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**(2012) 01 AHC CK 0121**  
**In the Allahabad High Court**  
**Case No : Service Single No. - 754 of 2009**

Pramod Kumar

APPELLANT

Vs

State Of U P Thr.Prin Secy Law Dept. Civil Sectt.Lko

RESPONDENT

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**Date of Decision :** 13-01-2012

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 21, 226  
Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975  
— Rule 3

**Citation :** (2012) 01 AHC CK 0121

**Hon'ble Judges :** Anil Kumar, J

**Bench :** Single Bench

**Advocate :** V.B. Kalia, Ankit Pande, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Hon"ble Anil Kumar, J.—Heard Sri Ankit Pande, learned counsel for petitioner, Sri V.S. Tripathi, learned State counsel and perused the record. Facts, in brief, of the present case are that in the District Court, Gonda, in the year, 2002, Fast Track Courts has been sanctioned and established, so in order to provide Pool Car/ Vehicle Driver to the Presiding Officer of the Fast Track Court, petitioner was appointed as Driver by order dated 31.08.2002 (Annexure No. 2) passed by District Judge, Gonda on temporary basis.

2. Thereafter, the temporary engagement of the petitioner was extended upto 28.02.2009. However, in the meantime, by means of the order dated 12.11.2008 passed by District Judge, Gonda/O.P. No. 2, the services of the petitioner has been terminated by invoking the provisions as provided under U.P. Temporary Government Servants (Termination of Services) Rules, 1975 (hereinafter referred to as the Rules, 1975).

3. Aggrieved by the said fact, present writ petition has been filed before this Court.

4. Sri Ankit Pande, learned counsel for petitioner while assailing the impugned order submits that as the petitioner's services were extended upto 28.02.2009 and the term of the Fast Track Court in District Gonda has also been extended upto 28.02.2010, so there is no justification or reason on the part of O.P. No. 2 to terminate the services of the petitioner by means of the impugned order dated 12.11.2008 (Annexure No. 1).

5. It is further submitted by learned counsel for petitioner that the action on the part of O.P. No. 2 thereby terminating the services of the petitioner by means of the impugned order without providing any opportunity whatsoever when the same was extended upto 28.02.2009 is an action which is wholly violative of Article 14, 16 and 21 of the Constitution of India and against the principles of natural justice because the livelihood of the petitioner has been taken away without providing any opportunity in most arbitrary manner, hence the same is liable to be set aside.

6. In response, learned State counsel submits that the petitioner is a temporary employee, as such the action on the part of O.P. No. 2 thereby terminating the services of the petitioner by means of the order dated 12.11.2008 (Annexure No. 1) invoking the provisions of Rules 1975 is perfectly valid and the present writ petition filed by the petitioner under Article 226 of the Constitution of India, is liable to be dismissed.

7. I have heard learned counsel for petitioner and gone through the record.

8. As per the undisputed fact of the present case, it is clearly established that the petitioner has been appointed on the post of Driver by order dated 31.08.2002 to operate the Pool Vehicle/Car to take the Presiding Officer of the Fast Track Court in District Gonda and thereafter his services were terminated by order dated 12.11.2008 invoking the provisions of Rule, 1975.

9. In view of the abovesaid facts, the sole question which is to be considered and decided in the present case that whether the action on the part of O.P. No. 2 thereby terminating the services of the petitioner by invoking the provisions of Rule 1975 is valid or not, the answer to the abovesaid question find place in the following judgments:-

10. In the case of State of U.P. and another State of U.P. and another Vs. Km. Prem Lata Misra and others, Hon'ble the Supreme Court has held that it is settled law that the court can lift the veil of the innocuous order to find whether it is the foundation or motive to pass the offending order. If misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted and an action according to law should follow. But if it is motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated, in terms of the order of appointment or rules giving one month's notice or pay/ salary in lieu thereof. Even if an enquiry was initiated could be dropped midway and action could be taken in terms of the rules of order of appointment.

11. In the case of Radhey Shyam Shukla Vs. State of U.P. and others (2008) 1 UPLBEC 177 Hon"ble the Supreme Court after considering the various case laws has held in the cases of Triveni Shanker Saxena V. State of U.P. 1992 SCC(L&S) 440 and State of U.P. and another State of U.P. and another Vs. Km. Prem Lata Misra and others, has held that in the former case, the termination order was simple order which did not cast any stigma and there were several adverse entries in the confidential reports. The termination was as per rules. In the latter case, the employees superiors complained that the employee was not regular in her work and was in the habit of leaving office during office hours. A simple order of termination was passed in terms of the order of her temporary appointment. There was no prior enquiry. In both these cases, the termination orders were upheld.

12. In Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, , the Hon"ble Supreme Court in paragraph 21 of the report observed as under:-

If findings were arrived at in an enquiry to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as " founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, as the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similarly is the position if the employer did not want to enquiry into the truth of the allegation because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegation would be a motive and not the foundation and the simple order of termination would be valid.

13. Similarly in AIR 2000 1706 (SC) , the Hon"ble Supreme Court articulated that if for determination of suitability for the post or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate the services, the order will not be punitive in nature. But, if there are some allegations of misconduct and an inquiry is held to find out the truth of that misconduct and thereafter the order of termination is passed, the order would be punitive in nature. In V.P. Ahuja Vs. State of Punjab and Others, , the Apex Court reiterated that services of temporary servant and even of probationer cannot be terminated arbitrarily, or can those services be terminated in a punitive manner without complying with the principles of natural justice as they are also entitled to certain protection.

14. In the case of Nar Singh Pal Vs. Union of India and Others, , Hon"ble Supreme Court has held that the reasoning of the Tribunal is fallacious. If an order had been passed by way of punishment and was punitive in nature, it was the duty of the respondents to hold a regular departmental enquiry and they could not have terminated the services of the appellant arbitrarily by paying him the retrenchment compensation. The observation of the Tribunal that the

respondent had a choice either to hold a regular departmental enquiry or to terminate the services by payment of retrenchment compensation is wholly incorrect.

15. In the case of Hari Ram Maurya Vs. Union of India and others (2006) 9 SCC 167, Hon"ble Supreme Court has held that from the order of termination Annexure P-7, it appears that the same refers to the show-cause notice dated 20.8.2002 which is to be found at Annexure P-5. It is stated therein that the appellant demanded kickback with a view to help the complaint to get a favorable order in the pension matter. That being so, there was a clear charge of bribery levelled against the appellant. No doubt, the appellant was a temporary employee, but if he is sought to be removed on the ground that he was guilty of the charge of bribery, it becomes necessary for the respondent Union of India to hold an inquiry and thereafter to act in accordance with law. In this case, admittedly, no inquiry was conducted, and that is obvious even from Annexure P-7, the latter described as disengagement of casual labour. We, therefore, allow this appeal and set aside the order of the High Court as also the order of termination Annexure P-& dated 30.9.2002. This, however, will not prevent the respondents from taking action in accordance with law.

15. In the case of State of Uttar Pradesh and Others Vs. Vijay Shanker Tripathi, Hon"ble Supreme Court has held that from a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either thin or overlapping. It may be difficult either to categories or classify strictly orders of termination simplicitor falling in one or the other category, based on misconduct as foundation for passing the order of termination simplicitor or to motive on the ground of unsuitability to continue in service.

16. A Division Bench of this Court in the case of Kailash Bharti Vs. State of U.P. and others 2005 (23) LCD 436 has held that the factual situation indicates that had there been no allegation of drunkenness there would have been no order of termination. The papers and affidavits show this and those are all matters of record. The whole thing having come to the notice of the Writ Court it cannot now say that the Court and everybody else will now only look at the faceless, or the unreasoned; letter of termination, but it will show its eyes to the history of its genesis. This type of self-imposed partial blindness is not permitted to the Writ Court. As such the order of termination brought into eThe provision of U.P. Temporary Government Service ( termination of service ) Rules,1975 would not apply where a temporary Government Servant is sought to be removed by way of punishment. If there is a termination simplicitor, which is intended to be ordered in respect of a Government Servant Rule 3 of the Rules can be invoked. But if a government servant, who is governed by these rules is sought to be removed on the ground of misconduct, embezzlement or lack of integrity,

something more is required to be done before the termination of which Government servant is ordered. Something more must be consistent with the constitutional provisions and with the principles of natural justice. At least a hearing is to be given to such Government employee to explain his misconduct, lack of integrity and negligence of duty.

17. In the case of State of U.P. and another State of U.P. and another Vs. Km. Prem Lata Misra and others, Hon''ble the Supreme Court has held that it is settled law that the court can lift the veil of the innocuous order to find whether it is the foundation or motive to pass the offending order. If misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted and an action according to law should follow. But if it is motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated, in terms of the order of appointment or rules giving one month's notice or pay/ salary in lieu thereof. Even if an enquiry was initiated could be dropped midway and action could be taken in terms of the rules of order of appointment.

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If findings were arrived at in an enquiry to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as " founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, as the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similarly is the position if the employer did not want to enquiry into the truth of the allegation because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegation would be a motive and not the foundation and the simple order of termination would be valid.

20. A perusal the above, clearly shows that if an enquiry was conducted as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple termination is to be treated as "founded" on the allegations and will be bad.

21. Similarly in AIR 2000 1706 (SC) , the Hon"ble Supreme Court articulated that if for determination of suitability for the post or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate the services, the order will not be punitive in nature. But, if there are some allegations of misconduct and an inquiry is held to find out the truth of that misconduct and thereafter the order of termination is passed, the order would be punitive in nature. In V.P. Ahuja Vs. State of Punjab and Others, , the Apex Court reiterated that services of temporary servant and even of probationer cannot be terminated arbitrarily, or can those services be terminated in a punitive manner without complying with the principles of natural justice as they are also entitled to certain protection.

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24. In the case of State of Uttar Pradesh and Others Vs. Vijay Shanker Tripathi, Hon"ble Supreme Court has held that from a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case.

Many a times the distinction between the foundation and motive in relation to an order of termination either thin or overlapping. It may be difficult either to categorise or classify strictly orders of termination simplicitor falling in one or the other category, based on misconduct as foundation for passing the order of termination simplicitor or to motive on the ground of unsuitability to continue in service.

25. A Division Bench of this Court in the case of Kailash Bharti Vs. State of U.P. and others 2005 (23) LCD 436 has held that the factual situation indicates that had there been no allegation of drunkenness there would have been no order of termination. The papers and affidavits show this and those are all matters of record. The whole thing having come to the notice of the Writ Court it cannot now say that the Court and everybody else will now only look at the faceless, or the unreasoned; letter of termination, but it will show its eyes to the history of its genesis. This type of self-imposed partial blindness is not permitted to the Writ Court. As such the order of termination brought into existence, because an allegation of drunkenness against the writ petitioner was found without any hearing to be true, has to be set aside.

26. Thus, the provision of U.P. Temporary Government Service ( termination of service ) Rules, 1975 would not apply where a temporary Government Servant is sought to be removed by way of punishment. If there is a termination simplicitor, which is intended to be ordered in respect of a Government Servant Rule 3 of the Rules can be invoked. But if a government servant, who is governed by these rules is sought to be removed on the ground of misconduct, embezzlement or lack of integrity, something more is required to be done before the termination of which Government servant is ordered. Something more must be consistent with the constitutional provisions and with the principles of natural justice. At least a hearing is to be given to such Government employee to explain his misconduct, lack of integrity and negligence of duty. For the foregoing reasons, as the petitioner is a temporary employee, his services has been terminated by order dated 12.11.2008 passed by District Judge, Gonda/O.P. No. 2 invoking the provisions of U.P. Temporary Government Servants (Termination of Services) Rules, 1975 and the same is a termination simplicitor, so, I do not find any illegality or infirmity in the impugned order which is under challenge in the present writ petition, thus, the same is dismissed.

No order as to costs.