
(2003) 08 UK CK 0014

In the Uttarakhand High Court

Case No : Writ Petition No"s. 105, 273, 277 and 278 (S/B) of 2002

Ishwar Singh and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (2003) 08 UK CK 0014

Hon'ble Judges : Irshad Hussain, J

Bench : Single Bench

Advocate : Alok Singh and A.D. Tripathi, for the Appellant; N.C. Gupta, Learned Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Irshad Hussain, J.—In all these petitions legality of the termination orders of the Petitioners passed by Respondent, the Senior Superintendent of Police, contained in Annexure-1 have been questioned. The Petitioners have also prayed for a writ, order or direction in the nature of mandamus commanding and directing the Respondents not to disturb the Petitioners during training period and allow them to appear in final examination.

2. Petitioners were selected on the post of constables in police department and after issuing their numbers they were sent for training by "Rawangi Aadesh" on 18.10.2001 and since 20.10.2001 they were under training and on completion they were to appear in final examination. Petitioners have also rendered their services in the general elections held in the year 2002 for state legislative assembly. Under the provisions of the U.P. Temporary Government Servants (Termination of Services) Rules, 1975, their services were terminated forthwith and they were to claim a sum equivalent to the amount of their pay plus allowances, if any, for the period of the notice at the same rate on which they were drawing immediately before the termination of their services. Petitioners alleged that the orders of the termination have been passed arbitrarily and

illegally without showing any cause against the provisions of Article 311(2) of the Constitution of India and these being illegal and without jurisdiction need to be quashed.

3. The petitions have been resisted mainly on the ground that during the course of the recruitment certain information about their educational qualifications, conduct, character and antecedents and other relevant matters was required and the Petitioners were also apprised that they should furnish true and correct information. The Petitioners furnished the requisite information supported by an affidavit. On verification, however, it was found that the Petitioners were involved/ or have been prosecuted in criminal cases, information of which was suppressed deliberately. The relevant government order which relate to the character verification etc. of the new incumbents in the service require that if any appointee furnishes wrong and incorrect information his recruitment/ appointment may be cancelled/terminated/ removed as the case may be. Since the services of the Petitioners were merely temporary orders of termination in accordance with the U.P. Temporary Government Servants (Termination of Services) Rules, 1975 were passed and that the impugned orders are just, proper, legal and within the jurisdiction of the appointing authority.

4. Heard Sri Alok Singh, Sri A.D. Tripathi, learned Counsel for the Petitioners and Sri N.C. Gupta learned Standing Counsel.

5. At the outset the status and other information received about the criminal cases in regard to the Petitioners may be reproduced for convenience in the chart as below:

Petition No.	Name of Petitioner	Date of Termination	on order	Criminal case(s)	Under section(s)	Result.
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105/02	Ishwar Singh	9.3.2002	S.T. No. 209/95	394 IPC, 3/2/5 SC/ST Act		Acquittal on 12.3.2001
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	Dinesh Kumar	9.3.2002	Crl. Case No. 527/01	147, 323 IPC		Acquittal on 24.10.2001
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	Yogendra Singh	9.3.2002	Crl. Case No. 1881/1999	323, 504, 506 (2)		IPC Acquittal on 17.11.2001
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	Atul Kumar Verma	9.3.2002	Case Crime No. 477/2001	3/6 Prevention of unfair means (Examinations) Act.		Accused Pleaded guilty and was fined Rs. 250/- on 18.8.01
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	Anil Kumar	9.3.2002	Case Crime No. 695/1998	147,323, 336, 225, 511, 504 IPC and Section 7 Crl. Law Amendment Act		Pending C.S. No. 302/98, dated 29.08.98
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278/02	Devendra Kumar	8.4.2002	Final report 258/2001	420, 465, 467, 460, 120B IPC		Final report accepted on 18.8.2001 by 1st Class Magistrate, Roorkee.
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273/02 Kuldeep Kumar Gupta 8.4.2002 Final report 15/1999 147, 148, 308 324, 504 IPC and 3(1)(x) SC/ST Act. Final report accepted on 31.3.2001 by A.C.J.M. Devband.

277/02 Rishi Sharma 8.4.2002 Crime No. 74/99 CrI. Case 1151/99 323, 504, 506 427 IPC Acquittal on 4.4.2001 by 1st ACJM, Haridwar.

6. It is an indubitable fact that the Petitioners were named as accused and were involved in criminal cases described in the chart above and each of them have in pursuance of the requirement to furnish information regarding criminal cases reiterated in their affidavits that they were neither named as accused in any non-cognisable or cognisable offence nor any criminal case was registered against them, nor investigation against them in any criminal case was pending nor they were prosecuted by a competent court for commission of criminal offence. In fact, no information whatsoever, about the criminal cases was given in their affidavits. The facts about their involvement in above criminal cases came to light when verification of their character was made pursuant to relevant G.O. No. 4674 II-B-321-1947 dated April 28, 1958, copy of which is annexed to the counter affidavits in these petitions. The relevant information about these criminal cases was also furnished on the record. Learned Counsel for the Petitioners submitted that all the Petitioners except Atul Kumar Verma were either acquitted or discharged in the criminal cases or final reports were submitted by the police after investigation and even Petitioner Atul Kumar Verma was only awarded fine of Rs. 250/- on his plea of guilty for an offence punishable u/s 3/6 of the Prevention of Unfair Means (Examinations) Act and since the Petitioners were not accused of offences of moral turpitude, the orders terminating their services without giving show-cause notice and affording them an opportunity of hearing were not legally justified. It was also submitted that if due to enmity false cases were instituted against the Petitioners and which have not resulted in their conviction for offences involving moral turpitude, the orders of termination without taking into consideration these aspects of the matter, cannot be justified. In support of the argument reliance was placed on the following reported decisions:

1. Chandra Prakash Shahi v. State of U.P. and Ors. 2000 (3) Education and Service Cases 1625 (SC),
2. Regional Manager, Bank of Baroda Vs. The Presiding Officer, Central Govt. Industrial Tribunal and Another, ,
3. Satish Kumar Shukla Vs. Union of India and Others, .

7. Learned Standing Counsel for the Respondents has, however, submitted that the Petitioners were temporary government servants and their services could be terminated at any time by giving a month's notice in terms of Uttar Pradesh Temporary Government Servants (Termination of service) Rules, 1975 without assigning any reason and since the orders of termination were not punitive in nature there was no legal requirement to either issue a show-cause notice to the

Petitioners or to conduct formal enquiry before passing the termination orders. It was also contended that the Petitioners in the face of the facts of the case were not entitled to be proceeded against by following the procedure prescribed under Article 311(2) of the Constitution.

8. At the outset it need to be mentioned that the Petitioners were appointed in a temporary capacity and their impugned termination orders were passed under the provisions of the U.P. Temporary Govt. Servants (Termination of Service) Rules, 1975. Temporary Govt. Servants have no right to hold the post and their services are liable to be terminated at any time by giving them one month's notice without assigning any reason in accordance with the terms and conditions of the service or the relevant rules. In case decision is taken for punitive action the competent authority may hold a formal enquiry by framing charges and giving opportunity to the government servants in accordance with the provisions of Article 311 of the Constitution of India. It is also well settled that the court can lift the veil of an innocuously worded order to find whether it is as innocent as worded. If misconduct is the foundation to pass the order then an enquiry into the misconduct should be conducted and an action according to law should follow. However, if it is mere motive it is not incumbent upon the competent authority to have the enquiry conducted and the services of the temporary employee could be terminated in terms of the order of the appointment or rules, giving month's pay or salary in lieu thereof. The Apex Court has considered the scope and nature of the power of the government exercisable in terminating the service of a government servant in accordance with the provisions of the above Rules of 1975. *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*, and *Triveni Shankar Saxena Vs. State of U.P. and others*, are two decisions where on consideration of the nature of the termination orders and the application of the said rules, the Apex Court held that the termination simpliciter is not a penalty and the Govt. has power and jurisdiction under the rules to terminate the service of a temporary government servant without conducting an enquiry and such termination does not amount to termination for misconduct. The decisions in these cases are being followed by the Apex Court consistently.

9. In the instant case, the G.O. dated April 28, 1958 on the subject relating to verification of character of the government servant, at first appointment, require furnishing of information about the character antecedents etc. of the new appointees and if the incumbent is found to have made a false statement in this connection he is liable to be discharged forthwith without prejudice to any other action that may be considered necessary by the competent authority. Admittedly the Petitioners have suppressed information about their involvement in criminal cases and they filed false affidavits before the appointing authority. Verification of their character divulged the above information as disclosed in the chart and the appointing authorities of the Petitioners thus, have had jurisdiction to exercise power under the above Rules of 1975 and to pass the order of termination simpliciter thereby terminating the services of the Petitioners forthwith. Question of any show-cause notice or affording any opportunity to the Petitioners in the

circumstances did not arise and it was immaterial that the Petitioners were not finally convicted of any offence involving moral turpitude. On the face of the facts of the cases, the Petitioners cannot be benefited from the reported decisions, which have been put in to service on their behalf by the learned Counsel. The reasons are that in the first mentioned decision in the case of Chandra Prakash Shahi (Supra) also there is no deviation from the principle as laid down by the Apex Court in the cases of Kaushal Kishore and Triveni Shankar Saxena (Supra). The Apex Court had, in the cited reported decision, reiterated that "an order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action. If it was a factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary enquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary enquiry." In the instant case, neither any enquiry about any misconduct was held behind the back of the Petitioners nor serious misconduct against the Petitioners was taken as a factor for decision to terminate their services. Instead, the Petitioners were found unsuitable for the post of police constable in view of their giving false information about their antecedents and this being a factor of general unsuitability of the Petitioners, the action of the competent authority to terminate their service under the provisions of above Rules of 1975 was legally justified.

10. As regards the other decision of the Apex Court in the case of Regional Manager Bank of Baroda, the same was directed not to be treated as a precedent and it was thus stated:

We make it clear, this order of ours is rendered on the peculiar facts and circumstances of the case as mentioned earlier and will not be treated as a precedent in future.

11. This aspect of the matter was taken not of in a recent decision by the Apex Court in the matter of Kendriya Vidyalaya Sangthan v. Ram Ratan Yadav AIR 2003 SCW 1126 and further, the termination of services of the Appellant, a teacher, on account of suppression of fact that criminal proceeding was pending against him at the time of appointment was held to be proper and justified. The facts of the reported case were that the Appellant-teacher was on getting the appointment letter; required to fill in the attestation form and as against relevant column he mentioned "No" despite the fact that a criminal case was pending against him in the court of law. On the ground of suppression of factual information in the attestation form, his services were terminated. He approached the Central Administrative Tribunal challenging the order of termination, which dismissed the O.A. at the admission stage itself. Aggrieved by the order, writ petition was filed and the Division Bench of the High Court set-aside the order of

termination by observing inter-alia, that the offence alleged did not involve moral turpitude and even otherwise the criminal case against him had been withdrawn by the State Government. The High Court took support of the judgment of the Apex Court in the case of Regional Manager, Bank of Baroda (Supra). On an appeal against the order of the High Court, the Apex Court set-aside the impugned judgment of the High Court and restored the order passed by the Tribunal on the grounds that the employee suppressed the fact that criminal proceedings were pending against him at the time of the appointment; that the plea that he could not understand the relevant clause in the attestation form requiring information as to his antecedents was not tenable and that the fact that the proceedings were for offence not involving moral turpitude and these were otherwise subsequently withdrawn was not, at all, relevant. It was also observed that it was unfortunate that the High Court treated the judgment of the Apex Court as a precedent, despite the caution in the judgment itself that it will not be treated as precedent in future. This recent decision of the Apex Court has full relevance to the facts of the instant case in saying that the similar arguments of the learned Counsel for the Petitioners are misconceived and the Petitioners cannot be benefited by the decisions cited at the bar.

12. So far as the dictum laid down by the Lucknow Bench of Allahabad High Court in the case of Satish Kumar Shukla (Supra) mentioned at serial No. 3, it is to be noted that it was also a case of termination simpliciter under the provisions of Central Civil Services (Temporary Services) Rules, 1965 and these rules did not stipulate issuing of show-cause notice and giving an opportunity to the temporary employee before taking any action thereunder. In that case a constable of Central Reserve Police Force faced termination of his services on the ground of suppression of the fact of pendency of criminal case against him and in which later on an amicable settlement was arrived at and he was acquitted. The impugned order of termination was held to be not justified in view of the fact that the constable was not accused of an offence of moral turpitude and was not convicted before he joined the services and also for the reason that he was not given an opportunity to submit an explanation about his conduct in not giving information of the criminal case against him. In the face of these facts of the case and in view of the decisions of the Apex Court as referred above, the dictum as laid down in this decision cannot be applied to the facts of the instant case for the benefit of the Petitioners. In other words, the termination being termination simpliciter under the relevant Rules of 1975 there was no requirement of seeking any explanation after issuance of show-cause notices to the Petitioners and the impugned termination orders were, therefore, passed in exercise of the jurisdiction vested in the appointing authority and therefore, these do not suffer from any legal infirmity and are not liable to be quashed.

13. In view of the above, these writ petitions lack merit and are liable to be dismissed. I order accordingly. No order as to costs.