

Nepal Singh vs State Of U. P. Ors on 9 November, 1984

Equivalent citations: 1985 AIR 84, 1985 SCR (2) 1, AIR 1985 SUPREME COURT 84, 1985 (1) SCC 56, 1985 LAB. I. C. 587, (1985) 1 APLJ 39.1, (1985) IJR 155 (SC), 1985 UJ (SC) 287, (1986) 1 LAB LN 683, 1985 UPLBEC 208, (1985) 2 SCR 1 (SC), (1985) ALL WC 47, (1985) 1 CURCC 258, (1985) 50 FACLR 77, (1985) UPLBEC 208, 1985 SCC (L&S) 1

Author: R.S. Pathak

Bench: R.S. Pathak, D.P. Madon, M.P. Thakkar

PETITIONER:

NEPAL SINGH

Vs.

RESPONDENT:

STATE OF U. P. ORS.

DATE OF JUDGMENT 09/11/1984

BENCH:

PATHAK, R.S.

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MADON, D.P.

THAKKAR, M.P. (J)

CITATION:

1985 AIR 84 1985 SCR (2) 1
1985 SCC (1) 56 1984 SCALE (2) 693

CITATOR INFO :

R 1986 SC1626 (30)
RF 1991 SC1490 (3)
RF 1992 SC 496 (26)

ACT:

Public Service-Termination of Service of a temporary government servant on the allegation of misconduct and corruption without following provisions of Article 311(2) of the Constitution is void and violative of Articles 14 and 16. Competent Authorities cannot circumvent the mandate of Article 311(2) and resort to the guise of ex-facie innocuous termination order-U.P. Government Servants Conduct Rules 1956, Rule 29 read with Constitution of India, Articles 14, 16 and 311 (2). D

HEADNOTE:

On an allegation that the appellant, a temporary Sub-inspector of Police, while posted at Pithoragarh had contracted in November 1964 a second marriage, while his first wife was alive, without obtaining the prior permission of the Government and in violation of Rule 29 of the U. P. Government Servants' Conduct Rules, 1956 the Superintendent of Police, Shahjahanpur initiated in 1968 disciplinary proceedings under section 7 of the Police Act against him. 1 However, after the evidence was closed in January 1970, the Superintendent noticed that his action was without jurisdiction and pointed out the same to the Deputy Inspector General of Police, Bareilly Range, who ordered the quashing of the disciplinary proceedings on March 12, 1970.

About this time the Inspector General of Police, Uttar Pradesh issued a circular letter to the Superintendent of Police throughout the State requiring them to submit a list of Sub-Inspectors who fell in any of the following three categories:

1. Whose reputation and integrity is very low and/or
2. Who are generally involved in scandals, like drinking, immorality, etc. which blackens the face of the U. P. Police and/or
3. Everywhere they are a big problem because they encourage gambling, excise offences, brothels, criminals, etc.

The Superintendent of Police, Shahjahanpur drew up a list of such Sub-Inspectors on February 5, 1970 and directed them to appear before the Deputy Inspector General of Police, Bareilly Range on February 10, 1970 during his

2 inspection of the district. The list included the name of the appellant with the note:

"A corrupt officer, who is not straight forward. Married two wives against Government Servants Conduct Rules. Does not do his duty sincerely. Wherever he goes creates problem".

Thereupon, on April 27, 1970, the Deputy Inspector General of Police, Bareilly Range, made an order purporting to be under the rules published by Notification No. 230/1953 dated January 30, 1953 that the appellant's services were not required any more and were terminated with one month's pay in lieu of notice.

The appellant thereupon filed a Writ Petition in the High Court against the order terminating his services and on November 17, 1972 a learned Single Judge of the Allahabad High Court dismissed the Writ Petition holding that the order of termination was passed bonafide, that it was an order of termination simpliciter and that it did not constitute the removal of the appellant from service. On appeal filed by the appellant that vice was endorsed by a

Division Bench of the High Court by its judgment and order dated March 13, 1973 and the appeal was dismissed holding that the impugned order was ex-facie innocuous and could not be said to cast any stigma or be regarded as imposing the punishment of dismissal or removal. Hence the appeal by Special Leave of the Court.

Allowing the appeal, the Court

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HELD; 1. It is well settled that in dealing with a government servant the State must conform to the constitutional requirements of Articles 14 and 16 of the Constitution. An arbitrary exercise of power by the State violates these constitutional guarantees, for a fundamental implication in the guarantee of equality and of protection against discrimination is that fair and just treatment will be accorded to all, whether individually or jointly as a class. When a government servant satisfies the Court prima facie that an order terminating his services violates Articles 14 and 16 the competent authority must discharge the burden of showing that the power to terminate the services was exercised honestly and in good faith, on valid considerations fairly and without discrimination. [S-E-G]

2. Where the services of a government servant on temporary appointment are terminated on the ground that his reputation for corruption makes him unsuitable for retention in the service, the reputation for corrupt behavior must be based on something more than a mere allegation. The State, and for that matter any statutory employer must take great care when proceeding to terminate a career on the ground of unsuitability, to ensure that its order is found in definable material, objectively assessed and relevant to the ground on which the termination is effected. [6-C-E]

In the instant case, the Superintendent of Police did not apply his mind to the requirements of the case. The Superintendent of Police has noted that the

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appellant created problems wherever he went, but it is not disclosed in the affidavits what those problems were and that the problems were of the nature specifically indicated by the circular issued by the Inspector General of Police. The other grounds mentioned in the report of the Superintendent of Police are equally vague and unspecific. [6A-B]

3. Where allegations of misconduct are leveled against a Government Servant, and it is : case where the provisions of Article 311 (2) of the Constitution should be applied, it is not open to the competent authority to take the view that holding the enquiry contemplated by the clause would be a bother or a nuisance and that therefore it is entitled to avoid the mandate of that provision and resort to the guise of an ex-facie innocuous termination order. The Court will view with great disfavour any attempt to circumvent the constitutional provision of Article 311 (2) in a case where

that provision comes into play.

[6-G-H, 7A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 621 of Appeal by Special leave from the Judgment and order dated the 13th March, 1973 of the Allahabad High Court in Special Appeal No.9 of 1973.

R.K Garg and M. Qamaruddin for the Appellant. Prithvi Raj and Mrs. Shobha Dikshit for the Respondent. The Judgment of the Court WCIS delivered by PATHAK, J This appeal by special leave is directed against the judgment and order of the Allahabad High Court dismissing the appellant's writ petition against an order terminating his services.

The appellant, Nepal Singh, was employed in a temporary capacity as Sub-Inspector of Police. He was serving at Shahjahanpur in 1968 when the Superintendent of Police, Shahjahanpur initiated disciplinary proceedings under S.7 of the Police Act against him on the charge that while posted at Pithoragarh he had, in November, 1964, contracted a second marriage while his first wife was alive, and as this was done without obtaining the prior permission of the Government the appellant had violated Rule 29 of the U.P. Government Servants' Conduct Rules, 1956. The appellant filed a reply and denied the charge. The oral testimony of about twelve witnesses for the prosecution and an almost equal number for the defence was recorded. But in January, 1970 the Superintendent of Police, Shahjahanpur wrote to the Deputy Inspector General of Police, Bareilly Range that as the act alleged against the appellant related to the district of Pithoragarh the disciplinary proceedings taken by him would be without jurisdiction unless there was an existing order transferring the proceedings from Pithoragarh to Shahjahanpur. Accordingly, on March 12, 1970, the Deputy Inspector General of Police, Bareilly Range ordered the quashing of the disciplinary proceedings. It appears that no further action was taken and the proceedings were dropped.

About this time the Inspector General of Police, Uttar Pradesh issued a circular letter to the Superintendents of Police throughout the State requiring them to submit a list of Sub Inspector who fell in any of the following three categories:

- "1. Whose reputation and integrity is very low and/or
2. Who are generally involved in scandals, like drinking, immorality etc. which blackens the face of the U.P. Police' and/or.
3. Everywhere they are a big problem because they encourage gambling, excise offences, brothels, criminals, etc. The Superintendent of Police, Shahjahanpur drew up a list of such Sub-Inspectors on February 5, 1970 and directed them to appear before the Deputy Inspector General of Police, Bareilly Range on February 10, 1970 during his inspection of the district. The list included the name of the appellant with

the note;

"A corrupt officer, who is not straight forward. Married two wives against Government Servants Conduct Rules. ' Does not do his duty sincerely. Wherever he goes creates problem."

Thereupon, on April 27,1970 the Deputy Inspector General of Police, Bareilly Range, made an order purporting to be under the rules published by Notification No. 230/II- B-1953 dated January 30, 1953 that the appellant's services were not required any more and were terminated with one month's pay in lieu of notice.

The appellant filed a writ petition in the High Court against the order terminating his services and on November 17,1972 a learned A Single Judge of the Allahabad High Court dismissed the writ petition holding that the order of termination was passed bonafide that it was an order of termination simpliciter, and that it did not constitute the removal of the appellant from service. That view was endorsed, on appeal filed by the appellant, by a Division Bench of the High Court by its judgment and order dated March 13,1973. The learned judges have taken the view that the case in respect of the appellant was covered by the first and third of the three categories enumerated earlier, that is to say, his integrity was low and he was a problem officer ' who encouraged gambling, excise offences, brothels, criminals, etc." The allegation that he had married two wives against the Government Servants Conduct Rules, 1956, the learned Judges said, did not bring him within any of the three categories as, in their view, the second marriage without prior permission of the Government gave rise merely to a tinkle charge. In view of the opinion that the impugned order was ex facie innocuous and could not be said to cast any stigma or be regarded as imposing the punishment of dismissal or removal, the learned Judges dismissed the appeal.

It seems to us that the High Court has failed to consider the true content of the case set up by the appellant. The entire thrust of the appellant's case is that in terminating the appellant's Services the competent authority treated him unfairly and arbitrarily. It is well settled that in dealing with a Government servant the state must conform to the constitutional requirements of Arts. 14 and 16 of the Constitution. An arbitrary exercise of power by the State violates those constitutional guarantees, for a fundamental implication in the guarantee of equality and of protection against discrimination is that fair and just treatment will be accorded to all, whether individually or jointly as a class. When a Government servant satisfies the Court prima facie that an order terminating his services violates Arts. 14 and 16, the competent authority must discharge the burden of showing that the power to terminate the services was exercised honestly and in good faith, on valid considerations fairly and without discrimination.

The High Court has observed that within the framework of the three categories defined in the Inspector General's circular the allegation of a second marriage by the appellant was of no significance, and that the principal intent in terminating the appellant's

services was to rid the State of an unsuitable officer. The Superintendent of Police has noted that the appellant created problems wherever he went, but it is not disclosed in the affidavits what were

those "problems". It is not shown that the problems were of the nature specifically indicated by the circular issued by the Inspector General of Police. We are unable to conclude from the material before us that the Superintendent of Police applied his mind to the requirements of the case.

The Superintendent of Police has also commented that the appellant was a corrupt officer who was not straightforward (whatever that might mean). On that we have this to say. Where the services of a Government servant on temporary appointment are terminated on the ground that his reputation for corruption makes him unsuitable for retention in the service, the reputation for corrupt behavior must be based on something more than a mere allegation. The other grounds mentioned in the report of the Superintendent of Police, which impressed the High Court, appear to us to be equally vague and unspecific. The State, and for that matter any statutory employer, must take great care when proceeding to terminate a career on the ground of unsuitability, to ensure that its order is founded in definable material, objectively assessed and relevant to the ground on which the termination is effected.

Proceeding from there, we may advert to a further aspect of the case. It would seem that the dominating factor which influenced the mind of the Deputy Inspector General of Police was the allegation that the appellant had married a second wife against the Government Servants' Conduct Rules. It is clear that a full-fledged enquiry was instituted into the matter, evidence was recorded but before any findings could be rendered the enquiry was dropped for want of jurisdiction. No attempt was made thereafter to institute proper enquiry by the appropriate authority. In the circumstances, it was not open to the Superintendent of Police to mention in his report, as a statement of fact, that the appellant had married a second time against the Government Servants' Conduct Rules. With the dropping of the enquiry the allegation remained unverified. We may observe that where allegations of misconduct are levelled against a Government servant, and it is a case where the provisions of Art. 311(2) of the Constitution should be applied, it is not open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a bother or a nuisance and that therefore it is entitled to avoid the mandate of that provision and resort to the guise of an *ex facie* innocuous termination order. A The Court will view with great disfavor any attempt to circumvent the constitutional provision of Art.311 (2) in a case where that provision comes into play.

For all the aforesaid reasons, we are unable to uphold the judgment and order of the High Court, and in the result the appeal must be allowed.

The appeal is allowed and the order dated April 27, 1970 of the Deputy Inspector General of Police, U.P. Bareilly Circle is quashed. The appellant is entitled to be treated as continuing in service without interruption. It will be open to the authorities to take fresh proceedings against the appellant in accordance with law. It will also be open to them to determine whether the appellant was gainfully employed for the purpose of considering the extent of relief, if any, to which he may be entitled pursuant to our present order quashing the impugned order. In the circumstances, there is no order as to costs.

S. R

Appeal allowed.

