
(1991) 08 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11096 of 1981

Anand Swarup Jagdhari

APPELLANT

Vs

U.P. Public Service Tribunal, I and Others

RESPONDENT

Date of Decision : 27-08-1991

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Penal Code, 1860 (IPC) — Section 409, 420, 468, 511

Citation : (1992) 1 AWC 269

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : S.C. Budhwar, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Petitioner was an employee of Government of Uttar Pradesh working as temporary Mines Moharrir. He received a notice dated 26-9-1972 from District Magistrate, Jhansi wherein it was mentioned that he has got an application of his wife Smt. Mohini Devi Srivastava for mining lease, forwarded without disclosing that she is his wife. It was further stated in the notice that mining business requires lot of money. Petitioner was accordingly called upon to show cause and submit his explanation. Petitioner thereafter submitted his explanation. It appears that enquiry was conducted by Anti Corruption Department of the State of U.P., on the basis of which first information report dated 24-9-1974 was lodged against the Petitioner and his wife, Smt. Mohini Devi Srivastava, with the police station for the offences u/s 409, 420, 468 and 511 IPC with the allegations of attempting to obtain mining licence by fraudulent and dishonest means etc. The police, however, submitted a final report. The District Magistrate, Jhansi thereafter, by order dated 3-9-1974 terminated the services of the Petitioner on the ground that his services are no more required. Petitioner filed a writ petition No. 7723 of 1974 before this Court against the order of termination of his services, which was dismissed on 15-9-1977 on the

ground of alternative remedy before the U.P. Public Service Tribunal, Lucknow (hereinafter referred to as the Tribunal). Petitioner accordingly filed claim petition No. 6 (II) of 1978 for cancellation of the order of termination of his services and other consequential relief in connection therewith. Another claim petition No. 5 (II) of 1978 was filed before the Tribunal for deciding the representation in connection with seniority and other incidental matters in connection there with. The Tribunal dismissed both the claim petitions. Claim petition No. 6 (FI) of 1978 was dismissed on the ground that the Petitioner was temporary employee whose services can be terminated without any notice or opportunity etc. and the order of termination is innocuous order without casting any stigma. This writ petition has been filed by the Petitioner against the order of termination of service dated 3-9-1974 and order of the Tribunal passed in connection therewith.

2. Learned Counsel for the Petitioner has argued that the order of termination was founded on the report of vigilance department holding the Petitioner guilty of misconduct which amounts to punishment; hence the order could not have been passed without giving reasonable opportunity of being heard in accordance with Article 311(2) of the Constitution of India. Learned Counsel for the Respondents has however, disputed the aforesaid submission.

3. It is true that the form of the order is not decisive and in order to find out whether the services have been terminated by way of punishment, it is open to the court to ascertain its real character. If a particular act of misconduct is the cause for the order of termination, it cannot be passed without complying with the provisions of Article 311(2) of the Constitution of India even if the termination order is innocuous and non-committal. In the case of *Anoop Jaiswal Vs. Government of India and Another*, the SC has laid down as follows:

Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as Appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution.

Recently Supreme Court in the case of *Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another*, has reiterated the same principle when, it declared as follows:

From the above directions it can be seen that it is well settled that in a case of an order of termination even that of a temporary employee the court has to see whether the order was made on the ground of misconduct if such a complaint was made and in that process the court would examine the real circumstances as

well as the basis and foundation of the order complained of and if the Court is satisfied that the termination of service is not so innocuous as claimed to be and if the circumstances further disclose that it is only a camouflage with a view to avoid an enquiry as warranted by Article 311(2) of the Constitution, then such a termination is liable to be quashed.

The same principle was again reiterated by Supreme Court in the case of Babu Lal Vs. The State of Haryana and others, .

4. The position will be different if the preliminary enquiry or vigilance enquiry into certain allegations" against the temporary government servants are held but, instead of taking punitive action on the basis of the report of the preliminary or vigilance enquiry, the Government passes a simple order of termination. Such an order without anything more may not amount to punishment and under these circumstances the provisions of Article 311(2) of the Constitution of India will not be attracted. In this connection reference may be made to the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , wherein the Supreme Court has laid down as follows:

There was no element of punitive proceedings as no charges had been framed, no inquiry officer was appointed, no findings were recorded, instead a preliminary inquiry was held and on the report of the preliminary inquiry the competent authority terminated the Respondent's services by an innocuous order in accordance with the terms and conditions of his services. Mere fact that prior to the issue of order of termination an inquiry against the Respondent in regard to the allegations of unauthorised audit of Boys Fund, was held does not change the nature of the order of termination into that of punishment as after the preliminary inquiry the competent authority took no steps to punish the Respondent, instead it exercised its power to terminate the Respondent's services in accordance with the contract of service and the rules. (Emphasis supplied).

5. In the instant case, after the vigilance report the Respondents did not terminate the services of the Petitioner but instead took steps to punish the Petitioner by filing FIR for the offences u/s 409, 420, 468, 511 IPC. As mentioned above, after the police has submitted final report the District Magistrate passed an order of termination. Having taken step to punish the Petitioner for the alleged misconduct regarding which vigilance enquiry was set up and FIR was lodged, it is not open to them to terminate the services of the Petitioner without giving him reasonable opportunity of being heard. The Petitioner's case is fully covered by the law laid down by Supreme Court in the cases of Anup Jaiswal, Om Prakash Goel and Babu Lai (supra). Even in the case of State of U.P. v. Kaushal Kishore Shukla (supra) an exception has been made to such a case where after the report of the preliminary enquiry steps are taken for punishing the government servant. As mentioned herein above in the instant case steps were taken after the vigilance report against the Petitioner for punishing him by lodging a FIR. The impugned order of termination of services though couched in

innocuous. language and is non-committal, cannot stand alone. The report of the vigilance and the charges levelled in the FIR being the basis for termination of services, it is clear that the order has been passed by way of punishment without affording reasonable opportunity of being heard to the Petitioner.

6. The writ petition is allowed with costs. The impugned order of termination of services dated 3-9-1974 is quashed. The Respondents are directed to re-instate the Petitioner, with back wages, forthwith, with continuity of service.