time.

xxx            xxx    xxx    xxx    xxx

8. That your appointment shall be on probation for a period of two years, which can be increased.”

A perusal of the above would make it amply clear that the appointment of the appellant was purely on temporary basis and his services could be terminated at any time without assigning any reason whatsoever, without prior notice. His period of probation was two years which could be increased and appointment and other conditions of service were regulated by the Haryana Subordinate Courts Establishment (Recruitment & General Conditions of Service) Rules, 1997 (hereinafter referred to as '1997 Rules'), and Haryana Civil Services Rules and Regulations, as amended from time to time.

(11) Rule 8 of the 1997 Rules deals with the probation of persons appointed to the service which reads as follows:-

“Probation of persons appointed to service

Persons appointed to any post in the service shall remain on probation for a period of two years of recruited by direct appointment and one year in the case of promotion, provided that :-

(a) Period spent on deputation on a corresponding or a higher post shall count towards the period of probation.

(b) In the case of an appointment by transfer any period of work on an equivalent or higher rank period to appointment to the service may in the discretion of the appointing authority be allowed to count towards the period of probation.

(c) Any period of officiating appointment to the service shall be reckoned as period spent on probation.

(2) If, in the opinion of the appointing authority, the work and conduct of a member of service during the period of probation is not satisfactory it may-

If such person is recruited by direct appointment dispense with his services, or revert him to a post on which he held

lien prior to his appointment.”

A perusal of the above would further leave no manner of doubt that the appellant was on probation all through during the period of his service and, therefore, his services could be dispensed with during the said period.

(12) The Annual Confidential Report of the appellant has been found to be “below average” for the year ending 2015. The immediate officer, with whom the appellant was attached, has found the work and conduct of the appellant to be not satisfactory and, therefore, the decision of the appointing authority to dispense with the services of the appellant in accordance with the terms and conditions of appointment, which is in consonance with the statutory Rules, cannot be said to be illegal or not in accordance with law.

(13) Further, nothing has come on record which would reflect that the order has been passed for ulterior motive or consideration other than what has been mentioned above. There is nothing which would indicate that the termination was stigmatic, perverse or in any manner, casting aspersions which would adversely affect the future appointment prospectus of the appellant.

(14) It is a settled proposition of law that during the period of probation, no enquiry is required to be held unless there is misconduct attributed to the employee. In any case, in the present case, there is no such instance which would indicate the same as none has been argued by the counsel for the appellant.

(15) In the light of the above, finding no merit in the present appeal, the same stands dismissed.

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*Shubreet Kaur*