

State of U.P. and Another Vs. Chandra Prakash Shahi and Another

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Court : Allahabad

Decided On : Nov-27-1997

Reported in : 1998(2)AWC1416; (1998)3UPLBEC2156

Judge : S.C. Verma and ;J. Bhalla, JJ.

Acts : Uttar Pradesh Temporary Government Servant (Termination of Service) Rules, 1975; [Police Act, 1861](#) - Sections 7; [Constitution of India](#) - Articles 226, 311 and 311 (2)

Appeal No. : Writ Petition No. 7819 (S/B) of 1993 and Writ Petition U/A 226 of the Constitution of India

Appellant : State of U.P. and Another

Respondent : Chandra Prakash Shahi and Another

Advocate for Def. : S.D. Singh, ;Y.S. Lohit and ;K.N. Misra, Advs.

Advocate for Pet/Ap. : C.S.C.

Judgement :

S.C. Verma, J.

1. The State of Uttar Pradesh through the Secretary HomeDepartment and the Commandant, 34 Battalion, P.A.C. Varanasi, had filed the present writ petition

under Article 226 of the Constitution challenging the order of U. P. Public Services Tribunal dated 18.1.1993 by which the Claim Petition of the respondent No. 1 Chandra Prakash Shahi, has been allowed and the order of termination dated 19.7.1989 has been quashed.

2. Assailing the Impugned order, the petitioners have alleged that the work and conduct of respondent No. 1 was not found satisfactory and as such, his services were terminated by order dated 19.7.1989 under the U. P. Temporary Government Servant (Termination of Service) Rules, 1975. The opposite party No. 1 was recruited as a temporary recruit Constable on 1.10.1985 at 34 Battalion P.A.C., Varanasi and after the respondent No. 1 completed training on 6.9.1986 he was placed as temporary Constable. The petitioners have alleged that the opposite party No. 1 at no point of time was confirmed or given permanent appointment. It has also been alleged that the U. P. Public Services Tribunal committed manifest error of law in holding that the impugned order is by way of punishment based on misconduct and no opportunity was afforded to the delinquent. It is further alleged that the U. P. Public Services Tribunal, erred in holding that the services could be terminated only after conduct of proceedings under Section 7 of the Police Act and the impugned order was founded on the allegation of misconduct on account of his involvement in a quarrel at the Camp at Ghat, Varanasi.

3. Relying on the Judgment of State of Uttar Pradesh and another v. Kaushal Kishore Shukla, 1991 (1) SCC 691, it has been submitted that the action of termination has not been taken as a measure of punishment founded on any misconduct but after considering the work and suitability of the petitioner, the services have been terminated in accordance with the Service Rules. It is open for the authorities to take action of punishment against an incumbent for any irregularity or misconduct or to terminate his services under the terms of contract.

4. Supporting the order of U. P. Public Services Tribunal, the learned counsel for the respondent No. 1 submitted that there is no material on record except the Incident which took place on 24.6.1989 in which some quarrel took place between Constables and the petitioner has been wrongly Implicated on the basis of incorrect preliminary report submitted by Sri Kailash Chaubey, Assistant

Commandant. The action of termination is founded on the above misconduct and is by way of punishment without affording any opportunity.

5. It is not disputed that some Incident of marpitt took place on 24.6.1989 between the Constables and a preliminary enquiry was conducted by Sri Kailash Chaubey, Assistant Commandant in which it was held that the opposite party No. 1 also participated and was guilty of hurling blows and used filthy language to the superior officers. The Commandant after considering the entire material on record including the preliminary report was of the view that the opposite party No. 1 was guilty of Indiscipline and misbehaviour with the senior officers and his services were terminated under the U. P. Temporary Government Servant (Termination of Service) Rules, 1975. The opposite party No. 1 has not been able to place any material on record either before the U. P. Public Services Tribunal or before this Court that the incident had not taken place and the findings recorded in the preliminary enquiry report against him are not borne out. from the material on record. The discipline of the police force has to be strictly followed and involvement of the member of the police force in such incident reflects his unsuitability and inefficiency. A preliminary enquiry was conducted to ascertain the correct facts and the correct material to be placed on record. The work and conduct of the opposite party No. 1 was thereafter assessed and the appointing authority took the decision that instead of Inflicting any punishment on the opposite party No. 1 after holding regular enquiry, the services of the petitioner be terminated by a non-stigmatic order under the U. P. Temporary Government Servant (Termination of Service) Rules, 1975.

6. in the case of State of Uttar Pradesh and another v. Kaushal Kishore Shukla (supra), it has been held :

'A temporary Government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Government servants. A temporary Government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority

is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability. misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the Government Servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary Government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent Government servant. very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well-settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order.

Learned counsel for the respondent urged that the allegations made against the respondent in respect of the audit of Boys Fund of an educational institution were incorrect and he was not given any opportunity of defence during the inquiry which was held ex parte. Had he been given the opportunity, he would have placed correct facts before the inquiry officer. His services were terminated on allegation of misconduct founded on the basis of an ex parte enquiry report. He further referred to the allegations made against the respondent in the counter-affidavit filed before the High Court and urged that these facts demonstrate that the order of termination was in substance, an order of termination founded on the allegations of misconduct, and the ex parte enquiry report. In order to determine this question, it is necessary to consider the nature of the respondent's right to hold the post and to ascertain the nature and purpose of the inquiry held against him. As already observed, the respondent being a temporary Government servant had no right to hold the post, and the competent authority terminated his services by an innocuous order of termination without casting any stigma on him. The termination order does not indict the respondent for any misconduct. The Inquiry which was held against the respondent was preliminary in nature to ascertain the respondent's suitability and continuance in service. There was no element of punitive proceedings as no charges had been framed, no Inquiry Officer was

appointed, no findings were recorded, instead a preliminary inquiry was held and on the report of the preliminary inquiry the competent authority terminated the respondent's services by an innocuous order in accordance with the terms and conditions of his service. Mere fact that prior to the issue of order of termination, an inquiry against the respondent in regard to the allegations of unauthorised audit of Boys Fund, was held does not change the nature of the order of termination into that of punishment as after the preliminary inquiry the competent authority took no steps to punish the respondent instead it exercised its power to terminate the respondent's services in accordance with the contract of service and the Rules.'

7. In the case of *Triveni Shankar Saxena v. State of U. P. and others*. AIR 1992 SC 496. It has been held :

'However, this Court has made it clear that if the competent authority decides to take punitive action, it may do so by holding a formal inquiry by framing charges and giving an opportunity to the Government servant in accordance with the provisions of Article 311 of the Constitution. In the Instant case, as we have already noticed supra, the termination is not a punitive action. According to the State of U. P. the services of the appellant were terminated as per the rules on account of his unsuitability by giving him one month's salary, which statement is not challenged before us. Therefore, we hold that the dictum laid down in the above *Kaushal Kishore Shukla's* case (supra) will squarely apply to the facts of the present case and that the order of termination 'simpliciter' cannot be challenged.'

8. After considering the law laid down in the *State of U. P. v. Kaushal Kishore* (supra), in the *State of U.P. and another v. Km. Prem Lata Misra and others*, 1994 (2) UPLBEC 1213, it has been held :

'This Court considered the entire case law elaborately and had held that the termination is in terms of the order of appointment and that therefore, it is not by way of punishment as a punitive measure. Accordingly the need to conduct an Inquiry into the alleged misconduct does not arise and the termination of service in terms of the contract was held to be valid. It is settled law that the Court can lift the veil of the innocuous order to find whether it is the foundation or motive to pass the offending order. If misconduct is the foundation to pass the order then an enquiry

into misconduct should be conducted and an action according to law should follow. But if it is motive. It is not Incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could he terminated. In terms of the order of appointment or rules giving one month's notice or pay salary in lieu thereof. Even if an enquiry was Initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment. The same principle applies to the facts in this case. It is seen that the respondent was appointed by direct recruitment by Selection Committee constituted by the Government in this behalf and on finding about the suitability to the post as an Assistant Project Officer, the respondent was appointed and was posted to the place where she had Joined. Thereafter, her work was supervised by the higher officers and two officers have submitted their reports concerning the performance of the duties by the respondent. She was regularly irregular in her duties. Insubordinate and left the office during office hours without permission etc. On consideration thereof, the competent authority found that the respondent is not fit to be continued in service as her work and conduct were unsatisfactory. Under these circumstances, the termination is for her unsuitability or unfitness but not by way of punishment as a punitive measure and one in terms of the order of appointment and also the Rules. Accordingly, the High Court has gone against settled law in allowing the writ petition.'

9. In view of the above law laid down by Hon'ble the Supreme Court, the U. P. Public Services Tribunal, was not correct in holding that the impugned order was founded on the allegations of misconduct and proceedings under Section 7 of the Police Act were necessary. The U. P. Public Services Tribunal was also Incorrect in holding that there was nothing on record to indicate that any separate enquiry was conducted to assess the suitability and as such, the action was by way of punishment without affording any opportunity in violation of Article 311(2) of the Constitution.

10. The opposite party No. 1 was a temporary employee and his services were not confirmed or treated to be on substantive basis at any point of time. The appointing authority after considering the preliminary report and such other service record of the petitioner had decided to take action of termination of temporary

services in accordance with the terms of employment and the termination rules. Thus the punishing authority was Justified in taking the impugned action of termination of the temporary services of the petitioner.

11. We are satisfied that in view of the law laid down by Hon'ble Supreme Court, the Judgment of the U. P. Public Services Tribunal cannot be sustained and is liable to be quashed.

12. We accordingly allow the writ petition and quash the order of the U.P. Public Services Tribunal dated 18.1.1993.

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