Reserved on: 17.11.2021

Delivered on: 17.12.2021

Court No.1

Case :- SPECIAL APPEAL No. - 418 of 2021

Appellant:-U.O.I. Thru. Secy. Min.Of Civil Aviation N. Delhi & Ors.
Respondent :- Jitendra Singh

Counsel for Appellant:- Raj Kumar Singh, Anjana Gosain, Divyanshu Bhatt

Hon'ble Ramesh Sinha,J.
Hon'ble Vivek Varma,J.

Heard Sri Shashi Prakash Singh, learned Additional Solicitor General assisted by Sri Raj Kumar Singh, Ms. Anjana Gosain and Sri Divyanshu Bhatt, learned counsel for the appellants, and Sri Jitendra Singh, the respondent appearing in person.

The instant special appeal arises out of the judgment and order dated 17.09.2021 passed by the learned Single Judge in Service Single No. 2295 of 2021 (Jitendra Singh v. U.O.I. and others), by which the writ petition preferred by the respondent was allowed and the impugned letter dated 26.12.2019, Internal Note (hereinafter referred to as "ID note") dated 17.12.2019 issued by the Joint Secretary, Government of India, Ministry of Civil Aviation, New Delhi and letter dated 09.01.2020 issued by the Under Secretary to the Government of India, Ministry of Civil Aviation, New Delhi, were quashed.

The brief facts of the case are that the respondent applied for the post of Registrar, Rajiv Gandhi National Aviation University (hereinafter referred to as "the University"), on 14.08.2018. He was selected and an offer of appointment was issued to him on 01.03.2019. As per the offer of appointment, the appointment of the respondent was on contract basis for a period of three years and the probation period was of one year from the date of appointment subject to further extension, which was at the discretion of the competent authority as per the prevailing Rules.

Being aggrieved by I.D. note dated 17.12.2019, whereby proposal was sent by the appellant to terminate the probation of respondent and for appointment of one Smt. Garima Singh as officiating Registrar and further to initiate the process of selecting new Registrar; by letter dated 26.12.2019, whereby the said proposal was approved and further by letter dated 09.01.2020, whereby the grounds for termination of the probationer was disclosed, the respondent preferred a writ petition, which was registered as Service Single No. 2295 of 2021. The writ petition was contested by the appellants by filing counter affidavit. The learned Single Judge, after hearing the submissions made by the learned counsel for the parties and considering the materials on record, allowed the writ petition and quashed the aforesaid proposal, i.e., I.D. note dated 17.12.20219 as well as letter dated 09.01.2020 and a writ in the nature of mandamus was issued commanding the appellants to reinstate the respondent on the post of Registrar of the University with all consequential benefits in terms of the offer of appointment dated 01.03.2019. A direction was also issued that since the services of the respondent was terminated by means of punitive and stigmatic orders, therefore, the respondent shall be treated in service with back wages. The learned Single Judge further directed that compliance of the aforesaid order will be made with promptness preferably within a period of one month from the date of receipt of certified copy of the order, failing which the respondent shall be entitled for the interest on the dues as per the current market rate.

Learned counsel for the appellants submits that the respondent was a probationer and his services were governed by the terms of the offer of appointment. The competent authorities have passed the impugned orders, which can be regarded as an order of termination simpliciter. He further submits that the learned Single Judge allowed the writ petition with all consequential benefits and also granted back wages, which is ex-facie illegal. He submits that in case the learned Single Judge came to the conclusion that the orders are stigmatic, he

ought to have remitted the matter to the authorities concerned for considering the matter afresh after affording opportunity of hearing to the parties concerned.

On the other hand, the respondent submitted that the order passed by the learned Single Judge does not call for any interference and appeal is liable to be dismissed.

We have considered the submissions made by the parties and perused the record.

The moot question which arises for our consideration is whether the orders, whereby services of the respondent were terminated, can be regarded as order of termination simpliciter or is ex-facie stigmatic. Going by the contents of the letter dated 09.01.2020 the same cannot be construed as termination simpliciter as the same is based on following grounds:

> *"i) Obstructing an officer appointed by the Government from discharging his duties.*
>
> *ii) Fabricating a complaint of sexual harassment by involving two girl students of the university. The girl students were called by you on 30.11.2019 on Saturday in your office. The complaint was drafted by you and the two students were made to append their signatures to the complaint.*
>
> *iii) For willful insubordination and indiscipline by exhibiting defiance to the official orders."*

Had it been a case of mere unsatisfactory performance, the situation would have been entirely different. The letter dated 09.01.2020 adverts to the complaint made against the respondent. It is a well established position that the material which amounts to stigma need not be contained in the order of termination of the probationer. Such reference may inevitably affect the future prospects of the incumbent and if so, the order must be construed as ex-facie stigmatic order of termination. The Hon'ble Supreme Court in the case of ***Dr. Vijayakumaran C.P.V. Vs. Central University of Kerala and others***, (Civil Appeal No. 777 of 2020) has observed as follows:

"8. It is well-established position that the material which amounts to stigma need not be contained in the order of termination of the probationer, but might be contained in "any document referred to in the termination order". Such reference may inevitably affect the future prospects of the incumbent and if so, the order must be construed as ex-facie stigmatic order of termination. A three-Judge Bench of this Court in ***Indra Pal Gupta v. Managing Committee, Model Inter College, Thora, [(1984) 3 SCC 384]*** *had occasion to deal with somewhat similar situation. In that case, the order of termination referred to the decision of the Managing Committee and subsequent approval by the competent authority as the basis for termination. The resolution of the Managing Committee in turn referred to a report of the Manager which indicated serious issues and that was made the basis for the decision by the Committee to terminate probation of the employee concerned. Relying on the aforementioned decision, the Court in* ***Dipti Prakash Banerjee vs. Satyendra Nath Bose Nation Centre for Basic Sciences, Calcutta & Ors. [(1999) 3 SCC 60]*** *observed as follows:-*

> *"**32. The next question is whether the reference in the impugned order to the three earlier letters amounts to a stigma if those three letters contained anything in the nature of a stigma even though the order of termination itself did not contain anything offensive.***
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> ***33**. Learned counsel for the appellant relies upon Indra Pal Gupta v. Managing Committee, Model Inter College (1984) 3 SCC 384 decided by a three-Judge Bench of this Court. In that case, the order of termination of probation, which is extracted in the judgment, reads as follows: (SCC p. 386, para 1)*
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> > *With reference to the above (viz. termination of service as Principal), I have to mention that in view of Resolution No. 2 of the Managing Committee dated April 27, 1969 (copy enclosed) and subsequent approval by the D.I.O.S., Bulandshahr, you are hereby informed that your service as Principal of this Institution is terminated…."*
>
> *Now the copy of the resolution of the Managing Committee appended to the order of termination stated that the report of the Manager was read at the meeting and that the facts contained in the report of the Manager being serious and not in the interests of the institution, that therefore the Committee unanimously resolved to terminate his probation. The report of the Manager was not extracted in the enclosure to the termination order but*

was extracted in the counter filed in the case and read as follows: (SCC p. 388, para 3)

> *"It will be evident from the above that the Principal's stay will not be in the interest of the Institution. It is also evident that the seriousness of the lapses is enough to justify dismissal but no educational institution should take all this botheration. As such my suggestion is that our purpose will be served by termination of his services. Why, then, we should enter into any botheration. For this, i.e., for termination of his period of probation, too, the approval of the D.I.O.S. will be necessary. Accordingly, any delay in this matter may also be harmful to our interests.*
>
> *Accordingly, I suggest that instead of taking any serious action, the period of probation of Shri Inder Pal Gupta be terminated without waiting for the period to end."*

It was held by Venkataramiah, J. (as he then was) (p. 392) that the letter of termination referred to the resolution of the Managing Committee, that the said resolution was made part of the order as an enclosure and that the resolution in its turn referred to the report of the Manager. *A copy of the Manager's report had been filed along with the counter and the said report was the "foundation". Venkataramiah, J. (as he then was) held that the Manager's report contained words amounting to a stigma.* ***The learned Judge said: "This is a clear case where the order of termination issued is merely a camouflage for an order imposing a penalty of termination of service on the ground of misconduct …", that these findings in the Manager's report amounted to a "mark of disgrace or infamy" and that the appellant there was visited with evil consequences.*** *The officer was reinstated with all the benefits of back wages and continuity of service.*

34. *It will be seen from the above case that the resolution of the Committee was part of the termination order being an enclosure to it. But the offensive part was not really contained in the order of termination nor in the resolution which was an enclosure to the order of termination but in the Manager's report which was referred to in the enclosure. The said report of the Manager was placed before the Court along with the counter. The allegations in the Manager's report were the basis for the termination and the said report contained words amounting to a stigma. The termination order was, as stated above, set aside.*

> ***35. The above decision is, in our view, a clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its annexures. Obviously, such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular enquiry was conducted.*** *We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma."*
>
> *(emphasis supplied)*

9. In the case of ***Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences & anr., [(2002) 1 SCC 520]****, the Court observed thus:-*

> *"**21**. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."*

In the present case, all the three elements are attracted, as a result of which it must follow that the stated order is ex-facie stigmatic and punitive. Such an order could be issued only after subjecting the incumbent to a regular inquiry as per the service rules. As a matter of fact, the Internal Complaints Committee had recommended to proceed against the appellant appropriately but the Executive Council proceeded under the mistaken belief that in terms of clause 7 of the contract, it was open to the Executive Council to terminate the services of the appellant without a formal regular inquiry as per the service rules. Indisputably, in the present case, the Internal Complaints Committee was constituted in reference to the complaints received from the girl students about the alleged misconduct committed by the appellant, which allegations were duly inquired into in a formal inquiry after giving opportunity to the appellant and culminated with the report recording finding against the appellant with recommendation to proceed against him.

10. Upon receipt of complaints from aggrieved women (girl students of the University) about the sexual harassment at workplace (in this case, University campus), it was obligatory on the Administration to refer such complaints to the Internal

Committee or the Local Committee, within the stipulated time period as predicated in Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for short, 'the 2013 Act'). Upon receipt of such complaint, an inquiry is required to be undertaken by the Internal Committee or the Local Committee in conformity with the stipulations in Section 11 of the 2013 Act. The procedure for conducting such inquiry has also been amplified in the 2015 Regulations. Thus understood, it necessarily follows that the inquiry is a formal inquiry required to be undertaken in terms of the 2015 Regulations. The allegations to be inquired into by such Committee being of "sexual harassment" defined in Section 2(n) read with Section 3 of the 2013 Act and being a serious matter bordering on criminality, it would certainly not be advisable to confer the benefit on such employee by merely passing a simple order of termination. Such complaints ought to be taken to its logical end by not only initiating departmental or regular inquiry as per the service rules, but also followed by other actions as per law. In such cases, a regular inquiry or departmental action as per service rules is also indispensable so as to enable the employee concerned to vindicate his position and establish his innocence. We say no more.

11. A priori, we have no hesitation in concluding that the impugned termination order dated 30.11.2017 is illegal being ex-facie stigmatic as it has been issued without subjecting the appellant to a regular inquiry as per the service rules. On this conclusion, the appellant would stand reinstated, but whether he should be granted backwages and other benefits including placing him under suspension and proceeding against him by way of departmental or regular inquiry as per the service rules, is, in our opinion, a matter to be taken forward by the authority concerned in accordance with law. We do not intend to issue any direction in that regard keeping in mind the principle underlying the exposition of the Constitution Bench in ***Managing Director, ECIL, Hyderabad & ors. vs. R. Karunakar & ors,[(1993) 4 SCC 727]****. In that case, the Court was called upon to decide as to what should be the incidental order to be passed by the Court in case after following necessary procedure, the Court/Tribunal was to set aside the order of punishment. The Court observed thus:-*

> ***"31. ……..***
>
> ***Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by***

> ***placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled.*** *The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."*
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> *(emphasis supplied)*
>
> *Following the principle underlying the above quoted exposition, we proceed to hold that even though the impugned order of termination dated 30.11.2017 is set aside in terms of this judgment, as a result of which the appellant would stand reinstated, but at the same time, due to flawed approach of the respondent No. 1– University, the entitlement to grant backwages is a matter which will be subject to the outcome of further action to be taken by the University as per the service rules and in accordance with law.*
>
> *12. Accordingly, this appeal partly succeeds. We set aside the impugned judgments and orders dated 30.1.2018 and 20.2.2018 passed by the High Court including the order of termination dated 30.11.2017 issued under the signatures of the Vice-Chancellor of the respondent No. 1 – University; and instead direct reinstatement of the appellant and leave the question regarding backwages, placing him under suspension and initiating departmental or regular inquiry as per the service rules, to be taken forward by the authority concerned in accordance with law.*
>
> *13. The appeal is disposed of in the above terms. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of."*

Following the principles as laid down by the Hon'ble Supreme Court in **Dr. Vijayakumaran C.P.V. (supra),** we are of the considered opinion that termination of probation of the respondent is illegal being

ex-facie stigmatic. The termination order needs to be revisited. The matter is remitted to the University to proceed in accordance with law and pass a fresh order within a period of two months from today. So far as the entitlement of back wages is concerned, the same shall be subject to the outcome of further action to be taken by the University.

Accordingly, the present special appeal is partly allowed in the above terms. The judgment and order dated 17.09.2021 passed by the learned Single Judge is modified to the extent indicated above.

Order Date :- December 17, 2021
Ashish/Lbm/SKT/-

(Vivek Varma, J.) (Ramesh Sinha, J.)