

(2001) 08 AHC CK 0032
In the Allahabad High Court
Case No : Special Appeal No. 408 of 2001

Padam Singh Sharma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

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

Citation : (2001) 4 AWC 2712 : (2001) 91 FLR 701 : (2001) 3 UPLBEC 2191

Hon'ble Judges : S.K. Sen, C.J;R.K. Agrawal, J

Bench : Division Bench

Advocate : N.L. Pandey, for the Appellant;

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—The present Special Appeal has been filed by Shri Padam Singh Sharma, the appellant writ petitioner against the judgment and order dated 26.3.2001 passed by the learned single Judge whereby the learned single Judge has dismissed the writ petition.

2. We have heard Shri N.L. Pandey, learned counsel for the appellant writ petitioner and the learned standing counsel who represents the respondents.

3. Briefly stated the facts of the case are that the appellant writ petitioner was engaged as Cooperative Kurk Amin on commission basis. According to the allegations, on 13.11.2000, he slapped his senior Mahipal Singh Assistant Block Development Officer, Co-operative and also behaved in an indecent manner with him. A preliminary inquiry was conducted in which the appellant writ petitioner was found guilty. On the basis of the findings arrived at in the preliminary inquiry, the Assistant District Registrar. Cooperative Societies, U. P., Saharanpur, issued a notice dated 5.12.2000 calling upon the appellant writ petitioner to show cause as to why action be not taken for the misconduct and indiscipline and for violating the orders. The appellant writ petitioner submitted his reply by letter dated 21.12.2000 denying the charges.

4. It appears that the District Magistrate/ Collector, Saharanpur issued another notice dated 16.12.2000, calling upon the appellant writ petitioner to appear before him personally and to give his explanation, if any, on 18.12.2000. The appellant writ petitioner appeared before the District Magistrate/Collector, Saharanpur and submitted that he has nothing further to give in writing but admitted the incident which took place as also indecent behaviour with the Assistant Block Development Officer, Cooperative. The District Magistrate/Collector, Saharanpur vide order dated 23.2.2001, terminated, the services of the appellant writ petitioner from the post of Kurk Amin Co-operative. The writ petition filed by the appellant writ petitioner has been dismissed by the learned single Judge vide judgment and order dated 26.3.2001.

5. The learned counsel for the appellant writ petitioner submitted that since the appellant writ petitioner was working as Cooperative Kurk Amin on commission basis, he is to be treated as a Government Servant and is entitled for protection of the provisions of Article 311 of the Constitution of India. The learned counsel relied upon the decision of the Hon"ble Supreme Court in the case of State of U. P. v. Chandra Prakash Pandey and Ors., (2001) 2 UPLBBC 1185, wherein the Hon"ble Supreme Court has held that Kurk Amin appointed on commission basis for recovery of outstanding dues of the co-operative societies were members of service and are Government servants. He further submitted that since the appellant writ petitioner is to be treated as a Government servant, he is entitled to protection of Article 311 of the Constitution of India and he could not have been removed on the basis of an order passed in a preliminary inquiry except on the basis of a regular inquiry. In support thereof, he relied upon a decision of the Hon"ble Supreme Court in the case of Nar Singh Pal Vs. Union of India and Others, .

6. The learned standing counsel, however, submitted that admittedly the appellant writ petitioner had admitted his guilt before the District Magistrate/Collector, Saharanpur, when he had appeared before him on 18th December, 2000, in response to the notice dated 16.12.2000, issued to him and, therefore, there was no necessity of holding a regular inquiry as provided under Article 311(2) of the Constitution of India.

7. He further submitted that holding of an inquiry would have been a mere formality in view of the admission of guilt by the appellant writ petitioner and this Court should not interfere in such a matter. He relied upon a decision of the Hon"ble Supreme Court in the case of M.C. Mehta Vs. Union of India (UOI) and Others, .

8. It is not in dispute that appellant writ petitioner had been appointed as a Co-operative Kurk Amin on commission basis. Thus, in view of the decision of the Hon"ble Supreme Court in the case of State of U. P. v. Chandra Prakash Pandey and Ors. (supra), the appellant writ petitioner shall be treated as a member of service and is a Government Servant.

9. The next question is as to whether the protection of Article 311 of the Constitution of India is available to the appellant writ petitioner or not and the same has been complied with or not. The services of the appellant writ petitioner have been terminated from the post of Co-operative Kurk Amin by the District Magistrate/Collector, Saharanpur, on the charge of misconduct, i.e., indecent behaviour with the Assistant Development Officer, Co-operative which casts a stigma. The said order has been passed on the basis of an inquiry held against him. There is nothing on record before us to show that he was informed about the charges in the inquiry which was conducted by the Assistant District Registrar, Cooperative. The Hon"ble Supreme Court in the case of Nar Singh Pal (supra) has held that an order of dismissal which has been passed on the basis of the preliminary inquiry and without holding a regular departmental inquiry in a case where the constitutional protection envisaged by Article 311 of the Constitution is available to a person cannot be sustained. The Hon"ble Supreme Court in the aforesaid case has held as follows :

"6. The appellant, no doubt, was a casual labour but as observed by the Tribunal, he had acquired temporary status with effect from 1.10.1989. Once an employee attains the "temporary" status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other articles dealing with services under the Union of India. A perusal of the impugned order by which the services of the appellant were terminated indicates that since the appellant had beaten one Mahender Singh with an iron rod and had also bitten him with his teeth on 20.4.1992 at 8.00 p.m. while the said Mahender Singh was on duty as Gateman, Tax Bhawan, Agra, therefore, his services were terminated with immediate effect. Thus, the services were terminated on account of the allegation of assault made against the appellant

8. The documents which have been placed before us pertain to the preliminary inquiry made against the appellant in which the statement of certain persons who had seen the incident was recorded. The services of the appellant were, thereafter, terminated by paying him the retrenchment compensation through a cheque along with the order dated 20.5.1992. The order having been passed on the basis of a preliminary inquiry and not on the basis of a regular departmental enquiry without issuing a charge-sheet or giving an opportunity of hearing to the appellant, cannot be sustained.

9. We may, at this stage, refer to the observations of Krishna Iyer. J., in Gujarat Steel Tubes Ltd. v. Mazdoor Sabha, in which the learned Judge observed as under (SCC p. 617 para 53).

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the

formal order of termination what the true ground for the termination is. If, thus, scrutinized, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test. It cannot be called a punishment. To put, it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used."

10. Applying the above principles, the order in the instant case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed without holding a regular departmental enquiry, cannot be sustained."

In the present case, the Additional District Co-operative Officer on the basis of the letter dated 4.11.2000 written by the District Assistant Registrar, Co-operative had inquired the complaint made against the appellant writ petitioner regarding the indecent behaviour and indiscipline and had submitted his report, on the basis of which the Assistant District Registrar Cooperative Societies, Saharanpur, in the notice dated 5.12.2000, had asked the appellant writ petitioner to give his explanation and further on the basis of the said notice, the District Magistrate/Collector, Saharanpur, who is the appointing authority of the appellant writ petitioner after giving an opportunity of hearing terminated his service.

10. A bare reading of the notice dated 6.11.2000, issued by the Additional District Co-operative Officer filed as Annexure-2 the notice dated 5.12.2000, issued by the Assistant District Registrar, Cooperative Societies, Saharanpur, filed as Annexure-5 and the termination order dated 23.2.2001 passed by the District Magistrate/ Collector, Saharanpur, filed as Annexure-7 to the affidavit in support of the stay application prima facie shows that the inquiry which was conducted against the appellant writ petitioner was in the nature of a preliminary inquiry and not a regular departmental inquiry as contemplated under Article 311(2) of the Constitution of India and thus, the services of the petitioner could not have been terminated on the basis of preliminary inquiry without holding a regular departmental inquiry as has been held by the Hon"ble Supreme Court in the case of Nar Singh Pal (supra).

11. The decision of the Hon"ble Supreme Court in the case of M.C. Mehta v. Union of India (supra) shall not be applicable to the facts of the present case inasmuch as the said case did not relate to the protection given to a Government servant under Article 311(2) of the Constitution of India. The Hon"ble Supreme

Court in the aforesaid case has held that if on the admitted or undisputed factual position, only one conclusion is possible and permissible, the Court need not issue a writ, merely because there is violation of principle of natural justice. Here, the question is not of violation of principle of natural justice, but the question is as to whether the services of a Government servant can be terminated without complying with the constitutional provisions of Article 311(2) of the Constitution of India.

12. As already stated hereinbefore, there is no material on record before us to come to the conclusion that a regular departmental inquiry was held before the service of the petitioner was terminated. Prima facie on the basis of the documents referred to above, it appears that only a preliminary inquiry had been held in the matter. Since the writ petition filed by the appellant writ petitioner had been dismissed in limine without giving any opportunity to the respondents to file an affidavit in reply bringing on record such documents as they may be advised to establish that a regular departmental inquiry has been held before passing the order of termination, it would be appropriate and in the ends of justice that the order of the learned single Judge is set aside and the writ petition be decided on merits on the basis of the affidavits.

13. In the result the special appeal succeeds and is allowed.