

Anant Ram Misra vs A.N. Dixit And Anr. on 5 December, 1955

Equivalent citations: AIR1956ALL527, AIR 1956 ALLAHABAD 527

JUDGMENT

Randhir Singh, J.

1. This is a special appeal from an order of a learned single Judge of this Court in a writ matter.
2. The appellant Anant Ram Misra was originally in the employ of the Food and Civil Supplies Department. After his retrenchment from that service he obtained a temporary employment as a clerk in the office of the District Relief and Rehabilitation Officer. On 23-4-1954 he was served with a notice of the termination of his services with effect from 12-5-1954. He had also made an application for the grant of leave on medical grounds which had be'en refused.

After the termination of his services the appellant made certain representations to the Commissioner for Relief and Rehabilitation and to the Minister in charge of the . Department but none of them proved fruitful. He ultimately made an application under Article 226 of the Constitution of India for a writ in the nature of mandamus or in the nature of certiorari and prayed that the District Relief and Rehabilitation Officer and the State of Uttar Pradesh be directed to reinstate the appellant and the emoluments attached to his post be given to him.

An affidavit was filed in support of the petition for writ in which it was stated that the appellant had been appointed by the District Magistrate and his dismissal by the District Relief Rehabilitation Officer was incompetent. It was further alleged that the provisions of Article 311 of the Constitution had been infringed inasmuch as the appellant has not been dismissed after the formalities prescribed by Article 311 had been observed.

The petition was, however, dismissed by this Court on the ground that the appellant was in a temporary service under a contract that his services could be terminated at any time and that Article 311 was not applicable to his case. Dissatisfied with this Order the appellant has filed this special appeal.

3. The first point which has been pressed on behalf of the appellant is that the termination of the services of the appellant in the present case amounted to a removal within the meaning of Article 311 of the Constitution and as such the provisions of Article 311 ought to have been complied' with by the officer terminating the services of the appellant.

Reliance was placed on a Calcutta Single Judge case, viz., -- 'Balai Chand Basak v. N. Roy Choudhury', 1954 Cal 495 (AIR V 41) (A), in which it was held that Article 311 was applicable equally

to permanent and temporary government servants. In this reported case a person had been dismissed after charges had been framed against him and he was found guilty, but it had been argued on behalf of the State that the person so dismissed could be dismissed under the contract without notice.

It was held that if the termination of services was under the terms of a contract Article 311 had no application but if a person is dismissed after charges had been framed against him the provisions of Article 311 would be attracted even if the person so dismissed was a temporary hand. The facts of this case were, however, quite different from the facts of the present case.

In the present case the appellant was not dismissed from service nor were any charges framed against him. In the notice issued to him no mention was made of any charges and he was simply told that his services were terminated with effect from a certain date. The affidavit filed on behalf of the State shows that the appellant was a temporary servant and his services were liable to be terminated without notice. No counter-affidavit has been filed to dispute this statement made in the affidavit filed on behalf of the State.

4. The word "removal" as used in Article 311 of the Constitution has been the subject of discussion in several reported cases. It has been held in :- 'Shyam Lal v. State of Uttar Pradesh', 1954 SC 369 (AIR V 41) (B), that the word "removal" as used in Article 311 cannot be made applicable to every termination of service. It covers only that termination of service which is made as a penalty for misconduct or on a person being found guilty of certain charges.

A termination of service under a contract has not been held to be a removal within the meaning of Article 311 of the Constitution. The termination of the service of appellant being a termination of service simpliciter under the contract cannot be covered by the word "removal" as used in Article 311 of the Constitution & the provisions of Article 311 would therefore not be attracted in the present case.

A similar view was taken in -- 'Smt. Anima Munshi v. Engineer-in-Chief and General Manager, Calcutta', 1954 Cal 561 (AIR V 41) (C), by the same learned Judge who decided the earlier case, 1954 Cal 495 (AIR V 41) (A).

5. It has further been argued on behalf of the appellant that the termination of the services of the appellant was not done by an officer competent to dismiss or remove the appellant and the provisions of Clause (1) of Article 311 had been infringed.

In this clause also it is only the removal or dismissal of a servant which should be done by a person who was the appointing authority and if the removal or dismissal is done by a person who was not the appointing authority it would be open to the person whose services have been terminated to seek redress by an application under Article 226.

If, however, the termination of a service is not covered by the word "removal" the provisions of Clause (1) of Article 311 would also not be attracted. It would thus appear that the appellant had,

made out no good case for seeking any of the relief sought in the petition for a writ and his petition was rightly rejected by the learned single Judge of this Court.

6. The appeal has, therefore, no force and is dismissed with costs to the opposite party.