
(2000) 03 AHC CK 0115
In the Allahabad High Court
Case No : Special Appeal No. 783 of 1995

U.P. State Spinning Mill Co. Ltd.	Vs	APPELLANT
N.K. Tripathi and another		RESPONDENT

Date of Decision : 30-03-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311(2)
Constitution of India, 1950 — Article 14, 16, 311(2)
Constitution of India, 1950 — Article 14, 16, 311(2)

Citation : (2000) 2 AWC 1730 : (2000) 86 FLR 12 : (2000) 2 LLJ 1062

Hon'ble Judges : N.K. Mitra, C.J.; S.R. Singh, J

Bench : Division Bench

Advocate : Krishna Murari, for the Appellant; S.C. and O.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

N. K. Mitra, C.J.—The Special Appeal in hand is directed against the judgment and order dated 17.8.1995 of the learned single Judge in civil. Writ Petition No. 18277 of 1987, N. K. Tripathi v. M/s. U. P. State Spinning Mills Company (No. 2) Limited, Unit-1, district Jaunpur through its Manager, Administration and another, whereby the learned single Judge "set aside" the order dated 11.5.1987 impugned in the writ petition whereby the services of the petitioner-respondent were terminated by the appellant-employer with immediate effect as "no longer required", by giving a month's salary in lieu of the notice period.

2. It is not disputed that the petitioner-respondent Nawal Kishore Tripathi was appointed Assistant Mill Engineer in the Jaunpur Unit of the Mill on a consolidated salary of Rs. 1,200 plus allowances mentioned in the appointment order dated 1.9.1986 which contained a stipulation that the services were purely temporary and liable to be terminated without assigning any reasons by giving month's notice from either side. The illegality of the order was challenged before the learned single Judge on grounds, inter alia, that he had been discriminated in the

matter of employment in that one Shri B. N. Sachan who came into employment five months after the petitioner-respondent has been retained while the services of the petitioner-respondent came to be terminated in "arbitrary and capricious exercise of power"; that the order of termination was hit by Articles 14 and 16 of the Constitution; and that it was otherwise bad in law. The writ petition was opposed by the appellants herein on the ground that the petitioner-respondent was found "unsuitable" and his services were, therefore, terminated on the ground of unsuitability in terms of the service conditions. Learned single Judge held that since one of the grounds of termination as stated in the counter-affidavit was the "charge" that the petitioner used to remain absent without obtaining leave and, therefore, the services of the petitioner were liable to be terminated without notice and enquiry in tune with the principles of natural justice.

3. We have had heard the learned counsel appearing for the parties and gone through the judgment under challenge as also the fact of the case. It has been submitted by the learned counsel appearing for the appellants that the services of the petitioner-respondent who was a temporary hand were terminated by an order of termination simpliciter casting no stigma; that the order of termination was passed on the ground of "unsuitability" and since no stigma was cast, the learned single Judge was not justified in interfering with the order of termination.

4. The submission made by the learned counsel appearing for the appellants cannot be countenanced. It is not disputed that the petitioner-respondent was granted an increment vide order dated 30.12.1986 and it being not the case of the appellants that the petitioner-respondent could earn the increment irrespective of his performance being good or bad, termination of his services as "no longer required" cannot be sustained unless valid justification is shown in the counter-affidavit. When the services of temporary Government servants are terminated as "no longer required", the question arises as to why the services are no longer required--whether the post has been abolished or the employee has been found unsuitable for the job? In the counter-affidavit, the order of termination is sought to be justified on the ground that the services of the petitioner-respondent had been dispensed with by a simpliciter order of discharge as the management found that the petitioner was not "suitable" for the post for which he was appointed i.e. the post of Assistant Mill Engineer in that during the short span for one year, there was report of "inefficiency" and that he was also in the "habit of going on leave without proper sanction." Termination of the services of temporary Government servants on the ground of "inefficiency" is punitive termination. Where, therefore, there are reports against the employee concerned about "inefficiency" and any act or omission amounting to misconduct and his services are terminated in the background of such report, the order of termination becomes punitive and it cannot be sustained if it has been passed without holding an enquiry. In *Samsher Singh Vs. State of Punjab* and *Another*, their Lordships of the Supreme Court were considering the question as to when the termination of services of a probationer could be held to be punitive. It was

held : "If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution."

5. The principles governing termination of service of a temporary employee are more or less same as those of a probationer. From the decision aforesaid it is apparent that the termination of services of the petitioner-respondent on the ground of "Inefficiency" was punitive in nature and since principles of natural justice were violated, the order of termination was rightly set at naught by the learned single Judge. Furthermore, in the counter-affidavit filed in the writ petition, it has been stated that not only there were reports of "Inefficiency" against the petitioner but he was also in the "habit of going on leave without proper sanction." This in our opinion, was rightly held by the learned single Judge to be tantamount to a charge of misconduct on which the services of the petitioner-respondent were not liable to be terminated without enquiry. In other words, the termination of service on the ground of unauthorised absence is, tantamount to termination of misconduct which could not have been done without holding proper enquiry. On the facts of this case it is established that the termination of the services of the petitioner-respondent was grounded on "inefficiency" and "misconduct". In *Dipti Prakash Banerjee a. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and others* (1999) 2 UPLBEC 1048, it has been propounded that if the findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad in law. The decision aforesaid will be applicable to the facts of the present case.

6. In *L. Robert D'souza Vs. Executive Engineer, Southern Railway and Another*, , it was held that striking off the name of the concerned employee from the rolls for unauthorised absence from duty for 8 consecutive days amounted to termination of services on the ground of misconduct and termination of service on such grounds without complying with minimum principles of natural justice would not be justified. In *H.D. Singh Vs. Reserve Bank of India and Others*, , the Supreme Court held that striking off the name from the rolls for the reasons of unauthorised absence from duty amounted to arbitrary action. In *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, , the Supreme Court considered the effect of discharge from service on similar ground on one month's notice or pay in lieu thereof and held that it was not a discharge simpliciter or a simple termination of service but one camouflaged for termination based on serious misconduct. In *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another*, , it has been held that, "an employer may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without

giving such person reasonable opportunity to show cause why he be not removed."

7. In D.K. Yadav Vs. J.M.A. Industries Ltd., , the decisions aforestated have been relied on and it has been held that termination of services of the workmen therein in terms of clause 13 (2) (iv) of the Standing Orders which provided for automatic loss of lien on the post in case of expiry of eight days" absence from duty was struck down on the ground of having been passed in breach of principles of natural Justice. Learned single Judge. In our opinion, committed no error in quashing the order of termination. The appeal is, therefore, liable to be dismissed.

8. Accordingly the appeal fails and is dismissed, however, without any order as to costs.