

Ram Kumar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-04-2012

Judge : Anil Kumar

Appeal No. : Civil Misc. W.P. NO. 3181 OF 1993

Appellant : Ram Kumar

Respondent : State of U.P. and Others

Judgement :

Anil Kumar, J.

1. Heard Sri R.J. Trivedi, learned counsel for the petitioner, learned Standing Counsel and perused the record. By means of present writ petition, petitioner has challenged the impugned order of termination dated 1.6.1992 (Annexure no.5) passed by opposite party no.2 as well as the order dated 18.1.1993(Annexure no.7) by which the petitioner's representation was rejected by opposite party no.2./ Commandant, Kendriya Nagrik Suraksha prishikshan Sanstahan, Lucknow which comes under U.P. Civil Defence Services .

2. Learned counsel for the petitioner submits that the petitioner was initially engaged on ad-hoc basis as Sweeper on 13.12.1985. Subsequently, the vacancy occurred in the Sansthan, the names were called from Employment Exchange by opposite party no.2 . In pursuance of the same, petitioner submitted his candidature and was called for interview and by order dated 9.8.1990 (Annexure

non.3) he was appointed on temporary basis on the post of Sweeper under opposite party no.3. In pursuance of the said order, petitioner joined his duty on 7.9.1990. While he was working and discharging his duties, by means of impugned order dated 1.6.1992 (Annexure no.5) passed by opposite party no.2, the services of the petitioner has been terminated by invoking the provisions as provided under U.P. Temporary Government Servants Rules(termination of service), 1975 (herein after referred to as Rules, 1975) .

3. Aggrieved by the said facts, petitioner submitted a representation, rejected by order dated 18.1.1993 (Annexure no.7) hence the present writ petition has been filed.

4. Learned counsel for the petitioner while challenging the impugned orders submits that in the present case, the services of the petitioner has been terminated on account of misconduct ,therefore before passing the impugned order an opportunity of hearing should be given to the petitioner, as such the action on the part of the respondent no.2 thereby terminating the services of the petitioner by invoking the provisions as provided under Rules, 1975 is illegal, arbitrary in nature and in contravention of Article 14 of the Constitution of India as well as principles of natural justice as the Rules 1975 have no application to the facts and circumstances of the present case, so liable to be set aside.

5. On the other hand, learned State Counsel while defending the impugned orders which are under challenge in the present writ petition submits that the petitioner was a temporary employee in the Sansthan, as such his services were terminated by invoking the provisions of Rules 1975, hence there is neither any illegality or infirmity in the impugned orders which are under challenge in the present writ petition, so the petition filed by the petitioner liable to be dismissed.

6. I have heard the learned counsel for the parties and going through the record.

7. The undisputed facts of the present case are that the petitioner was working on the post of Sweeper as temporary employee and his services were terminated on 1.6.1992 (Annexure no.5) by invoking the provisions as provided under Rules 1975 . Thereafter his representation was also rejected. Further in para nos. 11 and

13 of the counter affidavit filed on behalf of official respondents it has been stated that petitioner was absent from duty without any prior information or leave and ' Anushashanheen Acharan ka Aadi Tha' as such a complaint has been made against the petitioner and in response to the same a show cause notice has been issued to him, thereafter reminders have been given to which petitioner submitted his reply and admitted his guilt and also stated that he will not repeat such mistake in future, so keeping in view the said fact as well as dereliction of duties and undisciplined behavior while performing his duties, his services were terminated by invoking the provisions as provided under Rules 1975.

8. The provision of U.P. Temporary Government Service (termination of service) Rules,1975 would not apply where a temporary Government Servant is sought to be removed by way of punishment. If there is a termination simplicitor, which is intended to be ordered in respect of a Government Servant, Rule 3 of the Rules can be invoked. But if a government servant, who is governed by these rules is sought to be removed on the ground of misconduct, embezzlement or lack of integrity, something more is required to be done before the termination of which Government servant is ordered. Something more must be consistent with the constitutional provisions and with the principles of natural justice. At least a hearing is to be given to such Government employee to explain his misconduct, lack of integrity and negligence of duty.

9. In the case of State of U.P. and another Vs. Prem Lata Misra (Km) and others (1994) 4 SCC 189 Hon'ble the Supreme Court has held that 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 pas 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 be 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 could be dropped midway and action could be taken in terms of the rules of order of appointment.

10. In the case of Radhey Shyam Shukla Vs. State of U.P. and others (2008) 1 UPLBEC 177 Hon'ble the Supreme Court after considering the various case laws has held in the cases of Triveni Shanker Saxena V. State of U.P. 1992 SCC(LandS) 440 and State of U.P. V. Prem Lata Misra (1994) 4 SCC 189 has held that in the former case, the termination order was simple order which did not cast any stigma and there were several adverse entries in the confidential reports. The termination was as per rules. In the latter case, the employees superiors complained that the employee was not regular in her work and was in the habit of leaving office during office hours. A simple order of termination was passed in terms of the order of her temporary appointment. There was no prior enquiry. In both these cases, the termination orders were upheld.

In Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Center for Basic Sciences, Calcutta and others, reported in (1999) 3 SCC,60, the Hon'ble Supreme Court in paragraph 21 of the report observed as under:-

"If findings were arrived at in an enquiry 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. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similarly is the position if the employer did not want to enquire into the truth of the allegation because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegation would be a motive and not the foundation and the simple order of termination would be valid."

11. A perusal of the above, clearly shows that if an enquiry was conducted as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple termination is to be treated as 'founded' on the allegations and will be bad.

12. Similarly in Chandra Prakash Shahi Vs. State of U.P. and others, (2000)5 SCC 152, the Hon'ble Supreme Court articulated that if for determination of suitability

for the post or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate the services, the order will not be punitive in nature. But, if there are some allegations of misconduct and an inquiry is held to find out the truth of that misconduct and thereafter the order of termination is passed, the order would be punitive in nature . In *V.P. Ahuja v. State of Punjab*,(2000) 3SCC 239, the Apex Court reiterated that services of temporary servant and even of probationer cannot be terminated arbitrarily, or can those services be terminated in a punitive manner without complying with the principles of natural justice as they are also entitled to certain protection.

13. In the case of *Nar Singh Pal Vs. Union of India and others*(2000) 3 SCC 588, Hon'ble Supreme Court has held that the reasoning of the Tribunal is fallacious. If an order had been passed by way of punishment and was punitive in nature, it was the duty of the respondents to hold a regular departmental enquiry and they could not have terminated the services of the appellant arbitrarily by paying him the retrenchment compensation. The observation of the Tribunal that the respondent had a choice either to hold a regular departmental enquiry or to terminate the services by payment of retrenchment compensation is wholly incorrect.

14. In the case of *Hari Ram Maurya Vs. Union of India and others* (2006) 9 SCC 167, Hon'ble Supreme Court has held that from the order of termination Annexure P-7, it appears that the same refers to the show- cause notice dated 20.8.2002 which is to be found at Annexure P-5 . It is stated therein that the appellant demanded kickback with a view to help the complaint to get a favorable order in the pension matter. That being so, there was a clear charge of bribery levelled against the appellant. No doubt, the appellant was a temporary employee, but if he is sought to be removed on the ground that he was guilty of the charge of bribery, it becomes necessary for the respondent Union of India to hold an inquiry and thereafter to act in accordance with law. In this case, admittedly, no inquiry was conducted, and that is obvious even from Annexure P-7, the latter described as disengagement of casual labour. We, therefore, allow this appeal and set aside the order of the High Court as also the order of termination Annexure P-and dated

30.9.2002. This, however, will not prevent the respondents from taking action in accordance with law.

15. In the case of State of U.P. and others Vs. Vijay Shanker Tripathi (2005) 6 SCC 135 Hon'ble Supreme Court has held that from a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either thin or overlapping. It may be difficult either to categories or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or to motive on the ground of unsuitability to continue in service.

16. A Division Bench of this Court in the case of Kailash Bharti Vs. State of U.P. and others 2005 (23) LCD 436 has held that the factual situation indicates that had there been no allegation of drunkenness there would have been no order of termination. The papers and affidavits show this and those are all matters of record. The whole thing having come to the notice of the Writ Court it cannot now say that the Court and everybody else will now only look at the faceless, or the unreasoned; letter of termination, but it will show its eyes to the history of its genesis. This type of self-imposed partial blindness is not permitted to the Writ Court. As such the order of termination brought into existence, because an allegation of drunkenness against the writ petitioner was found without any hearing to be true, has to be set aside.

17. Further in the case of Usha Khare (Km.) Vs. State of U.P. and others (2009) 1 UPLBEC 894, a Division Bench of this Court has held :-

" Considering the facts of the present case in the light of the aforesaid exposition of law we find that the petitioner has been terminated observing that she is guilty of committing several irregularities and misuse of Pushtahar and being not original resident of village Ninora. The allegations of irregularities and misuse of public funds constitute serious stigma and therefore, by no stretch of imagination it can be said that the impugned order is non-stigmatic. Before castigating the appellant

for her alleged involvement in our view it was incumbent upon the respondents to afford an opportunity to appellant by issuing show cause notice and, therefore, the impugned order is in utter violation of principles of natural justice ."

18. Now reverting to the facts of the present case as stated herein above, the services of the petitioner were terminated on the ground of alleged misconduct in respect of which a show cause notice was issued to him to which he submitted his reply and in this regard averments has been made by the official respondents in para nos. 11 and 13 of the counter affidavit, so in view of the said fact, the position which emerge out is to the effect that the allegation of irregularities and misconduct committed by the petitioner while discharging his duty is the foundation for passing of the impugned order against the petitioner, hence before passing the same it is incumbent upon the respondents to afford an opportunity of hearing to the petitioner by issuing show cause notice and cannot pass by invoking the provisions as provided under Rules 1975.

19. In the result, the impugned order of termination dated 1.6.1992 (Annexure no.5) and the order dated 18.1.1993 (Anexure no.7) passed by opposite party no.2/Commandant, Kendriya Nagrik Suraksha Prishikshan Sanstahan, Lucknow are set aside.

20. Further, opposite parties are directed to reinstate the petitioner in service but the petitioner will not be entitled for any salary for the intervening period in view of the principle ' no work no pay' but the same shall be counted for other service benefits.

21. With the above observations, writ petition is allowed. No order as to costs.

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