

(2003) 01 AHC CK 0100
In the Allahabad High Court
Case No : Second Appeal No. 638 of 1983

Union of India (UOI) and Another	Vs	APPELLANT
Girja Shanker and Others		RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2003) 1 AWC 791 : (2003) 96 FLR 1094

Hon'ble Judges : V.N. Singh, J

Bench : Single Bench

Advocate : Lalji Sinha, for the Appellant; S.D. Dwivedi, Radhey Shyam, Santosh Kumar, A.K. Verma, Satish Dwivedi, C.M. Shukla, C.D. Srivastava and Ashok Khare, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Singh, J.—This appeal has been filed against the judgment dated 12.11.1982, passed by the then VIth Additional District, Judge, Allahabad, by which the appeal was allowed and the judgment and decree dated 7.12.1979, passed in Original Suit No. 397 of 1977 (Court, of Munsif, West, Allahabad) was set aside and the suit for perpetual injunction was decreed and it was held that, the notice of termination dated 30.8.1977 is invalid and illegal.

2. Brief facts of the case is that the respondent Girja Shankar Pandey was appointed as casual labour on 31.8.1970 in the Allahabad Division of the Northern Railway.

3. The contention of the respondent is that, subsequently he was appointed as Class IV regular employee with effect from 1.3.1971 and was promoted to the post of Driver on 24.10.1973. After expiry of the period of probation, he became permanent employee from 24.10.1974 or at the most from 24.11.1975.

4. A notice dated 30.8.1977, was given for terminating the services of the respondent with effect from 29.9.1977. After receipt of notice, Original Suit No.

397 of 1977 was filed for perpetual injunction and for declaration in the Court of Munsif, West, Allahabad.

5. After hearing both the learned counsel for the parties, the learned Munsif dismissed the suit on 7.12.1979, against which, Civil Appeal No. 62 of 1980 was filed. The learned first appellate court allowed the appeal and set aside the judgment and decree dated 7.12.1979, passed in Original Suit No. 397 of 1977 of the Court of Munsif, West and decreed the suit for perpetual injunction and for declaration, holding that, the notice of termination dated 30.8.1977, as invalid and illegal.

6. Aggrieved by the judgment and decree passed by the first appellate court dated 12.11.1982, this second appeal has been filed.

7. Heard the learned counsel for the parties.

8. The following points for determination arise :

(i) Whether the respondent has acquired the status of temporary Government servant or not?

(ii) Whether the notice dated 30.8.1977, given by the Assistant Engineer, Northern Railway, Tundla cast stigma? If so, whether the service of the respondent Girja Shanker Pandey is liable to be terminated without compliance of provision of Article 311(2) of the Constitution of India?

9. So far as the point, whether the respondent acquired the status of temporary Government servant or whether he is a casual labour is concerned, it is clear from the record that, respondent, who was appointed as casual labour on 31.8.1970 continued in service till the date of notice without break in service.

10. The relevant rules quoted by the first appellate court, which has not been disputed by appellant shows that, as the respondent remained in service for more than 120 days in accordance with the Rule 2511 of Chapter XXV of the Indian Railways Establishment Manual, he acquired the status of temporary Government servant.

11. Now it is to be seen, whether the notice issued by the concerned Engineer cast stigma on the service of the respondent or not?

12. It is to be noted that, the Assistant Engineer had stated in the notice that respondent is not willing worker and work has been infringed to a great extent with the consequence that, it resulted in loss to the Railway. Moreover, from the date of appointment, he has been inefficient and he did not improve his working despite repeated verbal warnings. These facts have also been quoted in the judgment of the learned first appellate court.

13. In view of the fact that, in the termination notice, it has been alleged that the respondent is inefficient worker and he has not improved his working despite verbal warnings and he is not a willing worker and due to his work the Railway

has incurred loss, it is clear that, it casts stigma.

14. In this case, my attention was drawn to the decision of Ram Sahai Shukla Vs. Member Sachiv, District Administrative Committee/Distt. Assistant Registrar, Co-operative Societies and Others, in which, it has been held "the reversion of officiating Secretary cast stigma without affording an opportunity of hearing and it is violation of the principle of natural justice. Hence, the order cannot be sustained."

15. The other decision of the Hon"ble Supreme Court in the case of Madan Gopal Vs. State of Punjab, , is also relevant. In which it has been held that "if an enquiry has been made for the purpose of taking punitive action including dismissal or removal from the service, if the appellant was found to have committed the misdemeanour charged against him, then it puts a stigma on his competence and thus affects his future career. Hence, the Government servant is entitled to the protection of Article 311(2) of the Constitution of India.

16. In view of the above mentioned facts and the decisions cited above, it is clear that, the notice issued by the concerned Engineer to the respondent is not legal and valid and compliance of the provision of Article 311(2) of the Constitution of India was essential. In such circumstances, the Court is of the view that the learned first appellate court was justified in allowing the appeal and there is no need to interfere with the judgment and decree passed. Accordingly, the second appeal is liable to be dismissed.

17. The appeal is dismissed. The parties are directed to bear their own costs.