

R.N.R.

Before Kanwaljit Singh Ahluwalia, J

SUNITA RANI,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 16584 of 1998

1st September, 2010

Constitution of India, 1950—Art.226—Principles of natural justice—Punishment to a student by a Science teacher working on ad hoc basis—Publication of report also in a newspaper—Preliminary inquiry initiated—Termination of services on basis of inquiry—Amounts to misconduct—Order of termination stigmatic in nature—Imperative for employer to grant an opportunity of hearing to petitioner—Neither an opportunity of hearing afforded to petitioner nor a regular enquiry in the matter conducted—Petition allowed, reinstatement of petitioner ordered while holding not entitled to any back wages and also granting liberty to authorities to initiate fresh proceedings against petitioner in accordance with law.'

Held, that this Court cannot ignore the fact that it was due to the publication of report in the newspaper that a preliminary enquiry was initiated against the petitioner and thereafter on the basis of that enquiry, her services were dispensed with. Therefore, the services of the petitioner

have not been dispensed with because of unsatisfactory performance on her part but due to the overt acts, which amounted to misconduct. If that is so, it was imperative for the employer to grant an opportunity of hearing to the petitioner. Therefore, the order of termination of services of the petitioner may look innocuous but the same for its effect and substance, is stigmatic in nature. Thus, an opportunity ought to have been granted to the petitioner to show cause as to whether she had inflicted the alleged punishment upon the student or not. Hence, a regular enquiry in the matter should have been conducted and the petitioner, an ad hoc employee, should have been given an opportunity to defend himself.

(Paras 19 and 20)

R. K. Malik, Senior Advocate with Kohal Sharma, *Advocate for the petitioner.*

Himanshu Raj, Assistant Advocate General, Haryana, *for the State.*

KANWALJIT SINGH AHLUWALIA, J.

(1) Petitioner, a science teacher, awarded punishment to the students, as a result whereof her services were terminated,—*vide* impugned orders (Annexures P-9 and P-10) dated 14th October, 1998. Both of these orders have been assailed on the ground that they are stigmatic in nature and services of the petitioner could not be dispensed with even though she was an ad hoc appointee.

(2) Therefore, this Court has to determine as to whether the orders of termination contained any imputation or misconduct which may have a bearing on the future employment of the petitioner, or not, and if it is so, as to whether a regular enquiry was to be conducted or not. Furthermore, as to whether the petitioner can be denied an opportunity to defend herself in violation of the principles of natural justice, is also to be determined by this Court.

(3) To answer these questions, it will be necessary to notice facts of the case.

(4) The petitioner joined as a Science teacher on *ad hoc* basis in the Government Girls Senior Secondary School, Kaithal (hereinafter referred to as, 'the School') in pursuance of appointment letter (Annexure P-1) dated 27th November, 1995. The appointment letter contained the following

words, which are necessary to be noticed for adjudication of the present case :

“The following candidates are appointed in the pay-scale of Rs. 1400/2600 on *ad hoc* basis in the School noted against their names up to 24th May, 1996 and up to summer vacations. Their services can be terminated at any time without any notice or on joining of the candidate recommended by the Haryana Subordinate Service Selection Board whichever is earlier. They can join their duties within 15 days from the date of appointment otherwise their appointment will be deemed to be cancelled.”

(5) The petitioner started teaching at the School. On 24th August, 1998, she was teaching the students of Class 10, Section ‘E’ and it was fourth period. Some of the students, who had not done their homework, were punished by the petitioner to take one round of the volleyball court of the School. One student, namely Kumari Sapna, not able to bear the fatigue and punishment, fainted and was taken to the Government Hospital, Kaithal, where Dr. D.C. Thukral, Medical Officer treated her. The medico-legal report issued by the doctor on 9th September, 1995, i.e. after a period of 15 days of the incident, has been annexed as Annexure P-6 with the present petition and the same reads as under :—

“As per records, the child was having no external mark of injury. She was admitted in the hospital from 26th August, 1998 to 28th August, 1998,—*vide* C.R. No. 4481. She was having symptoms of breathlessness aphonior and loss of consciousness for a few minutes and was diagnosed as a case of Hysteria (Functional disorder) and was treated on conservative lines. This disease is due to Psychological tension or conflict in the mind of the child.

9th September, 1998.

(Sd.). . . .,
(Dr. D.C. Thukral),
M.O. G.H. Kaithal”

(6) A daily Hindi newspaper ‘Punjab Kesri’, in its publication dated 27th August, 1998, carried a news that a student of the School of petitioner remained unconscious for two days, as corporal punishment was inflicted upon her. After the publication of the news, a preliminary enquiry

was ordered and the petitioner was given a questionnaire (Annexure P-3) by the Enquiry Officer. The petitioner filled-up the questionnaire and handed it over to the Enquiry Officer. Question No. 4 and answer thereto read as under :--

"4. Have you on date 24th August, 1998 punished the above mentioned student ? If yes, then what and why ?

Ans. Some students had not done their home work. That is why all those students were made to run around the volleyball court once. Afterwards all the students were normal and also Sapna was normal."

(7) It will be apposite here to notice question No. 6 and answer thereto also, which read as under :

"6. Have you informed the Principal about the incident ? If yes, then had he made arrangements to provide her medical Aid ? If yes, then what ? Elaborate.

Ans. On date 24th August, 1998 Shri Jai Ram Malik was Incharge of the School. He was informed by Smt. Kailash Arora that a girl has fallen unconscious and he sent the student for Medical Aid to Mr. Naresh Gupta (MBBS). I came to know about this in the staff room."

(8) A similar questionnaire was also given to the student, namely Kumari Sapna. The District Education Officer submitted his enquiry report to the Director, Secondary Education, Haryana, Chandigarh on 7th September, 1998. The subject of preliminary enquiry report was "Dainik Newspaper, Punjab Kesri dated 7th September, 1998 in respect of giving punishment to student, Kumari Sapna". The Enquiry Officer concluded that the teacher had not punished the student due to any animosity but only for not completing the educational assignment and the students were made to run around the Volleyball court and furthermore, parents of the students, during investigation had expressed no ill-will or any grievance against the teacher. It is stated that on 8th September, 1998, Punjab Kesri carried a news in which incident was denied by the members of the staff. Furthermore, the staff of the School had also passed a resolution, wherein it was stated that no punishment was given to the student by the teacher.

(9) Respondent No. 2 The Director, Secondary Education, Haryana, Chandigarh, on 9th October, 1998, passed an order, whereby the District Education Officer was asked to terminate the services of the petitioner. Copy of order of termination was also forwarded to the petitioner. The impugned order (Annexure P-9) dated 14th October, 1998 reads as under :—

“Reference letter No. A-II/98/3220 dated 7th September, 1998 the Enquiry conducted against Smt. Sunita Rani, Science Mistress, G.G.S.S.S. Kaithal. On the basis of enquiry report it is decided by Government to terminate her service, because the appointment letter was issued by your office. Inform Directorate after termination of her services.”

(10) In pursuance of this order, wherein a direction was given, the Principal of the School, on 14th October, 1998,—*vide* order (Annexure P-10), terminated the services of the petitioner and relieved her of the charge.

(11) Present writ petition was instituted in the month of October 1998. A Division Bench of this Court, while issuing notice of motion on October 28, 1998, observed as under :

“Contents that the impugned order casts a definite stigma and has been passed as a measure of punishment without complying with the provisions of Article 311 as also the Rules.

Notice of motion for January 4, 1999.

No stay.”

(12) It is not disputed that since then the petitioner is out of service.

(13) In the written statement filed, counsel for the State has taken a stand that the petitioner was appointed on *ad hoc* basis as a stop-gap-arrangement and since she failed to perform her duties according to the service norms and had proved herself unbecoming of a Government servant, her services were dispensed with. It is stated that the petitioner gave beating to a student, namely Kumari Sapna, so mercilessly that she fell unconscious and was admitted in the hospital. Therefore, the petitioner, as

a public servant, failed to maintain integrity and devotion to her duties and had acted against the norms of a civilized behaviour. It is further stated that due to conduct of the petitioner, reputation of the educational institution was badly damaged.

(14) Mr. R. K. Malik, Senior Advocate assisted by Mr. Kohal Sharma, Advocate appearing for the petitioner, has vehemently contended that the order of termination was not innocuous, but if substance of the order, attending circumstances and the basis of order are taken into consideration, it will be apparent that the same attached stigma and was based on the alleged misconduct. It has been urged that this Court should lift the veil and should examine as to whether the order of termination is simplicitor or has been passed on the ground of misconduct. To fortify this submission, reliance has been placed upon **Jarnail Singh and others versus State of Punjab and others** (1).

(15) Mr. Himanshu Raj, Assistant Advocate General, Haryana has submitted that termination of services of the petitioner was in accordance with the appointment letter and therefore, no complaint can be made by the petitioner. It is stated that the appointment letter specifically stated that services of the petitioner can be terminated at any time without any notice. Counsel for the State has further relied upon the order (Annexure P-10) to state that the impugned order contains no misconduct and attaches no stigma, as the order (Annexure P-10) passed by the Principal of the School only states that services of the petitioner be terminated with immediate effect. Learned counsel has submitted that even though the order (Annexure P-10) has been passed on the basis of order (Annexure P-9), which has been reproduced above, that was an internal communication between the Director, Public Instructions and Principal of the School. Therefore, that cannot be taken into consideration by this Court.

(16) I have given my thoughtful consideration to the rival submissions advanced by counsel for the parties. From the facts enumerated above, it emerges that on 24th August, 1998, while the petitioner was taking fourth period of Class 10 Section 'E', a student, namely Kumari Sapna had fainted. According to the teacher, she was punished to take a round of the Volleyball court. As per the newspaper report, she was given beating (corporal punishment). In answer to the questionnaire, the student Kumari Sapna had stated that she had answered three questions, but failed

to answer one question and requested the teacher that she would answer that question on the following day. The teacher had not accepted the explanation and slapped her on the face 2/4 times and made her stand in the sunlight. Then the teacher asked her to run in the ground for 10/15 minutes. She further stated that this punishment was not given to her alone but to ten other students also. It is also the case of the respondents that after publication of the news item, the District Education Officer was asked to conduct a preliminary enquiry, in which no witness was examined, but only questionnaires were given to the teacher and the student. After the preliminary enquiry report was sent to the Director Public Instructions, straightaway the order (Annexure P-9), which has been reproduced above, was passed and a copy of the same was sent to the petitioner. Order (Annexure P-9) specifically states that due to the enquiry conducted against the teacher, her services were terminated.

(17) In "**Nehru Yuva Kendra Sangathan versus Mehbub Alam Laskar**" (2) their Lordships of Hon'ble the Apex Court examined the validity of the order passed by the High Court, wherein the order of termination passed against a probationer was set aside, as the same was held to be stigmatic in nature. In **Nehru Yuva Kendra Sangathan's case** (*supra*), it was observed as under :

"12. Mere holding of a preliminary enquiry where explanation is called for from the employee, if followed by an innocuous order of discharge, may not be held to be punitive in nature but not when it is founded on a finding of misconduct.

13. In **Dipti Prakash Banerjee versus Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and Others, 1999(1) SCT 861 : [(1999)3 SCC 60]**, this Court held that the material which amounts to stigma need not be contained only in the termination order, but may also be contained in an Order or proceeding referred to in the order of termination or annexure thereto.

When the report submitted by a competent authority in a disciplinary proceeding forms the foundation therefor, it would be stigmatic in nature as such an order will have civil consequences.

14. It is not necessary for us to consider a large number of decisions operating in the field as this Court recently in **Jaswantsingh Pratapsingh Jadeja versus Rjkot Municipal Corporation and Anr.** [(2007)12 SCALE 115] has considered the question at some length.

Reliance, however, is placed by Mr. Rana Ranjit Singh on **Abhijit Gupta versus S.N.B. National Centre, Basic Sciences and Others** [(2006)4 SCC 469]. The said decision has been taken into consideration in *Jedeja (supra)*, stating :

‘If the satisfaction of the employer rested on the unsatisfactory performance on the part of the appellant, the matter might have been different, but in that case, from the impugned order it is evident that it was not the unsatisfactory nature and character of his performance only which was taken into consideration but series of his acts as well, misconduct on his part had also been taken into consideration therefor. It is one thing to say that he was found unsuitable for a job but it is another thing to say that he was said to have committed some misconduct.’

As in the instant case, it now stands admitted that the services of the respondent had been terminated on a finding of misconduct, the said decision of this Court in *Abhijit Gupta (supra)* has no application.

15. Reliance has also been placed on **Jai Singh versus Union of India and Others, 2006(4) SCT 66 : [(2006) 9 SCC 717]**. In that case, the appellant’s conduct was shown in the records as “Unsatisfactory”.

Therein, this Court noticed that the order of termination was the only motive and not the foundation therefor stating :

- ‘9. The question whether the termination of service is simpliciter or punitive has been examined in several cases e.g. **Dhananjay versus Chief Executive Officer, Zilla Parishad and Mathew P. Thomas versus Kerala State Civil Supply Corpn. Ltd.** An order of termination simpliciter passed during the period of probation has been generating undying debate. The recent two

decisions of this Court in **Dipti Prakash Banerjee versus Satyendra Nath Bose National Centre for Basic Sciences and Pavanendra Narayan Verma versus Sanjay Gandhi PGI of Medical Sciences** after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In **Dipti Prakash Banerjee** after referring to various decisions it was indicated as to when a simple order of termination is to be treated as 'founded' on the allegations of misconduct and when complaints could be only as a motive for passing such a simple order of termination. In para 21 of the said judgment a distinction is explained thus : (SCC pp. 71-72)

- '21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.'

From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or

overlapping. It may be difficult either to categorise or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service.” (emphasis in original)

(18) This Court cannot ignore the fact that it was due to the publication of report in the newspaper that a preliminary enquiry was initiated against the petitioner and thereafter, on the basis of that enquiry, her services were dispensed with. Therefore, the services of the petitioner have not been dispensed with because of unsatisfactory performance on her part but due to the overt acts, which amounted to misconduct. If that is so, it was imperative for the employer to grant an opportunity of hearing to the petitioner. Therefore, the order of termination of services of the petitioner (Annexure P-10) may look innocuous, but the same, for its effect and substance, is stigmatic in nature. The order (Annexure P-10) was passed in compliance of the order (Annexure P-9). Thus, an opportunity ought to have been granted to the petitioner to show cause as to whether she had inflicted the alleged punishment upon the student or not.

(19) The above said view formulated by this Court also finds support from a recent judgment of Hon`ble the Apex Court rendered in ‘**State of Punjab and others versus Constable Avtar Singh (dead) through LRs**’(3), in which it has been held as under :

“13 We have heard learned counsel for the parties. We are in total agreement with the submission of the learned counsel for the State of Punjab that the controversy involved in this case is no longer *res integra*. Learned counsel appearing for the respondent had drawn our attention to a two-Judge bench decision of this Court in **Prithipal Singh versus State of Punjab & Others, 2001(1) SCT 459 : (2002)10 SCC 133**. The court held that once there is stigma, the principle is well settled, an opportunity has to be given before passing any order. Even where an order of discharge looks innocuous, but on a close scrutiny, by looking behind the curtain if any material exists of misconduct and which is the foundation of passing of the order of discharge, or such could be reasonably inferred, then it leaves no room for doubt that any consequential order, even

of discharge, would be construed as stigmatic. The decision in Sukhwinder Singh (supra) was given by a three-Judge bench and in view of that decision in 2005, there is no scope for this court to take a different view. We are squarely bound by the said decision.”

(20) In view of the discussion made above, this Court is of the opinion that a regular enquiry in the matter should have been conducted and the petitioner, an *ad hoc* employee, should have been given an opportunity to defend herself.

(21) Hence, the present writ petition is allowed and the impugned orders (Annexures P-9 and P-10) are hereby quashed. The petitioner shall be reinstated into service and the concerned authorities, if so advised, shall be at liberty to initiate fresh proceedings against the petitioner in accordance with the provisions of law. However, the petitioner shall not be entitled to any back wages.

(22) However, there will be no order as to costs.
