

(1992) 02 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11199 of 1988

Jai Prakash Sharma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 21-02-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311, 311(3)

Citation : (1992) 2 AWC 952

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : A.N. Misra, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh, J.—By means of present petition under Article 226 of the Constitution the Petitioner seeks issuance of a writ of certiorari quashing the order dated 12-1-1988, whereby his services were terminated in the purported exercise of powers under U.P. Government Temporary Servant (Termination of Service) Rules, 1975 by offering him one month's pay in lieu of one month's notice on the ground that his services were no longer required.

2. The Petitioner was enlisted in police force as a constable Civil Police in the year 1986. It appears that while he was posted in the district of Jhansi he was sanctioned 7 days casual leave with effect from 14-11-1987 on the ground of his mother's illness. After expiry of the leave period the Petitioner resumed his duties but on 7-12-1987 he again applied for leave on the ground of illness of his wife, who, it is said was admitted in a hospital at Sultanpur In support of his leave application the Petitioner had attached a telegram which he received regarding her illness and admission in the hospital. It appears from the letter dated 11-12-1987 written by Senior Superintendent of Police, Jhansi to Superintendent of Police, Sultanpur that the former doubted the genuineness of the message contained in the telegram and accordingly he by his aforesaid letter required the Superintendent of Police, Sultanpur to get an enquiry made in the

matter and let him know about it. It transpires from the report Annexure-RA-I to the rejoinder affidavit that the enquiry could not be made because of the reason that the Petitioner's village Birshahka Pura did not fall within the limits of police station Gosainganj, the police of which were required to enquire into the matter and the only information that was sent back to the Senior Superintendent of Police Jhansi was to the effect that village Birshahka Pura was not within the limits of police station Gosainganj, Sultanpur and it was on this report that the Senior Superintendent of Police, Jhansi directed the Head Constable in his office to "put up discharge notice with one month pay" It is in this background that the impugned order of termination was passed.

3. I have heard learned Counsel for the Petitioner and the learned Standing Counsel.

4. The impugned order has been challenged inter alia on the ground that it was passed by way of punishment without affording the Petitioner an opportunity of hearing and that it was arbitrary and discriminatory and is in violation of Article 14 of the Constitution in that the Petitioner's service were terminated even though "junior constables appointed after Petitioner and placed much below in rank and service and placed similarly and equally" were allowed to be retained in service, as is evident from para 20 of the petition which has not been denied.

5. Having given my anxious consideration to the points involved in the case I am of the opinion that the impugned order is not sustainable in law even if it is held, as contended by the learned Standing Counsel, that the services of the Petitioner were not terminated by way of punishment and that he was not entitled to an opportunity of hearing within the meaning of Article 311 of the Constitution. The Petitioner being a temporary government servant his services were no doubt liable to be terminated in accordance with the provisions contained in the rule referred to in the impugned order and as held by the Hon'ble Supreme Court in State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , he was not entitled to an opportunity of hearing but the question is not so much of a right of temporary government servant to an opportunity of hearing before his services are terminated on the ground of unsuitability as it is of an obligation on the part of the appointing authority to act reasonably and fairly in consonance with the principles of natural justice which is regarded as a facet of Article 14 of the Constitution in order to arrive at a conclusion as to whether or not a temporary government servant, whose services are sought to be terminated on the ground of unsuitability, was suitable for the post. There is no gain saying the fact that acting in tune with the principles of natural justice by an Administrative Authority in its decision making process as to whether or not a temporary government servant is suitable to be retained in service would be in larger public interest for that would certainly be conducive to the sustenance of faith in the "Administration" which, I believe, is of paramount importance for the success of democracy. The rule of law that Article 14 of the Constitution aims at achieving, would be better observed by the State and its delegates vis-a-vis the temporary

government servants if the competent authorities follow a non-discriminatory procedure in tune with the principle of natural justice in all its facets, in regard to dispensation of their services on the ground of unsuitability. Such a procedure is bound to sub-serve larger public interest and therefore, it ought to be observed as a rule "of public policy". The services of a temporary Government servant may be lawfully dispensed with either on the ground of the abolition of post other than abolition actuated by ill-will and malice and brought about with a view to dispense with the services of an inconvenient temporary government servant or because the purpose and work for which appointment was made, stood exhausted or on the ground of unsuitability. Termination on the ground of unsuitability would be fully justified if it is brought about reasonably and not arbitrarily and capriciously. Such a course would also help a court of law, where the order of termination is challenged to ascertain, whether State agency has acted reasonably in consonance with the rule of law mandated by Article 14 of the Constitution while exercising its powers conferred under the contract or Service Rule to terminate the services of a temporary Government Servant.

6. In *Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another*, , the Hon"ble Supreme Court was considering a provision which empowered the Corporation to terminate the services of an employee by giving him one month's notice or pay in lieu thereof, in the case of temporary employee who have completed one month's service, and one day's notice or pay in lieu thereof in the case of temporary employees in the first month of their service. The Hon"ble Supreme Court was pleased to hold as under .

"In this context, the learned Counsel also questioned the termination order from another angle. In that order, it is mentioned that the services of the Petitioner are no longer required, therefore, they are terminated. But from the record, it is clear that juniors to the Petitioner are retained and they are continuing in service. In the affidavit, it is clearly mentioned that juniors whose names are given there are retained in service in violation of Articles 14 and 16 of the Constitution. In the counter affidavit only a vague reply is given simply stating that the averments made by the Petitioner are not correct. In *Smt. Usha Rani Datta, Aaya/attendant and Others Vs. State Industrial Court, Indore and Others*, , it is observed that "if it is discharged simplicitor, it would be violative of Article 16 because a number of store keepers junior to the Appellant are shown to have been retained in the service." Likewise in *Jarnail Singh and Others Vs. State of Punjab and Others*, it was observed as under (at p. 1635):

In the instant case ad hoc services of the Appellants have been arbitrarily terminated as no longer required while the Respondents have retained other surveyors who are juniors to the Appellants. Therefore, on this ground also, the impugned order of termination of the services of the Appellants are illegal and had been in contravention of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution of India.

After a careful perusal of the record we are satisfied that the juniors to the Petitioner are retained. Therefore, on this ground also the termination order is liable to be quashed.

7. Requirement of acting in tune with the principles of natural justice while ascertaining as to whether or not a temporary or ad hoc government servant is suitable for the post, has more succinctly been described by the Hon''ble Supreme Court in *Sumati P. Shere v. Union of India* 1989 SC 1431, as would be clear from the following passages of the judgment of Supreme Court in the said case.

5. We must emphasize that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give and take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability.

6. The counsel for the Respondents argued that the Appellant being temporary servant, no enquiry need be held for her removal if her services are not upto the mark. He placed reliance on the decisions of this Court in 1 (i) *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, and (ii) *Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali*, . Both the cases pertain to the termination of a temporary Government servant who was on probation. The termination was on the ground that his work had never been satisfactory and he was not found suitable for being retained in the service. This Court held that the termination of service in such cases on the ground of unsuitability for the post does not attract Article 311(3) of the Constitution.

7. There cannot be any dispute about this proposition. We are not laying down the rule that there should be a regular enquiry in this case. All that we wish to state is that if she is to be discontinued it is proper and necessary that she should be told in advance that her work and performance are not upto the mark.

8. In *Kaushal Kishor's* case (*supra*) too, the Hon''ble Supreme Court has held in paragraph 10 of the report that "... Before passing order of termination the Competent Authority may hold enquiry in fairness to ascertain whether the temporary servant should be continued in service or not." In the same very paragraph the Supreme Court has discussed the decision of a Constitution Bench in *Jagdish Mitter v. The Union of India* AIR 1964 SC 445 and recognised the need of preliminary enquiry before passing an order of termination of the services of a temporary government servant on the ground of unsuitability as is evident from the following observation which the Hon Supreme Court itself has quoted from *Jagdish Mitter's* case (*supra*).

There is no element of punitive proceedings in such an enquiry; idea in holding such an inquiry is not to punish the Temporary servant but just to decide whether he deserves to be continued in service or not. If as a result of such an enquiry, the authority comes to the conclusion that the temporary servant is not suitable to be continued, it may pass a simple order of discharge by virtue of the powers conferred on it by the contract or the relevant rule; in such a case, it would not be open to the temporary servant to invoke the protection of Article 311 for the simple reason that the enquiry which ultimately led to his discharge was held only for the purpose of deciding whether the power under the contract or the relevant rule should be exercised and the temporary servant discharged.

9. It is evident from the aforesaid authorities of the Hon'ble Supreme Court that the services of the Petitioner were arbitrarily terminated without ascertaining his suitability for the post in tune with the principles of natural justice while retaining his juniors in service. The preliminary enquiry sought to be made by the Senior Superintendent of Police, Jhansi through letter dated 11-12-1987 as to genuineness of the contents of the telegram on the basis of which the Petitioner had applied for casual leave w.e.f. 7-12-1987 could not be made as is evident from the report dated 4-1-1988 (Annexure-R.A.-2) submitted by the Superintendent of Police, Sultanpur on the basis of the report dated 1-1-1988 submitted by the local police of Cosainganj Police station. There was thus no basis to presume that the ground on which leave applied for by the Petitioner was false. There was no other material before the Senior Superintendent of Police, Jhansi, on the basis of which it could reasonably be said that the Petitioner was unsuitable for the post. Something could have been said had it been found that the Petitioner had applied for casual leave on 7-12-1987 on the basis of false telegram. But this, as stated above, could not be ascertained and found. The order of termination of the Petitioner's services as no longer required, was thus totally unjustified. When the post was not abolished and the juniors were allowed to be retained in service, there was no question of Petitioner's services being not required except on the ground of his unsuitability which, as stated above, could not be ascertained on the basis of the material on record. In this view of the matter the impugned order is liable to be quashed and the Petitioner is entitled to be treated in continuous service.

10. In the result the petition succeeds and is allowed. The impugned order dated 12-1-1988 is quashed and the Petitioner is held entitled to be treated in continuous service with consequential benefits.

Parties shall bear their own costs.