

**(2001) 11 AHC CK 0041**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 12173 of 1989**

Satya Pal Singh

APPELLANT

Vs

U.P. Public Services Tribunal III and Others

RESPONDENT

**Date of Decision :** 29-11-2001

**Acts Referred:**

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4A

**Citation :** (2002) 1 AWC 238 : (2002) 92 FLR 882 : (2002) 1 UPLBEC 364

**Hon'ble Judges :** Lakshmi Bihari, J;D.S. Sinha, J

**Bench :** Division Bench

**Advocate :** V.S. Dwivedi and Rama Shankar Dwivedi, for the Appellant; S.C., B.D. Mandhyan and Vinay Malviya, for the Respondent

**Final Decision :** Allowed

## Judgement

D.S. Sinha, J.—Heard Dr. Rama Shanker Dwivedi, learned Senior Advocate, appearing for the petitioner, Shri B. D. Mandhyan, learned counsel representing the respondent Nos. 2, 3 and 4, and Shri Vinay Malviya, learned Standing Counsel of the State of U. P., appearing for the respondent No. 1, at length and in detail.

2. Shri Satya Pal Singh, the petitioner, was appointed as Kamdar in the cadre of class IV employees in the Krlshi Utpadan Mandi Samiti, Gulawathi, district Bulandshahr on 6th July, 1969. His services were terminated on 31st May, 1974. Aggrieved by the termination order, he pursued departmental remedies. On being unsuccessful, he instituted a civil suit at Bulandshahr. Suit No. 136 of 1975 on 24th March, 1975, challenging the validity of the order of termination of the services. The suit was not contested by the Mandi Samiti. Thus, it proceeded ex parte, and was decreed on 27th July, 1977. A copy of the judgment decreeing the suit is appended to the petition as Annexure-1. Pursuant to the decree and judgment dated 27th July, 1977, the petitioner was reinstated.

3. After the lapse of more than three years, the services of petitioner were again

terminated by the order dated 7th May, 1980, a copy of which is Annexure-3 to the writ petition. This led the petitioner to filing of Claim Petition No. 343 P/III of 1980, u/s 4 of the U. P. Public Services (Tribunals) Act, 1976, (hereinafter called the Act). The claim petition has been dismissed by the order dated 21st April, 1989. The petitioner seeks to challenge this order through instant writ petition.

4. The Impugned order has been passed by a single member of the U. P. Public Services Tribunal III, Lucknow.

5. The learned counsel appearing for the petitioner contends that the Impugned order is without jurisdiction, inasmuch as under Subsection (1) of Section 4A of the Act, as it stood at the relevant time, that is. on 21st April, 1989, the claim petition of the petitioner was mandated to be heard and decided by a Bench comprising two members of the Tribunal, and single member of the Tribunal did not have jurisdiction to decide the claim petition.

6. Countering the submission of the learned counsel of the petitioner, the learned counsels appearing for the respondents submit that it was competent for a single member of the Tribunal to decide the claim petition of the petitioner, inasmuch as it sought to challenge the validity of the "termination", not the "dismissal" or "removal" which were required to be heard by a Bench comprising two members of the Tribunal. According to the learned counsels of the respondents, the subject-matter of challenge in the claim petition being an order of termination, it could be decided by a single member of the Tribunal as provided in sub-section (2) of Section 4A of the Act.

7. The rival contentions of the learned counsels of the parties call upon determination of the question whether the words "dismissal" and "removal" used in Sub-section (1) of Section 4A of the Act, Include "termination" also.

8. Section 4A of the Act, as it stood on 21st April, 1989, runs as below.

"4A. Hearing of reference in Tribunal--(1) A reference of claim wherein the validity of any order of dismissal or removal from service or reduction in rank is involved, shall be heard and finally decided by both members of the Tribunal :

Provided that any order other than an order finally disposing of the case, may be passed, evidence may be received and proceeding (except hearing of oral argument for final disposal of the case) may be conducted, by either of the members.

(2) A reference of claim other than that referred to in subsection (1) may be heard and finally decided by a single member of the Tribunal.

(3) Anything done by a single member of the Tribunal under sub-section (1) or sub-section (2) shall be deemed to have been done by the Tribunal."

9. The words "dismissal", "removal" and "termination" have not been defined in the Act. In the absence of any statutory definition of the words "dismissal", "removal" and "termination" given by the Legislature, these words have to be

given meaning as is understood in common parlance. To find out the sense in which the words "dismissal", "removal" and "termination" are understood in common parlance, it is appropriate and permissible " to look to the dictionary meaning.

10. In the present context, according to the dictionary, the word "dismissal" means the act of removal or discharge of an incumbent or employee from an office or employment, and the word "removal" means an act of discharge or dismissal of an incumbent from an office or displacing someone from a position or taking away something. The word "termination" means an act of determination, that is to say, an act of bringing an end.

11. Whether an employee is dismissed or removed or terminated, the net result of all the three situations is an end to his employment. Every dismissal, removal and termination leads to legally ending of the employment of the employee, and his discharge or dismissal from the office held by him. He is displaced from the office held by him, and his tenure to the office stands determined, and comes to an end, resulting in cessation of the bond of law between him and the employer.

12. It is true that sometimes bringing an end of employment may have the punitive element, and for that reason, it may be held dismissal or removal, as understood technically in the service Jurisprudence. Likewise, in the absence of punitive element, it may be held as termination simpliciter in the technical sense. But, in the context of the Act, indisputably, the Legislature has not defined the "dismissal" or "removal" artificially or technically. These words appear to have been used in sub-section (1) of Section 4A of the Act in the sense in which they are understood in common parlance, and in contradistinction to the artificial or technical sense. In common parlance, these words are understood in the sense of an act of removal or discharge of an incumbent or employee from an office or employment or displacing him from the position held by him, resulting in determination of the employment and the cessation of the bond of law between him and the employer.

13. After all, in reference to the context of the Act, either it be "dismissal" or "removal" or "termination", all have the effect of bringing an end to the employment of the employee or discharging him from the office held by him, whether by way of punishment or otherwise.

14. Tested on the above touchstone, in the opinion of the Court, the words "dismissal" and "removal" used in Sub-section (1) of Section 4A of the Act will include "termination" of any kind. The Act is a remedial legislation warranting literal and extensive construction, as opposed to technical and restrictive construction. Therefore, the Court perceives no justifiable reason to give restricted meaning to the words "dismissal" and "removal", and exclude the word "termination".

15. If the employment of an employee, who is a public servant as defined in the Act, is determined or brought to an end or he is dismissed or removed or

terminated and he is discharged from the office held by him, he has a right to prefer a claim petition u/s 4 of the Act for redressal of his grievance against his "dismissal", "removal" or "termination" from his service. It is a different matter that the Tribunal may decline to interfere holding that act of "dismissal", "removal" or "termination" of his employment to be termination simpliciter, in terms of the conditions of his employment or statutory rules governing the employment or being devoid of any punitive element.

16. It cannot be gainsaid that, normally, the Jurisdiction of a Court or Tribunal is to be determined on the basis of the pleadings contained in the plaint or petition. In the instant case, a copy of the claim petition is available on record as Annexure-4 to the petition. Paragraph Nos. 11, 16 and 17 of the claim petition read as follows :

"11. That the impugned order casts a stigma against the claimant and the order is liable to be quashed on this ground alone.

16. That the services of the claimant have been terminated on the basis of the past conduct of the claimant, therefore, a show cause notice was necessary before passing of the order.

17. That a departmental enquiry was necessary before passing of the order."

17. A conjoint and meaningful reading of the above pleadings, contained in paragraph Nos. 11, 16 and 17 of the petition, leads to an irresistible conclusion that the petitioner sought to challenge an order terminating his services on the ground of its containing punitive element, a well recognized ground for interference, if the order is found to have been passed without following due procedure of law.

18. Without examination and final determination of the nature of the order, in the light of the pleadings and evidence, it cannot be said that the impugned termination order did not amount to "dismissal" or "removal" for the purposes of Sub-section (1) of Section 4A of the Act. That being so. the claim petition of the petitioner had to be decided by a Bench of two members of the Tribunal as required by Sub-section (1) of Section 4A of the Act : and a single member of the Tribunal did not have the jurisdiction to decide the same. The impugned order deciding the claim petition having been passed by a single member of the Tribunal is held to be without jurisdiction, and liable to be quashed on that ground.

19. In the result, the petition succeeds, and is allowed. The impugned order dated 21st April, 1989, a copy of which is Annexure-6 of the petition, is quashed, without expressing any opinion on merits of the case. The claim petition of the petitioner would be deemed to be pending, and shall be decided by the Tribunal in accordance with law afresh. In view of the fact that the matter is very old, the Court directs the Tribunal to decide the claim petition as early as possible, but not later than six months from the date of presentation of a certified copy of this

judgment and order before it.