

(2001) 01 SC CK 0056

In the Supreme Court Of India

Case No : Civil Appeal No. 5037 of 1997

A.P. State Federation of Coop. Spinning Mills Ltd. and Another	APPELLANT
Vs	
P.V. Swaminathan	RESPONDENT

Date of Decision : 31-01-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : AIR 2001 SC 2659 : (2001) AIRSCW 2557 : (2001) 4 ALLMR 276 : (2001) 2 ARBLR 684 : (2001) 3 CompLJ 363 : (2001) 5 JT 427 : (2001) 4 SCALE 337 : (2001) 7 SCC 454 : (2001) 3 SCR 882 : (2001) 5 Supreme 117 : (2001) 2 UJ 1303

Hon'ble Judges : G. B. Pattanaik, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

1. The respondent had been appointed as General Manager (Finance) under Andhra Pradesh State Federation co-operative Spinning Mills Ltd. for a period of 3 years with effect from 6/8/1991. While he was continuing as such his services stood terminated on 10/06/1993. He, therefore, approached the High Court of Andhra Pradesh by filing a writ petition under Article 226 of the Constitution. The learned Single Judge dismissed the writ petition at the admission stage itself, though after hearing the employer. The learned Single Judge came to the conclusion that the order of termination being innocuous, it cannot be held to be penal in nature and termination of service is in accordance with the contract of service, since 3 months' salary in lieu of 3 months' notice had been paid. The respondent then approached the Division Bench. The Division Bench of Andhra Pradesh High Court allowed the appeal by the impugned judgment in Writ Appeal No. 1071 of 1993. The Division Bench came to the conclusion that a writ would lie against the Andhra Pradesh State Federation of Cooperative Spinning Mills Ltd. as it would be a State within the meaning of Article 12 of the Constitution. It also held that the impugned order, though on the face of it, appears to be innocuous, but if the attendant circumstances leading to the order of termination

are examined, more particularly, the stand taken in the counter-affidavit, the conclusion is irresistible that the order is penal in nature, and since the penalty has been imposed without following any procedure and without affording any opportunity to the delinquent to meet any charges, the said order cannot be sustained. It is this order of the Division Bench which is the subject matter of challenge in this appeal.

2. Mr. K. Ram Kumar, learned Counsel appearing for the appellants did not seriously press the question of non-maintainability of an application under Article 226 of the Constitution against the appellant in view of the several bye-laws and regulations of the appellant society. He, however, seriously challenged the conclusion of the Division Bench that the order of termination was penal in nature on the ground that the order being innocuous, the statements made by the appellants, who was the opposite party in the counter-affidavit, could not have formed the basis of conclusion of the High Court to the effect that the order of termination is penal in nature. In support of this contention, the learned Counsel places reliance on the decisions of this Court in *State of U.P. v. Kaushal Kishore Shukla* [JT 1991 (1) SC 108 = 1991 (1) SCR 29], *Indra Kumar Chopra v. Pradeshik Co-op. Dairy Federation Ltd.* [JT 1992 (4) SC 459 = 1992 (3) SCR 755], *State of U.P. v. Krishna Kumar Sharma* [1997 (11) SCC 437], *Sudhir Vishnu Panvalkar v. Bank of India* [JT 1997 (5) SC 307 = 1997 (6) SCC 271]. According to the learned Counsel for the appellants, since the respondent, who was the petitioner before the High Court, had urged in the writ petition that the order of termination is arbitrary and not supported by any reason, the bank was duty bound to indicate the reasons which were really the motive for the order of termination and could not have been held to be the foundation for the order of termination. The learned Counsel for the respondent on the other hand, contended that a bare look on the assertions made in paragraphs 13 and 14 of the counter-affidavit would indicate what really prompted the authorities to pass the impugned order and as such the conclusion is unassailable.

3. The legal position is fairly well settled that an order of termination of a temporary employee or probationer or even a tenure employee, simpliciter without casting any stigma may not be interfered with by court. But the court is not debarred from looking to the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with, but if the court comes to a conclusion that the so called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature and must be interfered with since the appropriate procedure has not been followed. The decision of this Court relied upon by Mr. K. Ram Kumar also stipulates that if an allegation of arbitrariness is made in assailing an order of termination, it will be open for the employer to indicate how and what was the motive for passing the

order of termination, and it is in that sense in the counter-affidavit it can be indicated that the unsuitability of the person was the reason for which the employer acted in accordance with the terms of employment and it never wanted to punish the employee. But on examining the assertions made in paragraphs 13 and 14 of the counter-affidavit, in the present case it would be difficult for us to hold that in the case in hand, the employer appellant really terminated the services in accordance with the terms of the employment and not by way of imposing the penalty in question.

4. In fact, the letter of the Commissioner for Handlooms and Director of Handlooms & Textiles dated 19/5/1993 was the foundation of the employer to terminate the services and as such the Division Bench of the Andhra Pradesh High Court was justified in holding that the order of termination is based on misconduct, though on the face of it, it is innocuous in nature. We therefore, do not find any infirmity with the said conclusion of the Division Bench of the Andhra Pradesh High Court requiring our interference.

5. The period of appointment of the respondent being for a period of 3 years, it stood expired on 6/8/1994. The order of termination was passed on 10/6/93. Notwithstanding the conclusion that the order of termination is vitiated, the respondent cannot seek enforcement of reinstatement by way of a mandamus but all the same he would be entitled to all his benefits flowing from the terms of appointment for the period 10/6/1993 to 6/8/1994 . The appellant-Federation is therefore directed to pay the necessary pecuniary benefits flowing from this direction of ours to the respondent within a period of 3 months from today after deducting the wages for 3 months which had been paid to him while passing the order of termination in lieu of notice. The appeal is disposed of accordingly.