

**HIGH COURT OF MADHYA PRADESH****BENCH AT GWALIOR****DIVISION BENCH****PRESENT****SHEEL NAGU & ANAND PATHAK, JJ.****( W.A.No. 285/2021 )****The State of M.P. & Ors.****Versus****Yogesh Pathak**

=====

Shri MPS Raghuvanshi, learned Additional Advocate General for appellants/State.

Shri Prashant Sharma, learned counsel for the respondent.

=====

**Whether approved for reporting : Yes****Law laid down:-**

*(i) If the purpose of the enquiry is not to find out the truth of the allegations of misconduct but to decide whether to retain the employee against whom a cloud is raised on his conduct such enquiry only serves as a motive for the termination. But where the enquiry is held wherein on the basis of the evidence a definite finding is reached at the back of the employee about his misconduct and such finding forms the basis or foundation of the order of termination, such order would be punitive. {Referred and relied :-Radhey Shyam Gupta Vs. U.P. State*

*Agro Industries Corporation Ltd., (1999) 2 SCC 21 and Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others, (2015) 15 SCC 151};*

*(ii) Regulation 59 of M.P. Police Regulation gives sufficient authority to the employer to get rid of unsuitable Police personnel, who in the opinion of Superintendent of Police cannot become a satisfactory Police Officer;*

*(iii) Long absence of Police Constable from training would attract the rigours of Regulation 59 of M.P. Police Regulation. Termination held valid and interference in termination declined.*

=====  
=

**J U D G M E N T**  
**(Passed on this 31<sup>st</sup> Day of August, 2021)**

**Anand Pathak, J.**

1. Appellants/State has filed this appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 assailing the order dated 10/12/2020 passed by learned writ Court in W.P.No. 1621/2016; whereby, learned writ Court allowed the writ petitioner preferred by respondent/petitioner and directed reinstatement of respondent in service with all consequential benefits.

2. Precisely stated facts of the case are that respondent (hereinafter shall be referred as “petitioner”) preferred a petition with the submissions that petitioner was selected on the post of Constable in year 2013 and after selection, petitioner was sent for training. Character verification of the petitioner was conducted. It appears that, petitioner remained absent for about 330 days on the pretext of ailment of his mother and thereafter his poor health, therefore, he did not join the training and despite the fact that information was given to him. In-charge, Training Centre, did not permit the petitioner to join after coming back from unauthorised leave and on 3/8/2015, his services were terminated on the ground of Regulation 59 of M.P. Police Regulation.

3. Petitioner preferred writ petition against the said order of termination and raised the ground of stigma attached to the said order and while relying upon judgments of Apex Court in the case of **D.K.Yadav Vs. JMA Industries Ltd., (1993) 3 SCC 259** and **Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and Anr., (2002) 1 SCC 520**, he raised the submission that termination order so passed without opportunity of hearing and conducting enquiry is bad in law.

4. Learned writ Court while passing impugned order quashed the termination order dated 3/8/2015 and order dated 8/2/2016 and directed reinstatement of petitioner with all consequential benefits.

5. Taking exception to the said order appellants/State are in

writ appeal.

6. It is the submission of learned Additional Advocate General appearing on behalf of appellants/State that petitioner was on probation and without successful completion of probation period, he does not come under the purview of government employee/servant and it is not mandatory for the State Authority to conduct a full fledged enquiry of such employee before terminating his services. Petitioner was in probation of two years and he remained absent in training for 338 days without intimation the authority and in the uniform department where discipline is paramount, absence without intimation makes him unsuitable for the job. Various notices (Vide R/2 of reply in writ petition) were issued to the petitioner (when he remained absent) calling him to join the duty but he did not prefer to join the same. Such casualness of high magnitude has been considered by the departmental authority and thereafter passed the impugned order.

7. Learned Additional Advocate General referred M.P. Government Servants (Temporary and Quasi Permanent Service) Rules, 1960 and Regulation 59 of M.P. Police Regulation to bring home the fact that petitioner was a fugitive and because of long absence and his attitude of casualness, he was found unsuitable for the job.

8. Learned counsel for the respondent/petitioner supported the impugned order and prayed for dismissal of the appeal. He relied upon the decision of Apex Court in the matter of **Shamsher Singh & Anr. Vs. State of Punjab, AIR 1974 SC**

2192.

9. Heard learned counsel for the parties and perused the record.

10. This is a case, where, petitioner is taking exception to the order of termination dated 3/8/2015 (Annexure P/2 of writ petition). The said impugned order is reproduced for ready reference as under:-

// आदेश //

वाहिनी में पदस्थ नवआर0 803 योगेश पाठक पुत्र श्री सतीशचन्द्र पाठक, दिनांक 17.02.14 को नवआर0 ( जीडी ) के पद पर भर्ती हुआ है । परिवीक्षाधीन अवधि में उसकी कार्यप्रणाली को देखते हुये उसका संतोषप्रद पुलिस अधिकारी बनना असंभावित है । पुलिस रेग्यूलेशन के पैरा 59 में दिये गये प्रावधानानुसार नवआर0 802 योगेश पाठक की आज दि0 03/08/2015 पूर्वान्ह से सेवा समाप्त की जाती है ।

(डॉ० हिमानी खन्ना)  
कमाण्डेंट  
05वीं वाहिनी विसबल, मुरैना''

11. Since the competent authority has taken resort to Regulation 59 of M.P. Police Regulation, therefore, same also deserves reproduction for ready reference:-

''59. परिवीक्षा—प्रत्येक रंगरूट दो वर्षो के लिये परिवीक्षा पर होगा जो कि प्रत्येक छः माहो की दो अवधियों का हो सकता है यदि अधीक्षक इसे उचित समझे । इस परिवीक्षाधीन अवधि के दौरान यदि अधीक्षक की राय में उसका संतोषप्रद पुलिस अधिकारी बनना असंभावित है तो उसकी सेवा किसी भी समय समाप्त की जा सकती है ।''

12. Since, the relevant service conditions of petitioner are

governed by M.P.Police Regulation, therefore, Police Regulation 59 is clear and categorical in its terms, wherein, without casting stigma, it contemplates termination of service of police personnel who in the opinion of Superintendent of Police cannot become satisfactory police officer.

13. If this position is seen from the perspective of present case then it appears that petitioner joined the services on 17/2/2014 and during the period of probation remained absent for the following spells:-

From 06/03/2014 to 26/03/2014	21 days
From 29/05/2014 to 11/09/2014	94 days
From 18/10/2014 to 17/11/2014	31 days
From 19/12/2014 to 09/01/2015	22 days
From 12/02/2015 to 16/03/2015	33 days
From 18/03/2015 to 09/06/2015	84 days
From 11/06/2015 to 03/08/2015	53 days
<b>Total (Seven times)</b>	<b>338 days</b>

From the above chart, it appears that petitioner was a habitual absentee during probation (training) and his absence aggravates the situation because he remained absent without any leave application and information. Therefore, his conduct during the probation period was not of the desired standard. In a disciplined force like Police, if a person remains absent for months together without any information to the higher Authority, it is disastrous to the moral and discipline of the force and by any standards his conduct cannot be termed as satisfactory. His conduct not only makes him vulnerable but if not handled sternly then it may have a cascading effect and may adversely affect

morale of other police personnels. Therefore, by all parameters, his conduct was not of desired standard.

14. It further appears that for initial abstention his conduct was ignored but thereafter repeatedly he was given notice to remain present over his duty and such notices have been referred as Annexure R/2 collectively with the return and this fact indicates that he was given sufficient opportunities to make himself available on duty.

15. Interestingly, petitioner did not file any document that he intimated his absence regularly to the authorities. He not only remained absent but he remained absent without any intimation, which makes his conduct more perceptible towards unsuitability. When a Constable did not undergo basic training course in any Police Training School and remained absent for almost a year (on different intervals) then his commitment, loyalty as well as discipline; all come under serious doubt and renders him unsuitable.

16. Apex Court in the case of **Radheshyam Gupta Vs. U.P.State Agro Industris Corporation Ltd., (1999) 2 SCC 21, Mathew P. Thomas Vs. Kerala State Civil Supply Corporation Limited and Ors., (2003) 3 SCC 263, State of Uttar Pradesh & Ors. Vs. Ashok Kumar, (2005) 13 SCC 652 and Ratnesh Kumar Chaudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Ors., (2015) 15 SCC 151** discussed such exigencies on the basis of **Motive and Foundation Policy** and held that where termination is based or

founded upon misconduct it would be punitive but it would be termination simpliciter and may be based on some prima facie facts without going into veracity to decide merely not to continue the employee where his conduct was apparent and therefore, it is a termination simpliciter when it is read with Regulation 59 of M.P. Police Regulation. Therefore, on the touchstone of Motive and Foundation Policy also, petitioner lacks merits.

17. In the case of **Radheshyam Gupta Vs. U.P.State Agro Industris Corporation Ltd., (1999) 2 SCC 21** the guidance given by Apex Court reads as under:-

“In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations. But if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation and the termination will be bad.”

From perusal of judgment referred above, it appears that if the purpose of the enquiry is not to find out the truth of the allegations of misconduct but to decide whether to retain the employee against whom a cloud is raised on his conduct such enquiry only serves as a motive for the termination. But where the enquiry is held wherein on the basis of the evidence a definite



finding is reached at the back of the employee about his misconduct and such finding forms the basis or foundation of the order of termination, such order would be punitive.

18. Here in the present case, intermittent absence of petitioner for months together persuade the authority to take decision not to continue a dubious employee. Therefore, it is a termination simpliciter, especially when it is read with Regulation 59 of M.P. Police Regulation. Therefore, on the touchstone of Motive and Foundation Policy also, petitioner lacs merits.

19. When case of petitioner is seen from the perspective of Rule 12 of Rules of 1960, Police Regulation 59 and Foundation and Motive Policy then it appears that his unsuitability for the post was writ large and without casting any stigma, he has been removed from the service. Police Authorities have not caused any illegality or arbitrariness in not continuing the service of petitioner and not making him permanent. During probation period itself his services were found to be unsatisfactory.

20. Learned writ Court glossed over the said aspects and erred in holding that departmental enquiry was required before removal of petitioner; whereas, the case did not require holding of departmental enquiry.

21. On the basis of cumulative discussion, casae of appellants/State succeeds and appeal is hereby allowed. Impugned order dated 10/12/2020 passed by learned writ Court is hereby set aside and orders dated 3/8/2015 and 5/2/2016 passed by the departmental Authority; whereby, services of

petitioner were terminated are held to be just and proper. However, it is made clear that such orders are not stigmatic in nature and carry termination simpliciter.

22. Appeal stands allowed and disposed of in above terms.

**(Sheel Nagu)**  
**Judge**

**(Anand Pathak)**  
**Judge**

**jps/-**