2024 INSC 620

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9758 OF 2024

[@ SPECIAL LEAVE PETITION (C) NO.11685 OF 2021]

SWATI PRIYADARSHINI … APPELLANT

VERSUS

THE STATE OF MADHYA PRADESH & ORS. … RESPONDENTS

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Heard learned counsel for the parties.

2. We are inclined to grant leave; hence, granted.

3. The present appeal has been filed against the Final Judgment and Order dated 03.02.2020 (hereinafter referred to as the “Impugned Judgment”) passed by the Division Bench of the High Court of Madhya Pradesh at

Jabalpur (hereinafter referred to as the "High Court") in Writ Appeal No.956/2017, whereby it overruled the Judgment dated 20.06.2017 passed by the learned Single Judge in Writ Petition No.8404/2013.

FACTUAL MATRIX:

4. On 15.10.2012, the sole appellant was appointed by the Respondent No.4 to the post of Assistant Project Coordinator (hereinafter referred to as "APC") under the *Sarv Shiksha Abhiyan* (hereinafter referred to as "SSA") on contract basis, initially for one academic session (1 year), renewable in subsequent years for two years each *"subject to evaluation of work in the first year."*

5. It was contended by the appellant that she received some information about alleged misconduct and immoral activity going on in the CWSN (abbreviation for "Children with Special Needs") Girls' Hostel, Sehore (hereinafter referred to as the "hostel") run by one Bright Star Social Society, a non-governmental organization (hereinafter referred to as "Bright Star"). The State Level Committee raided the hostel on a complaint made by the appellant. The State Level Committee found the

allegations, made by the appellant to be true eventually leading to termination of the Memorandum of Understanding with Bright Star to run the hostel with effect from 08.01.2013.

6. On 09.01.2013, the appellant was made in-charge of the hostel. An order was issued by the Sub-Divisional Officer and Magistrate, Sehore on 10.01.2013 to the District Coordinator, State Education Centre, Sehore to lodge a First Information Report against the warden under whose supervision the alleged crime(s) was/were being committed in the hostel.

7. By order dated 14.01.2013, charge of the hostel was withdrawn from the appellant after 5/6 days of assigning the charge. The appellant received a Show-Cause Notice (hereinafter abbreviated to "SCN") issued by the Respondent No.5 which reads as under[1]:

> *"The attendance register was perused by the District Project Coordinator District Education Centre, Sihore under the above subject. Absent was marked on 4th and 5th January, 2013 by me in the attendance rgister.* (sic)
>
> *Signatures were made by you in the said dates in the attendance register and your coming in the office at 12:00 hours*

[1] For convenience, English translation is used. The original SCN was issued in Hindi.

on 14.02.13 is a negligence on your part towards duties and is violation of orders of officer."

To the above, the appellant replied on 16.02.2013, stating that signatures have not been made by her on the attendance register. She stated that due to the arrival of her daughter from Bhopal on 14.02.2013, she was late on the said date. The appellant contended that whenever she comes late to work, she stays late in the office till evening 7-8 PM and completes all the work.

8. On 15.03.2013, another SCN was issued by the Respondent No.4 to the appellant with the following charges:

"i. Marking of disabled boys/girls and verification of the specified list prepared by Social Justice was to be done by you for the execution of several activities through Arushi Institution but marking and verification was not done by you.

ii. The proceedings of appointing volunteers and MRC are prevalent in the Arushi Institution. You are also nominated therein as representative of District Education Centre but due to your in-cooperative, obstruction and negligent attitude, the appointment on the said posts could not be made and due to this reason, the other activities including education is adversely being affected.

> *iii. No report was submitted when the monitoring of CWSN hostel was done and what improvements were made.*
>
> *iv. Entry of unauthorized persons in the hostel is strictly prohibited and you being posted at a responsible post, it is your duty to ensure prohibition on the entrance of unwanted persons in the hostel but telling about this is very far and you yourself has tried to enter the hostel along with the crowd of outsiders. Further you put pressure on the senior officers to give entrance to the unauthorized persons in the hostel. The work done beyond your official duties, comes under the category of indiscipline.*
>
> *v. Your head office is situated at Sihore, but you are not residing at the headquarter and come from Bhopal everyday*
>
> *vi. You do not come in the office at right time also and in spite of being late,you made signature on the attendance register. It is indiscipline on your part."*
>
> (sic)

9. The appellant *vide* representation dated 20.03.2013 stated that all tricks were being adopted for removing her from the post of APC. She stated that SCNs were being issued to her even for small things. She alleged non co-operation from other officers and that she was being harassed as she had complained about the hostel.

10. The appellant replied to the SCN dated 15.03.2013 on 22.03.2013, *inter alia*, countering that

she was being subjected to non-cooperation and mental harassment by the officers. She further alleged that her reputation was being spoiled by giving negative feedback to senior officers.

11. Order dated 30.03.2013 was passed by the Respondent No.4 deciding not to extend the contract of the appellant as APC from 31.03.2013 on the ground of dereliction of duty, as the work/performance of the appellant was found to be unsatisfactory. English translation of this order as annexed by the appellant with the paper-book reads as under:

> *"Under the above subject matter and under the Sarv Shiksha Abhiyan on 30.03.2013 in the meeting of the District Appointment Committee after the consideration and determination is done and subsequent to the same this decision has been taken that as you work is not satisfactory and due to this reason from the end dated 31.03.2013 of the Education Session your contract service may not be increased.*
>
> *In the context of the above decision from dated 31.03.2013 furthermore your contract service is not increased."*
>
> (sic)

12. Aggrieved, the appellant/original writ-petitioner invoked Article 226 of the Constitution of India (hereinafter referred to as the "Constitution")

to file Writ Petition No.8404/2013 before the High Court against the order dated 30.03.2013 *supra* refusing to renew/extend her services. A learned Single Judge allowed this writ petition on 20.06.2017 and quashed the order dated 30.03.2013, holding that the termination orders being stigmatic in nature, relating to alleged misconduct involving moral turpitude, the same could not have been passed without holding a regular enquiry.

13. Aggrieved by the learned Single Judge's judgment dated 20.06.2017, the official respondents filed Writ Appeal No.956/2017 under Section 2 of The *Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam*, 2005 before the Division Bench, which was allowed on 03.02.2020, and now stands impugned by the appellant.

APPELLANT'S SUBMISSIONS:

14. Mr. Prashant Bhushan, learned counsel for the appellant submitted that the order dated 30.03.2013 was clearly stigmatic in nature and thus could not have been passed without giving her an opportunity of being heard. It was submitted that the learned Single Judge has rightly held so, and the Division Bench has

gone only by the text of the order dated 30.03.2013 to erroneously hold that the same was "*simpliciter*".

15. It was contended that the rules stipulate that the minimum tenure of service of a contractual appointee will be at least one year in the first instance and two years each subsequently, subject to evaluation of work in the first year whereas in the present case, the appellant had put in only 5 months and 15 days. Further, it was submitted that the curtailment of the tenure of the appellant was in violation of the provisions of the rules of the *Rajiv Gandhi Prathmik Shiksha Mission*[2] (hereinafter referred to as "RGPSM") which provide that for persons working on contract, notice of one month is to be served, if their tenure is to be curtailed on the ground of inefficiency. Moreover, learned counsel submitted that the respondents were further bound by orders dated 09.03.2012 and 13.03.2012 issued by the Respondent No.2, which specifically provide that contractual workers in the SSA could not be terminated on the ground of inefficiency without

[2] Erstwhile name of the SSA.

affording them an opportunity of being heard, in accordance with the principles of natural justice.

16. It was pointed out by the learned counsel that the Division Bench also failed to take into consideration that the appellant was the victim of *malafide* counter-action by the Respondents No.4 and 5 as it was she who had brought to the notice of the authorities the misdeeds being committed at the hostel run by Bright Star, under the aegis of the State, which was sought to be buried by the respondents.

17. Learned counsel contended that the glaring fact was that the appellant was assigned the charge of the hostel on 09.01.2013, which was revoked on 14.01.2013 without giving any reason/ground for such action. Learned counsel submitted that this discloses that the respondents made an *ex-post-facto* justification for removing her and that during those 5/6 days, no incident had occurred, which may have justified such extreme action against the appellant.

18. Further, the stand of the learned counsel was that under the RGPSM, the Appointing Authority for the post of APC is the State Level Appointing

Authority, whereas she had been removed by the District Level Committee, in contravention of Article 311(2)[3] of the Constitution.

19. In support of his contentions, Mr. Bhushan relied upon the following decisions of this Court:

1. ***Anoop Jaiswal v Government of India*, (1984) 2 SCC 369**
2. ***Gujarat Steel Tubes Ltd. v Mazdoor Sabha*, (1980) 2 SCC 593**
3. ***State Bank of India v Palak Modi*, (2013) 3 SCC 607**

RESPONDENTS' SUBMISSIONS:

20. *Per contra*, Mr. Nachiketa Joshi, learned Additional Advocate General, for the respondents – the State of Madhya Pradesh and its functionaries – in support of the Impugned Judgment submitted that it was rightly held by the Division Bench that it was within the competence of the authority to determine as to whether the service of a person claiming

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[3] "***311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.***

xxx

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

xxx"

continuation was satisfactory. For this proposition, reliance was placed on ***State of Uttar Pradesh v Ram Bachan Tripathi*, (2005) 6 SCC 496** and ***Rajesh Kumar Shrivastava v State of Jharkhand*, (2011) 4 SCC 447**.

21. It was submitted that the order dated 30.03.2013 was an order *simpliciter* without involving any stigma being basically an order of non-extension of the appellant's contractual services. He submitted that it does not involve any evil consequences nor is founded on any misconduct. The further submission was that the appellant, having been appointed on contractual basis, has no right of service as such.

22. Relying upon the terms of service, it was pointed out that the same clearly indicated that the appointment would be purely temporary in nature and subject to the contractual conditions stipulated in the contract. It was submitted the even the letter of appointment dated 15.10.2012, under *"Service Conditions"* stated that:

> *"1. This appointment will be absolutely temporary and will be under the contract conditions of Mission.*
>
> *2. If the work is not found satisfactory or if the post is not required, then the service can be terminated without any prior information.*

…"

23. In the aforesaid light, it was submitted that in the present case despite the appellant having been issued SCNs seeking explanation for her non-performance, there was no improvement from her end and since her work was found to be unsatisfactory, the contract was not extended. In support of his contentions, learned counsel also relied upon the following:

1. ***State of Uttar Pradesh v Ram Chandra Trivedi*, (1976) 4 SCC 52**
2. ***Chandra Prakash Shahi v State of Uttar Pradesh*, (2000) 5 SCC 152**

24. It was submitted that the appellant was in the habit of remaining absent from work and neither discharged her duty of marking the names of specially-abled boys/girls and nor did verification of the specified list prepared by the Department of Social Justice for execution of several activities through the *Arushi* Institutions. Further, it was contended that in the Committee constituted to appoint volunteers and MRC in the *Arushi* Institutions, the appellant was appointed as the

representative of District Education Centre and due to her non-cooperative, obstructive and negligent attitude, such appointment were not made, leading to other activities, including education, being adversely affected.

25. Moreover, it was submitted that the appellant did not submit a report on the hostel when it was under her monitoring and she did not inform whether there was any improvement or not and if so, the details thereof and steps taken. It was submitted that only because the appellant had previously been issued some appreciation letters, future unsatisfactory conduct cannot be saved basis her past conduct.

26. Learned counsel further pointed out that initially the appellant was placed at Serial No.5 in the Provisional Merit List issued on 09.12.2011 which was because of non-submission of proper Certificate of Experience alongside her application for the post of APC. Later, when the Certificate of Experience was submitted, the Merit List was revised and rectified on 12.09.2012, whereupon she was placed at Serial No.1.

27. Apropos the appellant's allegations against Respondents No.4 & 5 to the effect that they were interested for the appointment of one Dheeraj Singh Dhakad, learned counsel submitted that in the Provisional Merit List, he was below the appellant, which would not have been the case had he been favoured. It is also submitted that had there been any *malafide* intent towards the appellant, Respondents No.4 & 5 would have rejected her application on the basis of her submitting an expired Certificate of Experience, but they chose to give time to her to submit a proper Certificate, which would demonstrate that the said respondents did not harbour any bias against her.

28. Learned counsel summed up by stating that the judgment impugned was well-considered and needed no interference under Article 136 of the Constitution.

ANALYSIS, REASONING AND CONCLUSION:

29. Having bestowed our anxious consideration to the *lis*, we find that the interference of the Division Bench with the judgment dated 20.06.2017 of the

learned Single Judge, has to be interdicted at our hands.

30. A bird's eye views reveals thus. The appellant topped the revised Merit List, leading to her appointment as an APC. While serving as such, complaint(s) against her, in brief, were that she was not performing her duties, primarily on two counts – (i) not punctual in attending to her duties, and; (ii) not correctly reported with regard to the events in the hostel. As against these, the appellant's response, *via* her replies to the SCNs, is that she, *inter alia*, frankly admits to being late on occasion, but to compensate for her late-coming, she used to sit till late evening in the office for completion of work. On this count, the Respondents cannot be faulted. It is no justification for the appellant to contend that she was late, but worked late/overtime such that the work did not suffer. However, as borne out from the record, with regard to the hostel, charge was given to her for only 5/6 days. As such, in our view, it cannot be said that within such a short period, the appellant, without fully understanding the attendant issues, could have

straightaway given any opinion/report on the hostel. Be that as it may, this case turns on our findings *infra*.

31. Clause 4 of the RGPSM's General Service Conditions under the heading "*Resignation/Termination*" provides as below:

> "*Persons working on contract can be* ***terminated with one month notice if found inefficient.*** *In case of* ***persons found indulged in undesirable activities amounting to degradation of dignity of Mission, Mission Director shall reserve right to terminate him/her with immediate effect.***"
>
> (emphasis supplied)

32. Perusal of Clause 4 makes it clear that ordinarily, for inefficiency, one month's notice is sufficient. The Clause also makes it clear that if someone is found to have indulged in "*undesirable activities*", the Mission Director was competent to terminate such person's services "*with immediate effect*". We are afraid that the Respondents have placed themselves in a Catch-22[4] situation. If the order dated 30.03.2013 falls within the former part of Clause 4, as contended by the respondent, on the

[4] Colloquially, when one is placed in a dilemma due to two contradictory conditions. The phrase was popularized by Joseph Heller's novel of the same name, first published in 1961.

premise that it is a case of termination *simpliciter* and non-stigmatic, then one month's notice was required to be issued to the appellant, which admittedly was not done in the instant matter. *Arguendo*, were the order dated 30.03.2013 to be seen as falling under the latter part of Clause 4, it would be stigmatic, as made clear by the use of the words "*indulged in undesirable activities amounting to degradation of dignity of Mission*".

33. In either of the above-noted eventualities, the Impugned Judgment would have to necessarily be set aside. Nevertheless, let us examine the reasoning of the Division Bench, which opined that the order is non-stigmatic and *simpliciter* non-renewal of contract. The order dated 30.03.2013 was, quite obviously, the culmination of the process set into motion by the two SCNs, which has been overlooked by the Division Bench. The mere non-mention of the background situation or the SCNs in the order dated 30.03.2013 cannot, by itself, be determinative of the nature of the order. As held by this Court in ***Samsher Singh v State of Punjab*, (1974) 2 SCC 831**[5] and ***Anoop***

[5] "***80.*** *...The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may*

***Jaiswal v Government of India*, (1984) 2 SCC**[6], the form of an order is not its final determinant and the Court can find out the real reason and true character behind terminating/removing an employee. Moreover, the Impugned Judgment also does not deal with Clause 4. Interestingly, this Clause also escaped the attention of or/and was not brought to the notice of the learned Single Judge either.

34. It is profitable to refer to what five learned Judges of this Court laid down in ***Parshotam Lal Dhingra v Union of India*, 1957 SCC OnLine SC 5**:

> *"**28.** The position may, therefore, be summed up as follows: **Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal**, as has been held by this Court in Satish Chander Anand v. Union of India [(1953) 1 SCC 420: (1953) SCR 655]. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a*

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in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311 ..."

[6] "***12.** It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."*

punishment and does not attract Article 311(2), as has also been held by this Court in Shyam Lal v. State of Uttar Pradesh [(1955) 1 SCR 26]. In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh v. Union of India [LR 58 Bom 673 : AIR (1956) Bom 455] wholly irrelevant. In short, ***if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted.*** *But even* ***if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.*** *As already stated if the servant has got a right to continue in the post, then,* ***unless the contract of employment or the rules provide to the***

contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forefeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. *A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment.* ***The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the***

> ***Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty.*** *The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions,* ***the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.***"
>
> (emphasis supplied)

35. We would only be adding to verbosity by multiplying authorities. In view of the above dictum, it is clear that the Respondents did not comply with Clause 4 – either the first part or the second part thereof. The order dated 30.03.2013 does visit the

appellant with evil consequences and would create hurdles for her *re* further employment.

36. In view of the discussions made hereinabove, the Impugned Judgment is quashed and set aside. The judgment of the learned Single Judge dated 20.06.2017 stands revived, however with a modification to the extent that the appellant shall be entitled to all consequential benefits including notional continuation in service at par with other similarly-situated employees, but with the back wages restricted to 50%. Further, in view of the long passage of time, we deny liberty to the respondents to proceed afresh against the appellant as was granted by the learned Single Judge. However, this will not preclude the respondents from taking action against the appellant in accordance with law *in futuro* apropos her official duties on the post in question, if the situation so arises. The exercise be completed within three months from the date of receipt of this judgment.

37. The appeal is allowed and disposed of on the above terms while leaving the parties to bear their own expenses.

.....J.
[HIMA KOHLI]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
AUGUST 22, 2024