
(1975) 01 AHC CK 0031
In the Allahabad High Court
Case No : Writ No. 5183 of 1971

Sheo Kripal Sharma

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 29-01-1975

Acts Referred:

Citation : (1975) 01 AHC CK 0031

Hon'ble Judges : R.L.Gulati, J

Final Decision : Disposed Of

Judgement

R.L. Gulati, J.

The petitioner after having served sometime under the Madhya Pradesh Government joined the Industries Department of the State of Uttar Pradesh as a typist in 1962. Thereafter he was selected as a Senior ClerkcumAccountant in the Home Guards Department, Banda which post he joined on October 31, 1964. It appears that a sum of Rs. 447.30 was drawn for disbursement to certain Home Guards as Travelling Allowance. The petitioner says that he handed over the amount to one Sri Deoraj Sharma, Company Commander, who duly disbursed it to the Home Guards concerned after obtaining their signature on the acquaintance roll. According to the respondents, actually no disbursement was made to the Home Guards and the acquaintance roll was a Farzi document. In due course, it was established that the entries in the acquaintance roll and the disbursement certificate of the company commander were in the handwriting of the petitioner and he was considered to be accomplice in the embezzlement. The District Staff Officer accordingly lodged a report with the police under Section 409, I.P.C. against the petitioner in respect of the embezzlement of Rs. 447.30. While the enquiry by the police was still pending, a departmental enquiry was instituted against the petitioner and the first respondent,, the District Magistrate, Banda, put the petitioner under suspension with the following recital in the suspension order:

"A report under Section 409, I.P.C. is being investigated by the Police against Sri

Sheo Kripal Sharma, Accountant, Home Guards, Banda, and it is felt that his continuance on the post would not be in the public interest. The charge against him is serious and, if proved, it is likely to warrant his removal or dismissal from service. He is accordingly placed under suspension with immediate effect. During the period of his suspension, he will be allowed 1/3rd of the pay as subsistence allowance and admissible dearness allowance."

The third respondent, Sri V. Singh, the District Staff Officer, Home Guards, Banda, was appointed as the Enquiry Officer. The petitioner protested against the appointment of Sri V. Singh as the Enquiry Officer, as he was the person who had lodged the complaint against him with the police. However, the District Magistrate did not pass any order on his application and the disciplinary proceedings were started. Soon afterwards on January 22, 1971 a chargesheet was served upon the petitioner to which the petitioner submitted a reply on January 27, 1971. On April 16, 1971 the petitioner was reinstated and on the same day he was served with an order terminating his services. This order is dated April 9, 1971. The petitioner has challenged this order in this writ petition.

The impugned order is challenged on the ground of violation of Article 311 and Articles 14 and 16 of the Constitution. It is submitted that the petitioner's services have been terminated by way of punishment for the misconduct attributed to him which was pending enquiry before the police and which was also the subjectmatter of departmental enquiry launched against him. The case of the respondents is that the petitioner was a temporary hand and his services would be terminated at any time on giving him one month's notice or pay in lieu thereof and that his services were not terminated by way of punishment.

It is now well settled that the protection contained in Article 311 (2) of the Constitution is available as such to a temporary government servant as to a permanent government servant and this Court would readily grant relief to a temporary government servant if his services have been terminated in violation of Article 311 of the Constitution. The impugned order is in the following words:

"The temporary services of Sri Shiv Kripal Sharma, Accountant, Home Guards, Banda, are no longer required in Home Guards Department. His services are, therefore, terminated with effect from the date of receipt of this order by him. He will get one month's pay in lieu of the notice."

This order, no doubt, is innocuous and does not cast any stigma on the petitioner. But it is well settled that the form in which an order is couched is not conclusive. It is open to the court to take into consideration the attendant circumstances to find out the real nature of the order, whether it is an order by way of punishment or an order of termination implicated. From the circumstances of this case it is very clear that the petitioner's services have been terminated because of the serious charge of embezzlement against him in respect of which a report had been lodged with the police and departmental enquiry also started. In the circumstances it was necessary that the departmental enquiry should have been

concluded and the petitioner should have been allowed opportunity to defend himself. This has not been done. The enquiry was interrupted and the petitioner was removed from service. The District Magistrate had passed an order on April 9, 1971 and it was served on the petitioner subsequently on April 16, 1971, after he was reinstated. It is not the case of the respondents that the petitioner had been reinstated because he had been exonerated in the enquiry. His reinstatement was clearly a device to get over the constitutional requirement contained in Article 311.

The petitioner has also complained of the infringement of his right guaranteed under Article 16 of the Constitution. He has stated that he was the seniormost employee in his cadre and there four other juniors who were still working in the department. He has disclosed their names. He has also stated that in case of retrenchment of any surplus staff the principle of last come first go has to be followed in accordance with G.O. No. 36(1) 166O. & M. dated March 2, 1967. This principle has not been followed, because while his services were terminated, his juniors were allowed to remain in service. The allegation is contemplated in paragraph 21 of the writ petition to which no reply has been furnished in the counteraffidavit. The charge of the petitioner that he has been discriminated against in the matter of employment is thus established.

For all these reasons the petition succeeds and is allowed. The impugned order terminating the petitioners' service, a copy whereof is Annexure "19" to the writ petition, is quashed. The respondents are directed to treat the petitioner as still in service and to pay him the emoluments to which he is entitled. The petitioner is entitled to the costs.