Ravindra Kumar Misra vs U.P. State Handloom Corporation Ltd. & ... on 15 October, 1987

Equivalent citations: 1987 AIR 2408, 1988 SCR (1) 501, AIR 1987 SUPREME COURT 2408, 1988 LAB IC 56, 1987 SCC (SUPP) 739, (1988) 1 SERVLR 526, 1987 5 JT 105, (1987) 55 FACLR 884, (1988) 1 CURLR 525, (1987) 2 SUPREME 603, (1988) 2 SERVLJ 97, (1988) 73 FJR 1, (1988) 6 ATC 617, (1988) 1 LAB LN 321, (1988) 1 LABLJ 73, 1988 UJ(SC) 1 11, (1987) 4 JT 105 (SC), 1988 SCC (L&S) 361

Author: Misra Rangnath

Bench: Misra Rangnath, M.M. Dutt

PETITIONER:
RAVINDRA KUMAR MISRA

Vs.

RESPONDENT:
U.P. STATE HANDLOOM CORPORATION LTD. & ANR.

DATE OF JUDGMENT15/10/1987

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
DUTT, M.M. (J)

CITATION:
1987 AIR 2408 1988 SCR (1) 501
1987 SCC Supl. 739 JT 1987 (4) 106
1987 SCALE (2)766
CITATOR INFO :
R 1992 SC 496 (26)

ACT:
U.P. State Handloom Corporation Rules: Rules 63 & 6 Temporary employee-Termination of servic Whether termination simpliciter or dismissal.

HEADNOTE:
Rule 63 of the U.P. State Handloom Corporation Rules stipulates termination of temporary service on one month's

notice on either side. Rule 68 provides that if the punishment of discharge or dismissal is imposed, an enquiry commensurate with requirements of natural justice is a condition precedent.

The appellant was employed in the aforesaid Corporation on temporary basis. The order of appointment stated that his services were liable for termination with one month's notice or one month's pay in lieu of notice on either side. He was placed under suspension in November 1982 on charges of misconduct, dereliction of duty, mismanagement and showing fictitious production entries. That order, however, was revoked in November 1983 and his services terminated forthwith by notice entitling him to one month's salary. The High Court held that the termination was not punitive and the question of breach of principles of natural justice did not arise.

In this appeal by special leave it was contended that the appellant was entitled to the protection of Articles 14 and 16 of the Constitution, that though his order of termination was innocuous, the setting in which it has been made clearly makes it an order of dismissal punitive in character and that as his service was determined by the order attaching stigma the appellant was entitled to a hearing commensurate with rules of natural justice and in the absence of the opportunity of being heard the order was liable to be quashed.

Dismissing the appeal,

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HELD: As long as the adverse feature of the employee remains the motive and does not become transferred as the foundation of the order of termination, it is unexceptionable. Whether 'motive' has be-

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come the foundation has to be decided by the Court with reference to the facts of a given case. [510-G]

It is necessary for every employer to assess the service of the temporary incumbent in order to find out as to whether he should be confirmed in his appointment or his services should be terminated. It may also be necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such an assessment would be necessary, merely because the appropriate authority proceeds to make an assessment and leaves a record of its views the same would not be available to be utilised to make the order of termination following such assessment punitive in character. [509G-H; 510A-B]

There may be cases where an enquiry is undertaken and prima facie material for serious charges are found; by disclosing the result of such preliminary enquiry, the officer concerned is put under suspension in contemplation of disciplinary action. After such steps have been taken, the employer/appropriate authority decides not to continue

the departmental proceedings but makes an order terminating the service. [510C-D]

In the instant case the appellant was a temporary servant and had no right to the post. Both under the contract of service as also the Service Rules governing him the employer had the right to terminate his services by giving him one month's notice. The order of termination was in innocuous terms. It did not cast any stigma on him nor did it visit him with any evil consequences. The order was, therefore, not open to challenge. [S11C-D]

The appellant is not entitled to compensation under the law. But since he has been put out of employment at an advanced age and it may be difficult for him to get an alternate employment, the Corporation to pay him a consolidated amount of Rs.25,000. [511F]

Purshotam Lal Dhingra v. Union of India, [1958] SCR 828; Champaklal Chimanlal Shah v. The Union of India, [1964] 5 SCR 190; Shamsher Singh & Anr. v. State of Punjab, [1975] 1 SCR 814; Regional Manager & Anr. v. Pawan Kumar Dubey; [1976] 3 SCR 540; State of U.P. v. Ram Chandra Trivedi, [1977] 1 SCR 452 and State of Orissa & Anr. v. Ram Narayan Dass, [19611 I SCR 606, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 443 of 1985.

From the Judgment and order dated 6.5.1985 of the Allahabad High Court in C.M.W.P. No. 2822 of 1983.

Dr. Y.S. Chitale, Mrs. Rekha Pandey, S.P. Pandey, Atul Tiwari, Pinaki Misra, Mrs. Mamta Kachawala and Miss Bina Gupta for the Appellant.

M.K. Banerjee, Solicitor General, A.K. Ganguli, Gopala Subramaniam, K.J. John, M.M. John, Harish N. Salve and Miss Nisha Srivastava for the Respondents.

The Judgment of the Court was delivered by RANGANATH MISRA, J. This is an appeal by special leave. The appellant was employed on the production side of the Uttar Pradesh State Handloom Corporation, a public sector undertaking-(hereinafter referred to as 'Corporation' for short) on temporary basis. Having been appointed on 30th of October, 1976 as Bunker Sewa he obtained two promotions while still working in temporary status and by 1983 was working as Deputy Production Manager. The appellant's letter of appointment, as far as material, stated:-

> "With effect from the date of taking over charge Shri Rabindra Kumar Mishra ... is hereby appointed as Bunker Sewa ..... on the following terms and conditions:-

(1) That his appointment is temporary and his services are liable for termination with one month's notice or one month's pay in lieu of notice from either side On November 22, 1982 the appellant was placed under suspension and that order read as follows:-

"As a result of preliminary enquiries made by the Central Manager on 13.11.1982 of the Production Center, Kunda and other Centres under the same, it has come to notice that Sri R.K. Misra, former Dy. Production Manager, Kunda, is responsible for misconduct, dereliction of duty, mismanagement and showing fictitious production of terrycot cloth. He is, therefore, placed under suspension with immediate effect ..... "

(Underlinings are ours) On the 1st of February, 1983 the order of suspension was A revoked and on 10th of February, 1983 the impugned order terminating his services being to the following effect was passed:-

"The undersigned hereby gives notice to Shri R.K. Misra, Deputy Production Manager, Production Center, Kunda, Prataapgarh, Salon Rai Bareilly that his services are no more required and his service will be deemed to be terminated from receipt of this notice by him. It is directed that he will be entitled to receive one month's salary in lieu of notice period on the same rate on which he was receiving salary before termination of his service."

The appellant challenged the order of termination of his service before the Allahabad High Court but the High Court declined to interfere by holding that the termination was not punitive and the question of breach of principles of natural justice did not arise.

It is not disputed that the employer-Corporation is 'State' within the meaning of Article 12; yet it has not been contended-and rightly-that the protection of Article 311(2) of the Constitution is avilable to the employees of the Corporation. The appellant has however, claimed that he is entitled to the protection of Article 14 and 16 of the Constitution; though his order of termination is innocuous the setting in which it has been made clearly makes it an order of dismissal and the High Court has gone wrong in holding that the order of termination was not punitive; as service was determined by the order of termination attaching stigma the appellant was entitled to a hearing commensurate with rules of natural justice and in the absence of that opportunity of being heard the order is liable to be quashed.

It cannot be disputed that temporary service can be terminated by notice. The order of appointment in the appellant's case made it abundantly clear that with a month's notice or payment of salary m lieu of notice such termination could be effected by either side Rule 63 of the Corporation Rules made in exercise of Article 127 of the Articles of Association of the Uttar Pradesh State Handloom Corporation Limited recognised such a power. That Rule provides:-

" 1. The appointing authority may, at any time, during the pendency of the temporary tenure terminate the services of a temporary employee by giving him one month's notice or emoluments for such lesser period by H which the notice falls short of one month.

2. The temporary employee, on his part, shall have the option of quitting service by giving one month's notice to the appointing authority or paying to the Corporation an amount equal to his one month's pay .. "

The order of termination of service in this case is indeed innocuous. The appellant is not entitled to the protection of Article 311(2) of the Constitution not being a member of a civil service of the Union or a State nor holder of a civil post under the State but his own Service Rules provide under Rule 68 that if the punishment of discharge or dismissal is imposed, an enquiry commensurate with requirements of natural justice is a condition precedent. Admittedly no such enquiry has been held. The question that crops up here for determination, therefore, is whether the impugned order was an order of termination simpliciter or really amounted to an order of dismissal. In Purshotam Lal Dhingra v. Union of India, [1958] SCR 828. a Constitution Bench of this Court stated:-

"This use of expression 'terminate' or 'discharge' is not conclusive. In spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned above, namely. (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind herinbefore referred to? If the case satisfied either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant. This view has been approved by another Constitution Bench of this Court in Champaklal Chimanlal Shah v. The Union of India, [19641 5 SCR 190. After indicating approval, Wanchoo, J. as he then was, spoke for the Constitution Bench thus:-

"It is well known that Government does not terminate nate the services of a public servant, be he even a temporary servant without reason; nor is it usual for Government to reduce a public servant in rank without reason even though he may be holding the higher rank only tempoarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case, there is nothing further to be said and his services terminate when the post comes to an end. Similarly a Government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the Government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct

or his suitability for the job and/or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction with the work and/or conduct of a temporary servant may arise on complaint against him. In such cases two courses are open to Government. It may decide to dispense with the services of the servant or revert him to his substantive post without any action being taken to punish him for his bad work and/or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary, he will have the protection of Article 311(2). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. ln this preliminary enquiry the explanation of the government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the servant concerned that charges are then framed against him and he is asked to show cause why disciplinary action be not taken against him. An enquiry officer (who may be himself in the case where the appointing authority is other than the Government) is appointed who holds enquiry into the charges communicated to the servant concerned after taking his explanation and his enquiry is held in accordance with the principles of natural justice. This is what is known as a formal departmental enquiry into the conduct of a public servant .....

"Generally therefore a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the Two should not be confused. Even where Government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually is held to satisfy Government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already, Government does not usually take action of this kind without any reason. Therefore when a preliminary enquiry of this nature is held in the case of a temporary employee or a Government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which generally follows such a preliminary enquiry) when the Government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant. Therefore, so far as the preliminary enquiry is concerned, there is no question of its being governed by Article 311(2) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary government servant or a servant holding higher rank temporary to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide

> whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry."

Both Pershotam Lal Dhingra's case (supra) and Champaklal's case (supra) were referred to and relied upon in Shamsher Singh & Anr. v. State of Punjab, [1975] 1 SCR 814. This is a case which was heard by a 7-Judge Bench. Ray, CJ., who spoke for the majority of five considered all the cases rendered by this Court till then touching on the point and at page 841 of the Reports stated as follows:-

> "The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity."

In Sharnsher Singh's case (supra) the ratio of the two earlier Constitution Bench judgment was approved. On facts it was found that the order of termination though innocuous in form was really an order by way of punishment removing the appellant from service on the basis of charges of gross misconduct found to have been established by an exparte enquiry conducted by the S.P. Vigilance Department with the only object of ascertaining truth of the alleged misconduct and for the purpose of dismissing or removing the appellant, if charges were found established. It was ultimately on the basis of specific findings recorded by the S.P. Vigilance that the appellant's services were terminated. The Court found that the enquiry by the S.P. Vigilance was essentially and in character and object different from the informal enquiry into the and in object different from the informal enquiry into the suitability of the appellant. Ray, CJ. in Shamsber Singh's case (supra) further pointed out:-

> "The fact of holding an enquiry is not always conclusive. What is decisive is whether the order is really by way of punishment ..... A probationer whose terms of services provided that it could be terminated without any notice and without any cause being assigned could not claim the protection of Article 311(2).
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> An order terminating the services of a temporary servant or probationer under the Rules of employment and without anything more will not attract Article 311. Where a departmental enquiry is contemplated and if an enquiry is not in fact proceeded with Article 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct. "

In Regional Manager & Anr. v. Pawan Kumar Dubey, [1976] 3 SCR 540 it was observed by this Court thus: 1 "We think that the principles involved in applying Article 311(2) having been substantially

explained in Shamsher Singh's case (supra) it should not no longer be possible to urge that Sughar Singh's case could give rise to some misapprehension of the law. Indeed we do not think that the principles of law declared and applied so often have really changed. But the application of the same law to the differing circumstances and facts of various cases which have come up to this court could create the impression some times that there is some conflict between decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decidendi of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a word of difference between conclusions in two cases even when the same principles are applied in each case to similar facts .. ".

As we have already observed, though the provisions of Article 311(2) of the Constitution do not apply, the Service Rules which are almost at par make the decisions of this Court relevant in disposing of the present appeal. In several authoritative pronouncements of this Court, the concept of 'motive' and 'foundation' has been brought in for finding out the effect of the order of termination. If the delinquency of the officer in temporary service is taken as the operative motive in terminating the service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. This is so on account of the fact that it is necessary for every employer to assess the service of the temporary incumbent in order to find out as to whether he should be confirmed in his appointment or his services should be terminated. It may also be necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such H an assessment would be necessary merely because the appropriate authority proceeds to make an assessment and leaves a record of its views the same would not be available to be utilised to make the order of termination following such assessment punitive in character. In a large democracy as ours, administration is bound to be impersonal and in regard to public officers whether in Government or public Corporations, assessments have got to be in writing for purposes of record. We do not think there is any justification in the contention of the appellant that once such an assessment is recorded, the order of termination made soon thereafter must take the punitive character.

There may be cases where an enquiry is undertaken and prima facie material for serious charges are found; by disclosing the result of such preliminary enquiry, the officer concerned is put under suspension in contemplation of disciplinary action. After such steps have been taken, the employer/appropriate authority decides not to continue the departmental proceedings but makes an order terminating the service, as has been done in this case.

Counsel for the respondents pointed that that in the matter of ordering termination of service of a temporary employee, the order follows a review of his working. Unless the termination is ordered because there is no need for the post, in the absence of reasons for termination, the action is open to challenge as arbitrary, particulary when other similarly situated employees are continued in service. When reasons are given, they are bound to disclose adverse features of the employee and disclosure of such features become the ground of challenge of the order on the plea that termination is not

innocuous. To meet this position, the distinction between 'motive' and 'foundation' has been adopted by the courts. As long as the adverse feature of the employee remains the motive and does not become transformed as the foundation of the order of termination it is unexceptionable. No straight jacket test can be laid down to distinguish the two and whether 'motive' has become the foundation has to be decided by the court with reference to the facts of a given case. The two are certainly two points of one line-ordinarily apart but when they come together 'motive' does get transformed and merges into foundation.

As has been held by a three-Judge Bench in State of U.P. v. Ram C'handra Trivedi, [1977] 1 SCR 462 the position in regard to cases of the present nature is clear and the examination of the decisions of this court shows that there is no real conflict in their ratio decidendi. On facts as established in different cases, courts have applied the known tests and in order that complete justice may be done on the facts found, there have been punishable deviations.

We may point out that this Court in a Consitution Bench judgment in the case of State of Orissa & Anr. v. Ram Narayan Dass, [1961] 1 SCR 606, indicated:-

> "The fact of the holding of an enquiry is not decisive of the question. What is decisive is whether the order in the light of the decisions laid down in Parshotam Lal Dhingra's case. Keeping in view the principles indicated above, it is difficult to accept the claim of the appellant. He was a temporary servant and had no right to the post. It has also not been denied that both under the contract of service as also the Service Rules governing him the employer had the right to terminate his services by giving him one month's notice. The order to which exception is taken is expressly an order of termination in innocuous terms and does not cast any stigma on the appellant nor does it visit him with any evil consequences. It is also not founded on misconduct. In the circumstances, the order is not open to challenge .
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> We may point out that the learned Solicitor General appearing for the Corporation had at the commencement of the arguments suggested that the appellant could be given some compensation for termination. Ordinarily, under the law he would not be entitled to compensation in a case of this type, but since he has been put out of employment at an advanced age and it may be difficult for him to get an alternate employment, while dismissing his appeal we think it reasonable to call upon the Corporation to pay a consolidated amount of Rs.25000 (Rupees Twenty-five Thousand only).

Accordingly the appeal is dismissed. The amount of Rs.25,000 as indicated above may be paid to the appellant within one month from today. There would be no order for costs.

P.S.S. Appeal dismissed.