
(1990) 08 AHC CK 0041
In the Allahabad High Court
Case No : Writ Petition No. 6548 of 1988

Ishwardin Shukla

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 20-08-1990

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1990) 08 AHC CK 0041

Hon'ble Judges : S.H.A.Raza, J

Final Decision : Allowed

Judgement

S.H.A. Raza, J.—A short point involved in this petition is as to whether the order of termination passed against the petitioner contained in Annexure 3 to the writ petition was as a measure of punishment or the same was passed in accordance with Rules providing the service conditions of the petitioner. The order of the U.P. Public Services Tribunal, dismissing the claim petition of the petitioner, has also been challenged in this petition.

2. The petitioner was appointed as Collection Amin on 15th November, 1963 and his name stood at serial No. 4 in the seniority list. It has been averred in the writ petition that on 10/11/1979 he was served with a show cause notice, inter alia, on the ground that his collection was less than the target on which an explanation was called upon as to why his services be not terminated, to which the petitioner submitted a reply. Thereafter the Tahsildar directed the concerned Naib Tahsildar to submit a report and on 26/2/1979 a report was submitted by the S.D.O., Patti to the District Magistrate, Pratapgarh recommending the removal of the petitioner from service. On 3rd March, 1979 the District Magistrate, Pratapgarh terminated the services of the petitioner on the basis of the report submitted by the S.D.O., Patti. The petitioner thereafter preferred an appeal/representation to the Commissioner, Faizabad Division and he rejected the same. Thereafter he approached the U.P. Public Services Tribunal which by means of its order dated 9/11/1987 dismissed the said reference. Aggrieved against which this writ petition

has been filed mainly on the ground that the order of termination has been camouflaged into an order of punishment and hence the same deserved to be struck down. The order of the U.P. Public Services Tribunal was also challenged on the ground that the Tribunal committed a manifest error of law in not taking into account that the order of termination amounted to an order of punishment.

3. In paragraph 23 of the written statement/counter affidavit filed before the Public Services Tribunal on behalf of opposite parties it was indicated that the work of the petitioner was never commendable and on 1611978 he was removed from service for the reason that his collection was not upto the mark. During the year 197576 and 197879 he was awarded adverse entries. It was further averred in paragraph 25 of the written statement that the collection made by the petitioner was never upto the mark as a result of which on 12121978 the S.D.O. in his report stated that his work was unsatisfactory and he was given severe warning. On 19121978 the Tahsildar reported that he was a careless Amin and the petitioner was warned to that effect. On 311979 the Tahsildar again reported that the petitioner failed to comply with his order and has been acting carelessly in the matter of collection and he showed no improvement. Thereafter in paragraph 26 of the counter affidavit it was indicated that on 1011979 he was served with a show cause notice. The petitioner submitted his reply on 2711979 upon which a report was called from the Naib Tahsildar. The report indicated that the explanation submitted by the petitioner was not sufficient to absolve him. Thereafter the S.D.O. submitted a report to the District Magistrate and the District Magistrate upon the said report terminated the services of the petitioner by issuing one month's notice to the petitioner.

4. Learned Standing Counsel submitted that as the work of the petitioner was found unsatisfactory, his services were terminated in accordance with Rules governing the service conditions of the petitioner. A perusal of the averments made in the written statement/counter affidavit filed before the Public Services Tribunal would indicate that on 1011979 the petitioner was served with a show cause notice. Thereafter an adverse report was submitted against him by the Naib Tahsildar as well as S.D.O., Patti on 2621979 and on the basis of the said report the services of the petitioner were terminated. The petitioner had earned adverse entries in the years 197576 and 197879. The proximity of the acts between the issue of show cause notice, the submission of the reports by the Naib Tahsildar as well as S.D.O., Patti and the order of termination show that the services of the petitioner were terminated for the reason of the fact that his collection was not upto the mark; he was a careless person and had earned several adverse entries as well as was warned several times but he failed to improve his work.

5. The U.P. Public Services Tribunal relying upon the case of Bishan Lal Gupta v. The State of Haryana and others (AIR 1978 SC 363) in which it was held that the show cause notice issued in that case was intended to arrive at a finding on the desirability of continuance of a person in service and more serious action not

being contemplated no stigma was involved in the notice; the order of termination was innocuous in nature and did not attract the provisions of Article 311 of the Constitution of India. In the case of Bishan Lal Gupta (supra) the Supreme Court indicated as under:

?Where a probationer's services are terminated by an innocuous order after holding summary inquiry only for determining his suitability to continue in service and giving him ample opportunity to answer whatever is alleged against him, the Supreme Court would certainly not interfere under Article 136 on a merely technical plea that the case deserved a fuller enquiry. It must be shown that such an enquiry could serve a useful purpose. The facts must indicate that, if this fuller inquiry was held, the Government servant will be found to be blameless. Otherwise, further prolongation of such litigation is pointless.

It is only if patent facts disclose a serious enough infringement of law as well as insurability damaging and underserved consequences, upon a probationer that the Court's conscience could be so moved as to induce it to interfere under Article 136. It, however after going into the particular facts and circumstances of a case, the court finds, that the inquiry conducted and notices given were intended only arrive at a finding on the desirability of continuing a person in service, and more serious action was not contemplated, it means that no stigma was intended to be cast. It may be that, in some cases, the mere form does not indicate the exact nature and result of the proceedings judged by its nature, and its effects upon a probationer. To some extent the courts are bound to take into account what the incontrovertible evidence disclosed. It may conclude that, if the reputation of a probationer was to some degree affected by what took place, yet, if those facts could not reasonably be disputed by him, it provided a sufficient ground for terminating his services. There is, in such cases, no injustice.?

6. The allegations made in the writ petition as well as the averments made in the written statement/counter affidavit are quite distinguishable from the facts of Bishan Lal Gupta's case (supra). The consequences of events starting from issuance of the show cause notice, reply of the petitioner report of the Naib Tahsildar as well as of the S.D.O. recommending that on account of his inefficiency he should be removed from service and the order of the District Magistrate terminating the services of the petitioner within less than three months indicate that the services of the petitioner were terminated for the reason of the fact that he was inefficient and that his work regarding collection of dues was not upto the mark, he was given adverse entries into his character roll and was warned to improve his work which he failed to do, indicate that the foundation of the order was to punish the petitioner. Only the issue of show cause notice was not the solitary instance but there were several other factors including the adverse entries as well as the report of the Naib Tahsildar and of the S.D.O. which prompted the District Magistrate to terminate the services of the petitioner.

7. In the case of Harpal Singh v. State (1988 SCD 259) the case of the petitioner was that he had earned four adverse entries in the years 197677, 197778, 197879 and 197980. After those entries were made, by means of the order dated July 24, 1979 his services were terminated. Against the adverse entries in his character roll he filed a claim petition before the U.P. Public Services Tribunal while against the order of termination of service he approached this Court by filing a writ petition. The claim petition before the Tribunal was still pending while the writ petition was dismissed. Against the order passed by this Court the petitioner filed an appeal before the

Supreme Court.

Mr. Justice Ranga Nath Misra and

Mr. Justice G.L. Oza allowed the said appeal and quashed the order of termination. In the aforesaid judgment it was indicated as under:

?A seven Judge Bench of this Court in Shamsheer Singh v. Punjab (1975)1SCR814 laid down:

?No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated, it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct or inefficiency or for similar reason without a proper enquiry and without his getting reasonable opportunity of showing cause against his discharge, it may in a given case amount to removal from service within the meaning of Article 311 (2) of the Constitution. Law is well settled by a catena of decisions of this Court that even if the adverse order is innocuous and does not show any element of stigma, the Court has jurisdiction to peer below to find out what exactly is the foundation of the order. See for instance Jagdish Mitter v. Union of India, AIR 1964 SC 449. The apparent innocuous order would be linked with the stigma if the link is not for to seek and the respondent has disclosed what exactly were the grounds for making the order.?

8. The facts leading to the termination of the services of the petitioner are more or less similar to that of the above case of Harpal Singh (supra), hence there is no reason as to why this writ petition be not allowed.

9. In view of what has been indicated hereinabove the writ petition is allowed. The order of termination dated 331979 passed against the petitioner contained in Annexure 3 and the order dated 2031980 contained in Annexure 4 as well as the judgment and order dated 9111987 (Annexure 1) are quashed. The opposite parties are directed to reinstate the petitioner in service with all consequential benefits. However, it will be open for the opposite parties to proceed in accordance with law. No order is made as to costs.