

(1999) 09 AHC CK 0155
In the Allahabad High Court
Case No : Writ Petition No. 4487 (SIS) of 1992

State of U.P. and Ors.

APPELLANT

Vs

Sri Om Prakash & Anr.

RESPONDENT

Date of Decision : 01-09-1999

Acts Referred:

Citation : (1999) 09 AHC CK 0155

Hon'ble Judges : R.H.Zaidi, J and R.P.NIGAM, J

Final Decision : Dismissed

Judgement

1. By means of this writ petition filed under Article 226 of the Constitution of India the petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the judgment and order dated 29/4/1992, passed by the U .P PublicServicesTribunal No. II, Lucknow.

2. The facts are that Respondent No. 1 was appointed in temporary capacity as Class IV employee, i e. "Mali" by the Respondent No. 3, Commissioner, Gorakhpur Region, Gorakhpur, in a clear vacancy on permanent post which fell vacant due to retirement of one Bindeshwari vide order dated 27/1/84. He belongs to Scheduled Castes Community. The services of the Respondent No. 1 were terminated vide order dated 24/1/85. Challenging the validity of the said order, the Respondent No. 1 filed the claim petition before the Respondent No. 3 pleading that one Janardan Singh who was Head Assistant in the Office of the Commissioner of the Division had become displeased with the Respondent No. 1 and his father, as they had not worked at his residence. Janardan Singh had ultimately got his services terminated by means of the impugned order dated 24/1/85 by the Commissioner of the Division, Sri S.K. Biswas. It was mentioned in the order in which it was mentioned that he shall get one month's pay in lieu of notice. He was falsely accused by Janardan Singh that he used to attend office after taking alcohol and inspite of warnings had not given up the habit. It was wrongly alleged that his work and conduct had been unsatisfactory, actually order of termination was passed by way of punishment and same was stigmatory,

therefore, the termination order was liable to be quashed.

3. The petitioners have contested the claim petition before the Tribunal denying the allegations made by Respondent No. 1. It was pleaded that the order of termination was passed in accordance with the relevant rules. As he was a temporary employee and his service was liable to be terminated by serving one month's notice or on payment of one month's pay in lieu of the notice, the order of termination was quite valid. In the written statement it was also pleaded that the petitioner used to come to the office in intoxicated condition and also used to give threats to the assistants due to which their work had suffered. The department also lodged a First Information Report against the Respondent No. 1 with the police.

4. The parties produced oral and documentary evidence before the Tribunal and the service record of Respondent No. 1 was also summoned. The Tribunal after hearing the parties and perusal of record came to the conclusion that the impugned order of termination was passed by way of punishment without following prescribed procedure, therefore, same was liable to be quashed. Having recorded the said findings the claim petition was allowed by the impugned order dated 29/4/1992.

5. Learned standing Counsel vehemently urged that the Respondent No. 1 was holding the post of Mali in temporary capacity and his services were liable to be terminated in accordance with U.P. Temporary Government Servants (Termination of Service) Rules, 1975, therefore, it was urged that the order of Tribunal should be set aside.

3. The Tribunal after hearing the Counsel for the parties and perusal of the record held that :

4.

"The opposite parties themselves, in their counteraffidavit / written statement have pleaded that the petitioner used to perform his duties after consuming alcohol regarding which a First Information Report had been lodged by the department with the police and also that he used to cause hinderance in the normal working of the assistants in the office, i.e., thus had been thrown out of employment due to his above mentioned misconduct but no opportunity was given to him to show cause against the proposed action and to defend himself as required by Article 311 (2) of the Constitution of India."

7. The aforesaid finding was recorded on the basis of the material on record. We do not find any infirmity and illegality in the order passed by the Tribunal. It is well settled that even a temporary Government servant is entitled to protection under Article 311, if his services are to be terminated on the ground of some misconduct. In the instant case the procedure prescribed for taking disciplinary action was not followed. Although on the face of it the termination order was innocuous, but in fact same was stigmatic and punitive.

8. The writ petition has got no substance and same fails and is dismissed. The interim order, if any is discharged.