

**Singari Devi Vs. State of Uttar Pradesh and ors.**

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**Court :** Allahabad

**Decided On :** Sep-07-2001

**Reported in :** 2001(4)AWC2844; [2001(91)FLR610]; (2002)1UPLBEC740

**Judge :** D.R. Chaudhary, J.

**Acts :** [Constitution of India](#) - Articles 14 and 16

**Appeal No. :** C.M.W.P. No. 10236 of 1987

**Appellant :** Singari Devi

**Respondent :** State of Uttar Pradesh and ors.

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

**Advocate for Pet/Ap. :** A.K. Gupta and ;Sarita Singh, Advs.

**Disposition :** Writ petition allowed

**Judgement :**

**D.R. Chaudhary, J.**

1. By means of this petition, the petitioner Smt. Singari Devi is assailing the order dated 2.8.1985 (Annexure-4) terminating her services as no longer required. The resume of the facts are that pursuant to the advertisement issued by the respondents, the petitioner applied for the post of full-time dai ; she was appointed

against the substantive post of full-time dai by means of order dated 15.12.1983 (Annexure-1) in the scale of Rs. 315-440 through selection process ; her services were confirmed on completion of one year in service and office started deduction of G.P.F., etc. from her salary ; she started receiving threats of termination of her services as she denied to part with some money which was being realised as donations to be used for the purpose best known to respondents No. 2 and 3 ; she tried to seek relief against her apprehended termination by filing O. S. No. 1552 of 1985 in which the civil court granted interim injunction, on legal advice of her counsel, the suit was withdrawn as the same was not maintainable as the services of the petitioner stood terminated by the order impugned herein.

2. The main thrust of Sri A. K. Gupta, learned counsel for the petitioner is that the services of the petitioner could not be terminated inasmuch as the Juniors to the petitioner are retained in service, Sri Gupta further submitted that the termination of the services of the petitioner is no longer required is arbitrary for the reasons the petitioner was appointed against a permanent vacancy through a selection process and her services were unblemished throughout. The similar controversy came up for consideration before the Apex Court in *Om Prakash Goel v. Himachal Pradesh Tourism Development Corporation Ltd., Shimla and Ors.*, AIR 1991 SC 1490. In that case, the petitioner who was on probation was served with charge sheet but before the conclusion of the disciplinary proceedings, his services were terminated as no longer required though juniors to the petitioner were retained in service.

3. The Apex Court examined the controversy on two points ; first whether the services of the petitioner in that case were rightly terminated 'as no longer required' before conclusion of the disciplinary proceedings and secondly, whether the order terminating the services 'as no longer required' though juniors retained in service, is violative of Articles 14 and 16 of the [Constitution of India](#)? Considering the first question, the Supreme Court held as under:

'Having gone through the various records and also the admissions made in the counter-affidavit, we are satisfied that the termination order, though appears to be innocuous, was intended only to punish the petitioner for the misconduct, in

respect of the allegations which are mentioned in the charges that were served on him. After serving the charge-sheet, as a matter of fact, the enquiry was conducted. But before the conclusion of the enquiry, the termination order was passed. Therefore, it is not difficult to say that the form of termination order is only a cloak for an order of punishment.'

4. While considering the 2nd question, the Supreme Court after relying upon the observations in *K C. Joshi v. Union of India*, AIR 1985 SC 1046, that 'if it is discharge simpliciter, it would be violative of Article 16 of [Constitution of India](#) because a number of store-keepers juniors to the appellant are shown to have been retained in service' and the observation recorded in *Jarnail Singh's case*, AIR 1986 SC 1626, the Supreme Court came to the conclusion that :

'After a careful perusal of the record, we are satisfied that the juniors to the petitioner are retained. Therefore, on this ground also, the termination order is liable to be quashed.'

5. The Apex Court has taken the similar view in catena of its decisions which are not being referred hereto for brevity.

6. Sri Gupta has also placed reliance upon a decision of this Court in *Satya Deo Mishra v. State of U. P. and Anr.*, (1995) 3 UPLBEC 1410. In that case, the services of the petitioner, who had put in 15 years of service, were terminated as no longer required. Learned Judge has drawn up the viable interpretation of reasonableness with regard to concept that the temporary employee has no right to the post and held as under:

'In my opinion, the concept that a temporary employee has no right to the post, has to be modified in the light of the new interpretation of Article 14 of the Constitution given by the Supreme Court in *Menaka Gandhi's case*, AIR 1978 SC 597, which is a 7 Judges Constitution Bench decision followed by several subsequent decisions of the Supreme Court. The concept that a temporary employee has no right to the post cannot be treated as an absolute concept. It has to be treated as subject to Article 14 of the Constitution. The Constitution is the Supreme law of the land if the Supreme Court gives a new interpretation to a

Constitutional provision, then it is necessary to revise the earlier concepts in the light of the new interpretation given by the Supreme Court. To tell a person who has put in 18 years of service that his service is no longer required, in my opinion, is wholly arbitrary and unreasonable. When a person is appointed, then within two or three years, the authority must confirm him if his work is satisfactory, or if the work is not satisfactory, his service may be terminated if he was appointed temporarily but it is wholly arbitrary and unreasonable to keep a damocles sword hanging over the head of the employee and not to confirm him for a long period of time. No one can work properly if he does not get job security. In my opinion, the decisions cited by the learned standing counsel are distinguishable. In our country after a person gets a job, ordinarily gets married, has children and he has to support his family. He settles down in life with a reasonable expectation that he will continue till the time of retirement, and he becomes overage for seeking other service after a few years. As such, after a person has put in 18 years of service to tell him that his service is being terminated on the ground that it is no longer required is, in my opinion, wholly unreasonable and arbitrary.'

With the aforesaid observations, the impugned order terminating the services 'as no longer required' was quashed by the Court.

7. The petitioner in the present case has categorically stated in para 9 of the writ petition that six dais (serial No. (a) to (f) who, being juniors to the petitioner were retained and continuing in service. The respondents after having availed of several opportunities granted by the Court filed the counter-affidavit, in para 6 of which they have given evasive reply neither admitting nor denying the averments contained in para 9 of the writ petition. On having required by the Court to give full and correct reply of para 9 of the writ petition, the respondents have given requisite reply in para 4 of the supplementary counter-affidavit which is conveniently quoted below :

That Smt. Sabiran, at serial No. (a) was appointed on 5.1.1985. Smt. Durgawati at serial No. (b) was appointed on 27.5.1982 and is senior to the petitioner. Smt. Bhumia at serial No. (c) is at Maharajganj and not at Gorakhpur and her service records are not at Gorakhpur. Smt. Prabhawati shown at serial No. (d) is non-

existent, as no such person is known to be at Gorakhpur. Smt. Humilia at serial No. (e) at Maharajganj and not at Gorakhpur. Serial No. (f) not named dai is Mona and is working at Gorakhpur and was appointed on 1.8.1984. As such it is on serial Nos. (a) and (f) who are juniors to the petitioner working at Gorakhpur. The candidate at serial No. (b) is senior to the petitioner rest not being at Gorakhpur, are not relevant.'

8. Learned standing counsel yet made an effort to defend the impugned order, made a mere submission that the petitioner being a temporary employee has no right to hold the post.

9. I have considered the submission of the learned counsel for the parties and scrutinised the decisions cited in support thereof. In my considered view, the controversy involved in the present writ petition is squarely covered by the decisions in the ease of Om Prakash Goel and Satya Deo Mishra (supra) and as such, the order impugned deserves to be set aside.

10. In the result, the writ petition succeeds and is allowed. The impugned order dated 2.8.1985 Annexure-4 to the writ petition passed by respondent No. 2 is hereby quashed. The petitioner shall be reinstated with continuity in service within a period of 10 days from the date of receipt of a certified copy of this order and shall be entitled to all benefits except that of 50% of the back wages which. In my view, shall meet the end of justice in the facts and circumstances of the case. The payment shall be made within three months from the date of receipt of a certified copy of this order.

11. No order as to cost.