

(2003) 11 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 861 of 1986

U.P. State Road Transport Corporation through its Deputy
General Manager, Lucknow

APPELLANT

Vs

U.P. Public Service Tribunals, Lucknow and another

RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 304A

Citation : (2003) 11 AHC CK 0104

Hon'ble Judges : M.Katju, J and R.S.Tripathi, J

Final Decision : Allowed

Judgement

M. Katju, J.—Heard learned Counsel for the parties.

2. The petitioner has challenged the impugned order of the U.P. Public Service Tribunal dated 20.9.85 Annexure 5 to the writ petition. The respondent No. 2 was a temporary Bus Driver in the service of the U.P. Roadways and he was sent on deputation to the U.P. State Road Transport Corporation when the Corporation was created. The service of the respondent No. 2 was terminated by order dated 6.1.77, copy of which is Annexure 2 to the petition. He challenged that order before the Tribunal which allowed his petition by the impugned order dated 20.9.85. In the impugned order of the Tribunal it has been observed that the termination order is illegal as it is punitive in nature and was passed without giving opportunity of hearing. We do not agree with the view taken by the Tribunal. There is no dispute that the petitioner was only a temporary employee as has been stated in the termination order dated 6.1.77 and that has also been stated in Para 3 of the petition. The appointment order Annexure 1 to the petition specifically mentions that the petitioner is appointed on a temporary basis and his service can be terminated at any time. It is well settled that a temporary employee has no right to the post. There is nothing to show that the respondent No. 2 was ever confirmed in service.

3. The recent trend of the decisions of the Supreme Court is that if the order of

termination is innocuous then merely because of some allegations of misconduct in the counteraffidavit that would not make it a punitive order vide *Union of India v. A.P. Bajpai*, (2003) 2 SCC 433. Even if the employee had been suspended and an enquiry contemplated against him yet a termination order following such suspension would not be a punitive order, even if in the termination order it is mentioned that the employee is under suspension vide *Dhananjay v. Chief Executive Officer, Zila Parishad*, (2003) 2 SCC 386. In *Dhananjay's* case (supra), the facts were that the service of the employee who was temporary was terminated alleging that he had paid an amount of Rs. 18,000/ to the contractor as against the actual cost of Rs. 8,000/ spent towards repairs. The employee was placed under suspension and an enquiry was directed against him and a criminal complaint was lodged against him, but he was acquitted in the trial. The employee contended that the impugned order was stigmatic but the Supreme Court rejected the plea holding that mere acquittal in a criminal case is not relevant and merely keeping him under suspension is not an indication that the termination order is punitive. Since, the employee was temporary the Competent Authority could terminate his service without giving opportunity of hearing and the termination order was simpliciter and not punitive. In *Radhey Shyam Gupta v. U.P. Agro Industries Corporation Ltd.*, 1999 (81) FLR 475, it was held by the Supreme Court that if after gathering some facts the employer does not want to conduct a fullfledged enquiry the termination order would not be punitive. In *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*, (2002) 1 SCC 520, the petitioner was a probationer whose service was terminated after enquiry. He alleged that the termination order was stigmatic and punitive, but that plea was rejected by the Supreme Court holding that merely because an enquiry was held prior to the order of the termination that would not turn an otherwise innocuous order into one of punishment. The Supreme Court observed that an employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose it may make an enquiry to satisfy itself fairly as to the truth of any allegation that may have been made about the employee.

4. In the present case, the service of the respondent No. 2 had not been satisfactory as earlier there were complaints against him and he had been punished, as is evident from the counteraffidavit filed before the Tribunal copy of which is Annexure 4 vide Paras 1 and 3 to the said counteraffidavit. Thereafter, on 15.12.76, the respondent No. 2 was responsible for an accident under Section 304A IPC (rash and negligent driving) and other provisions of the I.P.C., but he was acquitted in the same. As already observed above, the Supreme Court in *Dhananjaya's* case (supra) has held that merely because a person has been acquitted in a criminal case, it does not mean that the termination order will become punitive.

5. For the reasons given above the impugned order of the Tribunal dated 20.9.85 is quashed. The termination order of the respondent No. 2 is upheld.