
(1993) 10 AHC CK 0002

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 33609 of 1990

Prem Shanker Pandey

APPELLANT

Vs

Krishi Utpadan Mandi Samiti and Others

RESPONDENT

Date of Decision : 05-10-1993

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1994) 1 AWC 243

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : R.N. Shukla, for the Appellant; B.D. Mandhyan, for the Respondent

Final Decision : Allowed

Judgement

M.L. Bhat, J.—Petitioner challenges the order of termination passed by the Respondent No. 1 dated 7-4-1978 and also order of Respondent No. 4 dated 29-11-1990.

2. It is submitted by the Petitioner that he was initially appointed in 1973 as a clerk by the Respondents and thereafter to the post of Auctioner in December 1976 in the pay scale of Rs. 200-320. Petitioner is said to have been involved in a criminal case on 6-4-1978. He was arrested by the police. However he was released on bail on 8-4-1978. The report of FIR lodged against the Petitioner was sent by the Secretary to the President and it was recommended that the Petitioner be placed under suspension. On receipt of this report the City Magistrate who is said to be the appointing authority directed termination of the petitioner's services by giving him one month's salary in lieu of notice. Petitioner also submits that he was appointed by the Secretary and he could not be removed from service by the City Magistrate. Petitioner's involvement in the criminal case has not proved his misconduct unless criminal Court finds him guilty.

3. Petitioner challenges the order of termination on the ground that his

termination could not be ordered unless he was found guilty by the Court. He has not been given any show cause notice against the order of punishment, therefore, also order is bad.

4. Petitioner seems to have approached the service tribunal which has dismissed his petition. The tribunal has held that the order of termination of petitioner's service is not based on criminal case. It appears at that stage Petitioner had been exonerated from the criminal charge and he had produced the final report to this effect but the tribunal held that petitioner's services were purely contractual which could be terminated according to the terms of contract and service. The termination of the petitioner's service was not by way of punishment but it was termination simpliciter.

5. In the counter affidavit filed by the Respondents it is stated that the Petitioner was a purely temporary employee. His services could be terminated at any time by giving one month's pay in lieu of notice, Petitioner's services are said to have been terminated in 1978. Therefore, he has no right to continue in service. The case against the Petitioner in FIR was not false. He was a temporary employee. His services could be terminated. It was not necessary for the Respondents to "wait for the result of the criminal case. The appointing authority of the Petitioner is City Magistrate, therefore, the impugned order is said to be valid. It is categorically submitted by the Respondents that the impugned order is not based on FIR. The termination order is passed in pursuance of appointment letter.

6. In the rejoinder affidavit Petitioner has stated that his services were not terminated by invoking clause 2 of the appointment letter. Petitioner's service had been terminated on the basis of FIR which was registered in respect of criminal charges against I he Petitioner. Petitioner has been exonerated from the criminal charge, therefore, the basis of termination of service has also disappeared. Petitioner is said to have worked for more than 5 years as a clerk-cum-auctioner. After completing, three years of service, he could- not be treated as temporary and dealt with in a casual manner. The judgment of the Respondent is also said to be patently illegal.

7. I have heard the learned counsel for the parties. The counsel for the Petitioner has drawn my attention to Annexure-"B" which is a letter of recommendation written by the Secretary to the appointing authority. In this letter, the appointing authority is informed that the Petitioner was arrested by the police on some criminal charges. Copy of the PIR was not received by them as yet. It is said by the Secretary in his communication that the Petitioner was arrested by the police. He recommended his suspension from service and made suggestion in this regard to the appointing authority. The appointing authority after perusal of the report ,of the Secretary ordered, on the margin of the report, that petitioner's services be terminated after giving him one month's salary. This order was passed by the appointing authority on 6-4-1978. This date is referred to in the impugned order dated 7-4-1978 whereby, the petitioner's services are terminated.

8. Learned counsel for the Petitioner has submitted that termination order is not in pursuance of the appointment letter but is based on FIR which is lodged against the Petitioner for some criminal case of which he has now been exonerated. . Therefore, the termination order is not simpliciter but is passed because in the opinion of the appointing authority Petitioner was involved in a criminal case.

9. Mr. Mandhyan appearing for the Respondents has submitted that the order of termination is simpliciter and not by way of punishment. The order was passed in pursuance of the appointment letter of the Petitioner. He was a temporary employee. His service could be terminated by paying him one month's salary in lieu of notice. No stigma is cast on the Petitioner. The Respondents could not wait for the result of the criminal trial which would have taken years, therefore, they discharged the Petitioner by an innocuous order. He has relied on *State of U.P. v. Kausbal Kishore Shukla*, 1991 SCC 691, in which it is held that termination of service of adhoc or temporary government servant in pursuance of contract of service and rules can be made. Such a termination can be ordered , on assessment of suitability on consideration of adverse entry and preliminary enquiry report. The termination is not punitive so as to attract Article 311(2) of the Constitution-of India. It is held by the Supreme Court that a temporary government servant has no right to hold the post. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his service in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. However, if the later course is adopted then enquiry is to be held that if it is termination simpliciter it would not attract provisions ? of Article 311(2) of the Constitution of India. He has also relied on *Pyare Lal Pandey v. Commissioner, Allahabad Division*, 1986 UP LB EG 676 , It is held in this authority that in case of an ad hoc appointment no opportunity is to be given to the Petitioner before termination of service and an ad hoc appointment can be terminated before one year. Re has also relied on *Triveni Shankar Saxena Vs. State of U.P. and others*, . In this case services of temporary Assistant Consolidation Officer were terminated on the ground of adverse entries about his unsatisfactory performance in the work. Order of termination was simpliciter without casting stigma or disclosing penal consequences against him. However, in the facts and circumstances of the case and considering the equities, the Supreme Court directed to pay amount of Rs. 50,000/- as ex-gratia payment to the employee.

10. The only question that falls for the consideration is whether the order of termination of Petitioner is simpliciter or it is by way of punishment. The order of termination itself is cauched in a very innocent and innocuous language. If the said order is read alongwith the recommendation letter of the Respondent No. I it would appear that the decision to terminate the petitioner's service is taken

because the criminal case is filed against him and FIR is lodged against him. In pursuance of that decision the impugned order is passed which is Annexure-C to the writ petition. It is permissible for the Court to lift the veil and peep into the reality as to what was the reason of termination of service of the Petitioner and to ascertain whether the order of termination of service was innocent, innocuous and simpliciter or was it punitive in nature. The order of termination may be innocent on the face of it but if the record reveals that it was not so and the basis of the order was punitive and the employer wanted to terminate the service by way of punishment, the Court is permitted to intervene.

11. In the present case, I am not inclined to accept the contentions of Mr. Mandhyan that the order of termination of service was simpliciter in pursuance of the appointment letter of the Petitioner. Petitioner was of course temporary employee who has spent more than 5 years with the Respondents as clerk-cum-auctioneer. He could be terminated from service if the order of termination was simpliciter in pursuance of the appointment letter but that is not so in the present case. I say so after going through the Annexure-B carefully. Information is given by the Secretary on 6-4-1978 to the appointing authority that Petitioner has been arrested by the police in pursuance of the " criminal case. Copy of FIR is not available as yet. Therefore, desirability of placing him under suspension may be considered. Under the service rules if an employee is arrested in consequence of a criminal case or a criminal case is lodged against the employee, the employer is empowered to suspend him till the criminal case is decided or till further orders. In pursuance of this principle Secretary wanted to take action against the Petitioner by placing him under suspension for being arrested by the police in a criminal case. So the fact of Petitioner being arrested by a police in a criminal case was placed before the appointing authority. The appointing authority wrote a cryptic order, ordering termination of his services on payment of one month's salary in lieu of notice. The decision to terminate the services of the Petitioner was taken by the appointing authority on the basis of information received by him that the Petitioner was involved in a criminal case and was arrested and after seeing the recommendation made by the Secretary. Therefore, the order of termination of petitioner's service cannot be said to be in pursuance of the appointment letter. The decision is taken by virtue of Annexure-"B". The termination order may be couched in an innocent language that would not make the termination order simpliciter as contended by Mr. Madhyam. The Petitioner has been exonerated now which is admitted by the tribunal also. Petitioner was not entitled to be reinstated till the final result of the criminal case. After the final result of the criminal case his reinstatement cannot be resisted by the respondents. The order of petitioner's termination is punitive in nature and not simpliciter order of termination, therefore, the law cited by Mr. Madhyan will have no application to the facts of the present case.

12. The impugned order of termination of petitioner's service being punitive passed on the decision of the appointing authority on the report of - the Secretary who wanted the Petitioner to be suspended for being involved in a

criminal case, is punitive in nature, therefore, such an order cannot be treated to be order simpliciter and with the finalisation of criminal case in favour of the petitioner's reinstatement to the post cannot be resisted by the Respondents. It is also held that petitioner's services have not been terminated in pursuance of the appointment letter or contract of appointment. The reason for his termination of his service is given in Annexure-B. He is removed from service because he was involved in a criminal case and instead of suspending him he is at once directed to be removed by the appointing authority which decision is conveyed to him on 7-4-1978 by Annexure-C.

13. The Respondent No. 4 has lost sight of all these facts. It has committed a legal error by holding that petitioner's service was terminated in pursuance of the appointment letter and termination of service was simpliciter.

14. For the reasons stated above, this writ petition deserved to be allowed and contention of the learned counsel for the Respondent to the contrary is overruled.

15. Accordingly, the writ petition is allowed and the order of termination of petitioner's service dated 6-4-1978/7-4-1978 and also order of the tribunal, Respondent No. 4 dated 29-11-1990 are quashed as being invalid and against the provisions of law. The Petitioner is directed to be reinstated with consequential benefits within one month from the date of supply of certified copy of this judgement to the Respondents. However, he has remained out of service from 6-4-1978- and has not discharged any functions, therefore, his period from 6-4-1978 Upto 29-11-1990 i.e. date of the judgement of the Respondent No. 4 shall be treated as " period of leave whatever kind is due to him but this shall not have the effect of break-in-service of the Petitioner. In case he is not entitled to long leave with allowance his period of leave be treated as Leave Without pay. He will be notionally treated to be in service and his continuity in service will not be broken by the leave. However, from 29-11-1990 when the tribunal decided the matter which decision is now set aside, he will be reinstated with full back wages and paid his salary and allowance as admissible to him under rules. There will be no order as to costs.