
(1990) 03 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13553 of 1983

Badri Narain Singh

APPELLANT

Vs

S.D.O. Rasra and Another

RESPONDENT

Date of Decision : 19-03-1990

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1990) 1 AWC 693

Hon'ble Judges : V.K. Khanna, J;R.A. Sharma, J

Bench : Division Bench

Advocate : M.D. Misra and B.P. Srivastava, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Petitioner was Collection Amin, in the service of the Government of U.P. Disciplinary proceedings were initiated against him by charge sheet dated 24-2-1983 for misappropriation of fund and interpolation in the Government record. Petitioner submitted his reply on 23-6-1983. Thereafter vide order dated 29-10-1983 services of the Petitioner were terminated by a simple order on the ground that his services are no longer required. It is this order of termination, which "has been challenged by this writ petition before this Court.

2. Serious charges of embezzlement and interpolation in the Government record were levelled against the Petitioner by chargesheet dated 24-2-1983. These were the charges which required investigation and Government rightly instituted a full fledged disciplinary inquiry against the Petitioner. However, without concluding this inquiry an innocuous order of termination was passed, which was not justified on the facts and circumstances of the case. Although the order of termination is an innocuous order but it has to be read along with the preceding circumstances. In our opinion the circumstances of the case establish that serious charges of misconduct levelled against the Petitioner by the charge sheet dated 24-2-1983 is the foundation for terminating the services of the Petitioner by the impugned order. In Anoop Jaiswal Vs. Government of India and Another,

employee in the middle of the probationary period was called upon to explain the alleged act of indiscipline and after he had submitted the explanation, he was discharged from service. The Supreme Court set aside that order on the ground that charge of indiscipline was a foundation or basis for the order of discharge and laid down as under:

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 the 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 the Appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution.

3. Again in the case of *Nepal Singh Vs. State of U.P. and Others*, , the Supreme Court observed that when the inquiry against a charge of misconduct was dropped and the allegation remained unverified, it is not open to the Government not to proceed Under Article 311(2) of the Constitution by passing an ex facie innocuous order. The relevant passage of the judgment is extracted below:

With the dropping of the enquiry the allegation remained unverified. We may observe that where allegations of misconduct are levelled against a Government servant, and it is a case where the provisions of Article 311(2) of the Constitution should be applied, it is not open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a bother or a nuisance and that therefore it is entitled to avoid the mandate of that provision and resort to the guise of an ex facie innocuous termination order. The Court will view with great disfavour any attempt to circumvent the constitutional provision of Article 311(2) in a case where that provision comes into play.

4. Having instituted the disciplinary proceedings Under Article 311(2) of the Constitution against the Petitioner for serious misconduct, it is not open to the Government to pass an ex facie innocuous order of termination of services of the Petitioner. The charges of misconduct levelled against the Petitioner by a charge sheet dated 24-2-1983 being the foundation and basis for the impugned order of termination of services, the same should not have been passed in violation of Article 311(2) of the Constitution of India.

5. The writ petition is accordingly allowed with costs and the impugned order of termination of service dated 29-10-1983 is set aside. The Petitioner is entitled to be reinstated in his service.