

(1972) 02 MP CK 0018
In the Madhya Pradesh High Court

Suresh Chand

APPELLANT

Vs

Principal, Government Girls Degree College and Another

RESPONDENT

Date of Decision : 07-02-1972

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1977) ILR (MP) 877 : (1972) JLJ 341 : (1972) 2 LLJ 363 : (1972) 17 MPLJ 481 : (1972) MPLJ 481

Hon'ble Judges : Bishambhar Dayal, C.J.;A.P. Sen, J

Bench : Division Bench

Judgement

Bishambhar Dayal, C.J.

This is a petition by Suresh Chand Choubey who was employed on a temporary post of a laboratory assistant in a Government Girls Degree College. His services were terminated at first by an order, dated 7th July, 1970 (Annexure P-2 to the petition). In this order it was mentioned that after search some facts had come to knowledge which indicated that the petitioner took out acid belonging to the college and threw it on a co-employee and that his conduct also was otherwise unsuitable for employment in a girls college. His services were, therefore, terminated. Subsequently, this order was withdrawn and another order (Annexure P-3) was served on the petitioner which merely stated that his services were no more required by the college and were, therefore, terminated with effect from 31st July, 1970. This order itself was dated 31st July, 1970.

Learned Counsel appearing for the applicant has contended that the applicant's services were not temporary because in the order of appointment it was not so mentioned. Since the post itself was a temporary post, the applicant could not be a permanent servant. He must, therefore, be deemed to have been a temporary employee.

The next contention of learned Counsel was that a formal order of termination having once been passed, viz., Ext. P-2, dated 7th July, 1970, no further order

could be passed terminating the petitioner's service. This order Ext. P-2 attached a stigma and would, therefore, have amounted to a punishment although it was not intended to be a punishment. That could not have been done without making a formal enquiry. This order was, therefore, ineffective and did not have, in law, the effect of terminating the petitioner's services. It cannot, therefore, be said that by that order the mutual relationship of master and servant had come to an end. It has been stated in the return that as a stigma would have affected the petitioner's future career, the second order dated 31st July, 1970 (Annexure P-3) was served simply terminating the petitioner's service so that it may not affect his future career. We, therefore, do not see any force in the contention that the second order was wholly without jurisdiction and had no effect.

The last contention of learned Counsel for the petitioner was that although the second order (Ext. P-3) did not mention the reason which resulted in the termination of the services of the petitioner, yet the previous order indicates that the termination had been based upon some alleged misconduct. Consequently, the Court can go behind this order and see the real state of facts to come to a conclusion that the termination was by way of punishment and Article 311 of the Constitution was, therefore, attracted. Learned Counsel has relied upon two cases of the Supreme Court. The first of these is reported in *The State of Bihar and Others Vs. Shiva Bhikshuk Mishra*, . This was a case in which the services of the Government servant had been terminated after a formal enquiry had started and the servant had submitted his explanation. Before the order of termination he was demoted from a higher post where he was officiating, The validity of the termination order was not challenged before the Supreme Court. Only the validity of the order of demotion was challenged. The position of reversion of a Government servant is different from that of termination of service of a Government servant. It has been laid down in several cases that a servant-who has been appointed to officiate on a higher post should normally be reverted according to the exigencies of the service and this means that he has to be reverted after all his juniors have been reverted and the service conditions required that he should also be reverted. But such a principle does not exist in the case of termination of service of a temporary Government servant. Moreover, in paragraph 3 of the judgment in *State of Bihar v. S.B. Mishra* (supra) their Lordships of the Supreme Court have quoted five propositions which the Supreme Court laid down in *State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, . Those propositions are:

1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution,

The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by

way of punishment, no matter whether he was a mere probationer or a temporary servant.

An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service does not attract the operation of Article 311 of the Constitution.

If there be a full-scale departmental enquiry envisaged by Article 311, i.e., an enquiry officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article.

Proposition No. 4 is relevant for the purpose of the present case. All that the previous order (Annexure P-2) indicates is that in order to ascertain whether the petitioner was suitable for being retained in the service of a girls college, certain facts were discovered. No formal enquiry was launched and no formal enquiry officer was appointed. Consequently, the case did not fall under the fifth proposition and in such a case Article 311 is not attracted. Learned Counsel relied upon the observations of their Lordships in paragraph 4 of the judgment. The observations are as follows:

The test as previously laid and which was relied on was whether the misconduct or negligence was a mere motive for the order of reversion or whether it was the very foundation of that order.

The distinction, therefore, is whether the employer was motivated to terminate the service on account of misconduct which the employer had come to know of or whether the employer wanted to punish the employee basing that punishment upon the misconduct. To our mind, these two propositions in the case of termination of the service of a temporary Government servant would be covered by propositions Nos. 4 and 5. Where after an informal enquiry an employer finds that the conduct of an employee is such that he is not suitable for retention in service, Article 311 of the Constitution does not apply as the termination is merely motivated by the misconduct. But where the employer goes further and starts a formal enquiry, appoints an enquiry officer, asks the delinquent to give a formal defence and explanation of his conduct and then comes to a conclusion that he has committed misconduct and bases the termination on that misconduct, it would be a case where the misconduct is the foundation of the order. The Supreme Court case cited above is, therefore, of no assistance to the petitioner.

The next case relied upon by learned Counsel for the petitioner is K.H. Phadnis Vs. State of Maharashtra, . That was also a case where an officer officiating on a higher post temporarily was reverted and the same principles were reiterated by their Lordships of the Supreme Court. In paragraph 17 of the judgment their Lordships have laid down the principle as follows:

Therefore, though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment.

The reasoning given above with regard to the Supreme Court case cited earlier applies to this Supreme Court case also and to our mind this case also has no application to the facts of the present case.

Learned Counsel for the respondents strenuously relied upon the decision of their Lordships of the Supreme Court in *The State of U.P. Vs. Sri Shyam Lal Sharma*, . This was a case of compulsory retirement. Their Lordships observed as follows:

Unless it is established from the order of compulsory retirement itself that a charge or imputation against the officer is made the condition of the exercise of that power or that by the order the officer is losing benefits already earned, the order of retirement cannot be said to be one for dismissal or removal in the nature of penalty or punishment. (Para. 20.)

In all the circumstances of this case, we see no substance in this petition. It is accordingly dismissed. Parties will bear, their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.