

**Harendra Kumar Singh Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Aug-27-1999

**Reported in :** 2000(2)AWC1325

**Judge :** Dev Kant Trivedi, J.

**Acts :** Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975 - Rules 3 and 5; Police (Amendment) Act, 1961- Sections 6 and 9; Uttar Pradesh Police Regulations; [Constitution of India](#) - Article 226; [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 504 and 506; [Police Act, 1861](#)

**Appeal No. :** Writ Petition No. 1227 (S/S) of 1992

**Appellant :** Harendra Kumar Singh

**Respondent :** State of U.P. and Others

**Advocate for Def. :** C.S.C.

**Advocate for Pet/Ap. :** S.D. Singh, Adv.

**Judgement :**

**Dev Kant Trivedi, J.**

1. The present petition under Article 226 of the Constitution is directed against an order dated 7th December, 1992. whereby the services of the petitioner Harendra

Kumar Singh were terminated.

2. The petitioner was employed as Constable of Pradeshik Armed Constabulary, hereinafter referred to as 'P.A.C.' and was posted in 10th Battalion, P.A.C., Jahangirabad, Barabankt. The petitioner was recruited as Constable on 1st April, 1984. The opposite party No. 3 Sri S. N. Chak, the then Commandant of 10th Battalion of P.A.C. lodged a report against the petitioner on 4th October, 1992 at Police Station Kotwali Fatehgarh, district Farrukhabad under Sections 323/504/506, I.P.C. and Section 6 P.A.C. Act alleging an altercation between the petitioner and Sohan Lal, Head Constable which had allegedly taken place on 2nd August, 1992. The petitioner was awarded a punishment of 24 days drill and after undergoing the said punishment he was sent for duty to District Bahraich at Nanpara. He was served with the termination order dated 7.12.1992 in exercise of the powers under the provisions of U. P. Temporary Government Servants (Termination of Service) Rules, 1975. According to the petitioner, the said termination order is in fact punitive in nature and amounts to punishment of removal without any departmental enquiry and that no opportunity was afforded to the petitioner and in fact he has been removed from service on account of an alleged altercation between him and Head Constable Sohan Lal which formed the subject-matter of a criminal case in which he was released on bail. According to the petitioner the provisions of U. P. Temporary Government Servants (Termination of Service) Rules, 1975, are not applicable to the petitioner, rather the provisions of Section 9 of P.A.C. Act and Schedule thereto apply to the case of the petitioner.

3. Counter-affidavit was filed on behalf of the opposite parties wherein it was admitted that the petitioner was appointed as a temporary constable in P.A.C. on 1st October, 1984. Punishment of two days' leave without pay was awarded to him in the year 1985 and two days' leave without pay in the year 1989. He was further awarded the punishment of 14 days of parade drill in the year 1991 when he misbehaved with the Platoon Commander. In the year 1992, he was again awarded punishment of 14 days of parade drill and again by 10 days parade drill when he made false allegations against the Platoon Commander. In the year 1989 he was awarded the adverse entry when during his medical leave he was found in

the house of a prostitute. In the year 1992 again he had assaulted one Santosh Kumar, driver when he was on duty in Delhi and one increment was stopped. In the circumstances the services of the petitioner were terminated as he was a temporary Government servant.

4. In his rejoinder-affidavit, the petitioner claimed that in terms of para 541 (2) of U. P. Police Regulations even an unconfirmed Constable or a Constable on probation cannot be discharged from service unless he is called upon to show cause. It was also urged that since the petitioner was a member of paramilitary force and therefore, he could not have been dealt with by applying U. P. Temporary Government Servants [Termination of Service) Rules. 1975.

5. Learned counsel of parties have advanced their arguments.

6. It has been urged on behalf of the petitioner that in fact the Impugned order of termination is punitive in nature and that it is not an order simpliciter terminating the services of a temporary Government employee. It is urged on behalf of the petitioner that though the petitioner has been terminated from service exercising the powers under U. P. Temporary Government Servants [Termination of Service) Rules, 1975, the impugned order is in fact based on the alleged previous misconduct of the petitioner and it is a case in which the respondents have themselves admitted this fact in their counter- affidavit. As has earlier been observed in their counter-affidavit, the respondents have themselves referred to several misconducts of the petitioner in which he was awarded several punishments. The petitioners' claim is that immediate cause of termination of his services has been an allegation made against him of an alleged altercation with Head Constable Sohan Lal, in respect of which a report was lodged by the Commandant, respondent No. 3 at Police Station Kotwali and the applicant had obtained bail in the said case. Thus, the petitioner claims that in fact he was penalised by exercising the power under U. P. Temporary Government Servants [Termination of Service) Rules, 1975, though in fact the order is that of removal consequent upon his alleged misconduct. It is urged on behalf of the petitioner that in the present case of the alleged misconduct he should have been given an opportunity of being heard and in fact full-fledged departmental enquiry was

required to be held since the order was punitive in nature.

7. There can be no dispute that in the circumstances of the present case, though the respondent No. 3 has not mentioned of an alleged misconduct, but the termination order was in fact based on the alleged misconduct of the petitioner, and, therefore, the order in question is punitive in nature and it was necessary for the respondents to have afforded an opportunity of hearing to the petitioner before passing the order which has the effect of removal from service.

8. According to the petitioner, the provisions of U. P. Temporary Government Servants (Termination of Service) Rules, 1975, are not applicable to the P.A.C., inasmuch as under Section 9 of the P.A.C. Act no officer of the P.A.C. shall be entitled to be discharged from the P.A.C. notwithstanding anything contained in the Police Act, 1861, or in any other law. Thus, any person who is appointed in the P.A.C. has no right to get discharged or to quit the services, even though he is a temporary employee of the P.A.C., U. P. Temporary Government Servants (Termination of Service) Rules, 1975, provide for a right to a temporary Government servant to quit the services by serving a notice of thirty days or to pay salary in lieu thereof. However, a temporary member of the P.A.C. in view of the provisions of Section 9 of P.A.C. Act is not entitled to exercise the said right and, therefore, it cannot be said that the petitioner was subject to the provisions of U. P. Temporary Government Servants (Termination of Service) Rules, 1975. In view of what has been stated above, it is evident that firstly the petitioner could not have been discharged from service in exercise of the powers conferred on the appointing authority under U. P. Temporary Government Servants (Termination of Service) Rules, 1975. and secondly the termination having been based on the alleged misconduct of the petitioner is punitive in nature and, therefore, it was necessary for the appointing authority to provide an opportunity to the petitioner of showing cause as prescribed under para 541 of the Police Regulations.

9. In view of the above discussion, it is evident that the Impugned order of termination cannot be sustained and has to be quashed. The writ petition is, therefore, allowed and the order dated 7th December, 1992, terminating the services of the petitioner is hereby quashed. The petitioner will be entitled to all

benefits as if he has been in service irrespective of the order of termination. It is, however, made open to the respondents to act in accordance with law to proceed against the petitioner by affording him reasonable opportunity of hearing as prescribed under the rules and the law. Costs on the parties.

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