
(2026) 01 UK CK 1912
In the Uttarakhand High Court
Case No : Writ Petition No. 101 (S/S) Of 2017

Ganga Joshi

APPELLANT

Vs

Uttarakhand Parivahan Nigam And Others

RESPONDENT

Date of Decision : 10-01-2026

Acts Referred:

Constitution Of India, 1950 — Article 311

Citation : (2026) 01 UK CK 1912

Hon'ble Judges : Subhash Upadhyay, J

Bench : Single Bench

Advocate : M.C. Kandpal, Devesh Kandpal, Ashish Joshi, Shobhit Joshi

Final Decision : Disposed Of

Judgement

Subhash Upadhyay, J

1. The petitioner who is aggrieved by the termination of contractual engagement as a Conductor has filed the present writ petition challenging the impugned order dated 26.03.2011 on the ground that the same is based on the alleged misconduct and the said order being stigmatic in nature is liable to be quashed as the same has been passed in utter violation of the principles of natural justice without conducting any inquiry. The petitioner has further prayed for considering her case for regularization on the post of Clerk looking into her past services.

2. The brief facts of the case as narrated in the Writ Petition are as follows:

The petitioner after completing the apprenticeship training (clerk) at the Corporation Office at Nainital from 21.10.1986 to 15.03.1988 was engaged as a Conductor on 09.07.1998 on contractual basis and was to be paid 0.35 paise per kilometer. The petitioner deposited Rs. 2000/- as security amount and continued as Conductor. The petitioner was issued a show cause notice on 15.03.2011 stating therein that on a spot inspection of the bus, it was found that in total 75 way bill, the petitioner has by tempering the ticket machine had prepared 1062 tickets with zero balance and such an amount of ₹ 45,407/- was embezzled by

her. The said act amounts to corruption, for which, the petitioner was asked to submit her reply within one week.

3. The petitioner replied to the said notice on 18.03.2011 stating therein that she was not provided any training for operating the ticket machine and due to incidentally pressing some button of the ticket machine the zero balance tickets were printed. The Show Cause Notice dated 15.03.2011 and the reply submitted by the petitioner on 18.03.2011 reveals that a simple Show Cause Notice was issued to the petitioner to explain her case and no inquiry or any opportunity of personal hearing was provided to the petitioner. The Assistant General Manager of the Uttarakhand Transport Corporation vide impugned order dated 26.03.2011 on considering the reply submitted by the petitioner concluded that the petitioner by interpolating in the ticket machine had embezzled an amount of ₹ 45,407/-. He found the petitioner to be guilty of corrupt practice and directed the termination of the contract of the petitioner as Conductor and further ordered for forfeiture of the entire dues and security amount deposited by the petitioner in favour of the Corporation. The impugned order dated 26.03.2011 reads as hereunder:

4. Learned counsel for the petitioner submits that the impugned order being founded on misconduct and being stigmatic in nature is liable to be quashed on the ground that neither any inquiry nor any opportunity of hearing was provided to the petitioner. He submits that the impugned order of termination of Contract is in fact a punishment founded on misconduct, is stigmatic in nature, is vested with the evil consequence of loss of pay and affects the future career of the petitioner. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in the case of Purshottam Lal Dhingra vs. Union of India 1957, SCC online Supreme Court, 5 and submits that in absence of any inquiry and due opportunity of hearing provided to the petitioner, the entire exercise is vitiated in law.

5. Per contra, learned counsel for the respondents-Corporation submits that the petitioner was a contractual employee and the Departmental Service Rules are not applicable on her and, as such, the departmental proceeding was not initiated against the petitioner. He submits that the petitioner was involved in similar incidents earlier, as such, a special team was constituted which intercepted the bus carrying passengers and found that the petitioner by interpolating in the ticket machine, had printed zero ticket and embezzled an amount of ₹ 45,407/-. He further submits that the petitioner was holding a post of trust and due to such conduct of the petitioner, the Corporation was caused a monetary loss. Learned counsel for the respondents referred to para 5 to 11 of the Counter affidavit which read as follows:

"5. That the petitioner was engaged as Conductor on contract basis in the department, the conduct of the petitioner was not good as she was caught carrying two passenger without ticket while she was working as conductor on 24-02-2005 on Rudrapur- Moradabad route for which she was punished vide

order dated 17-03-2005 and again on 22-06-2006 she was caught by the carrying 1 passenger without ticket on 20-05-2006 on Delhi-Haldwani route for which the order of recovery dated 22-06-2006 has been passed.

6. That the petitioner again found carrying one passenger without ticket on 17-06-2006 on Delhi-Haldwani route for which the recovery order dated 01-07-2006 has been passed against the petitioner.

7. That the conduct of the petitioner reviewed as the same was doubtful and the integrity of the employees also under the vigilance of the corporation and ultimately a team of Transport Inspector Sri Naveen Chandra and Km. Vimla Dhami and one office assistant Grade-II Smt. Khadiza Bano was constituted to check the way bills submitted by the petitioner on the routes she performed the duty of conductor. After the inspection the show cause notice dated 15-03-2011 was issued to the petitioner which shows that in total 75 way bills the total no. of 1062 tickets has been prepared on zero (0) balance which amounting Rs. 45407/- and the said amount has been taken off by the petitioner for her personnel use by making the tempering in the ticket machine.

8. That the petitioner has given the reply on 18-03-2011 and after going through the reply of show cause the AGM Kathgodam depot vide order dated 26-03-2011 has discharged the petitioner from service on the ground of serious misconduct committed by her.

9. That the government issued the Government order dated 30-07-2013 which is annexed as Annexure No. 3 of writ petition regarding regularizing the services of the contract and other Employee in pursuance to the government order dated 09-12-2011 keeping in view of the Financial Condition of the Corporation in various stages on the ground of utility and seniority of the employee.

10. That after the Government order dated 30-07-2013 the Head Quarter directed the regions to sent the list of the contract Employee working in the region and the AGM of the concerned depot, has been directed to prepare the report of the Employee.

11. That in the case of the petitioner the report has been sought from the region for reengagement of the petitioner in service on her application. The report dated 03-09-2014 to the Head Quarter stating the earlier misconduct committed by the petitioner and has recommended that the previous record of the petitioner was very bad and she is not legible for reengagement."

6. Learned counsel for the respondents thus submits that looking into the past conduct of the petitioner it was decided that the petitioner is not entitled for re-engagement. He submits that the order of termination was passed in the year 2011 and the subsequent decision of not re-engaging the petitioner looking at her past conduct was passed on 03.09.2014, however, this writ petition has been filed in the year 2017 challenging the termination order dated 26.03.2011, however, there is no challenge to the subsequent order dated 03.09.2014, as

such, the writ petition is liable to be dismissed.

7. Learned counsel for the respondents placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of (i) V.Ramana vs. A.P.S.R.T.C. & others, 2005 (7) SCC 338, (ii) U.P.S.R.T.C. vs. Suresh Pal, 2006 (8) SCC 108, (iii) U.P.S.R.T.C. vs. Gopal Shukla, 2015 (17) SCC 603 and U.P.S.R.T.C. vs. Sanjay Kumar Nautiyal, 2008 12 SCC 131 and submitted that in cases where trust was broken and amount was embezzled by the bus conductor, the Hon'ble Apex Court has upheld the decision of the departmental authority in terminating the services of the employees.

8. Heard learned counsel for the petitioner, learned counsel for the respondents and perused the record.

9. A perusal of the impugned order and the stand taken by the respondents in their counter affidavit in unequivocal terms lead to a conclusion that the services of the petitioner has been terminated on the ground of misconduct. The impugned order holds the petitioner to be involved in corrupt practice and the services are terminated by forfeiture of the entire dues and security amount of the petitioner in favour of the corporation.

10. Moreover, the respondents in their counter affidavit have taken a specific stand that the petitioner was found to be ineligible for re-engagement on account of her past conduct. Thus, the order of termination of contract of the petitioner is founded on misconduct, stigmatic and could not have been passed without holding an inquiry and following the principle of natural justice. Hon'ble Apex Court, in the case of Purshottam Lal Dhingra vs. Union of India (supra) para 28 has held as hereunder:

"28. The position may, therefore, be summed up as follows: Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. Union of India [(1953) 1 SCC 420: 1953 SCR 655]. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in Shyam Lal v. State of Uttar Pradesh [(1954) 1 SCC 572: (1955) 1 SCR 26]. In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh v. Union of India, [58 Bom LR 673: AIR 1956 Bom 455] wholly irrelevant. In short,

if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "terminate" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank, or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied

with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

11. In *Swati Priyadarshini vs. State of M.P.*, 2024 INSC Page 620 decided on 22.08.2024, the Hon'ble Apex Court dealing with the case of termination of services of contractual employee on the ground of misconduct by referring to the judgment of the Court in *Purshottam Lal Dhingra vs. Union of India* (supra) quashed the order of termination as the same visit the appellant with evil consequences and would create hurdles for the re-employment.

12. Similarly, the Hon'ble Apex Court in the case of *U.P.S.R.T.C. vs. Brijesh Kumar*, reported in, 2024 INSC 638 decided on 28.08.2024, in para 19 has held as hereunder:

"19. The services of the respondent have been determined solely on the ground of misconduct as alleged but without holding any regular inquiry or affording any opportunity of hearing to him. The termination order has been passed on the basis of some report which probably was not even supplied to the respondent. No show cause notice appears to have been issued to the respondent. Therefore, the order of termination of his services, even if on contractual basis, has been passed on account of alleged misconduct without following the Principles of Natural Justice. The termination order is apparently stigmatic in nature which could not have been passed without following the Principles of Natural Justice. "

13. I have also perused the judgments relied by the learned counsel for the respondents. In the aforesaid cases, a proper departmental inquiry was held against an employee and on charges of proved misconduct, the punishment was imposed by the disciplinary authority and the Hon'ble Apex Court, as such, held that in case of proved misconduct of a corruption, the Court cannot substitute its own decision and decision taken by the departmental authorities should not be interfered with. The facts of the cases relied on by the counsel for the respondents are different as in the present case the issue involved is that as to whether order of termination is simplicitor or is stigmatic in nature and if the same is founded on misconduct as to whether an inquiry and proper opportunity of hearing was to be provided to the petitioner prior to the passing of the impugned order. The Hon'ble Apex Court in *Purushottam Lal Dhingra* (supra) and in other cases referred above has dealt with the issue as to what procedure is to be followed even in case of a contractual employee whose services are terminated on the ground of misconduct. Admittedly, the contractual employment of the petitioner is terminated on the ground of misconduct and the said very fact is mentioned in the impugned termination order itself. Moreover, the said termination order has visited with evil consequences of forfeiture of loss of pay and future employment, as such, the same could not have been passed without holding an inquiry and following the principles of natural justice. In the considered view of the Court, the termination order is founded on misconduct and is stigmatic order, as such, is a punishment and the requirement of Article 311 of the Constitution of India were to be followed.

14. In view of the above, the impugned order of termination dated 26.03.2011 being founded on misconduct and being stigmatic in nature cannot be sustained in the eyes of law. Accordingly, the order dated 26.03.2011 is quashed. The petitioner's status shall be restored to the same position as it was prior to the issuance of the impugned order dated 26.03.2011. The petitioner shall be entitled to 50% of the wages drawn by her. The respondents are given a liberty to pass an appropriate order after affording full opportunity of hearing to the petitioner, in accordance with law. The said exercise shall be completed within a period of three months from the date of production of certified copy of this Order before the authority concerned.

15. Learned counsel for the petitioner has also prayed that a writ of mandamus be issued commanding the respondents to regularize the services on the post of Clerk. As per the own case of the petitioner, she was engaged as a Conductor on contractual basis and, her services were terminated from the post of Conductor and, as such, the prayer made by the petitioner for her regularization on the post of Clerk cannot be granted.

16. It is however provided that the petitioner shall be at liberty to claim her regularization on the post of Conductor after the conclusion of the proceedings against her.

17. With the above observations, the writ petition is finally disposed of.