Supreme Court of India
G.B. Pant Agr. & Tech. University vs Kesho Ram on 5 May, 1994
Equivalent citations: 1995 AIR 718, 1994 SCC (4) 437
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
G.B. PANT AGR. & TECH. UNIVERSITY

Vs.

RESPONDENT:
KESHO RAM

DATE OF JUDGMENT05/05/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1995 AIR 718 1994 SCC (4) 437
1994 SCALE (2)1063

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. We have heard the learned counsel on both sides. The respondent was appointed as Assistant Block Superintendent on 30-11-1972, subject to the terms of the contract. Two of the terms, relevant for the purpose of this case, are that his service was liable to be terminated with one month notice or pay in lieu thereof as per clause 9, and such termination would be subject to arbitration as provided under clause 14. The employee also shall be, subject to clause 12, bound by the law, statutes and regulations issued by the officer or authority of the university, competent to issue in that behalf and was in force. On 26-3-1976 the service of the respondent was terminated. The respondent filed the civil suit for a declaration that his order of termination was illegal, as he was not given an opportunity to defend himself, and that it was by way of punishment. The trial court in its decree

dated 24-4-1981 decreed the suit. On appeal, the District Judge set aside the order. When second appeal was filed in the High Court, initially, it was dismissed on the ground of limitation. In CA No. 785 of 1989, this Court set aside the order of the High Court and remanded the case directing it to dispose of the matter on merits. In Second Appeal No. 2908 of 1992, by judgment and decree dated 7-8-1992, the High Court set aside the judgment and decree of the appellate court and confirmed that of the trial court. Thus, this appeal by special leave.

3. Though Shri Rao learned Senior Counsel for the appellant sought to contend that the order of dismissal dated 26-3-1976 impugned in the Civil Suit No. 16 of 1980 was passed (sic barred) by limitation as on date of suit three years' period of limitation had expired by efflux of time, that point is no longer open to the appellant to canvass it as the order of this Court operates as res judicata. Therefore, the suit was filed within the limitation.

4. It is next contended that in view of the finding given by the district court as well as by the High Court that the respondent was a temporary employee appointed by the university, the findings of the High Court that the order though innocuous, it is by way of penalty and that therefore, the order of dismissal without inquiry is violative of Article 311(2) of the Constitution is illegal. We find force in the contention. It is settled law that the order though is innocuous, it is open to the court to lift the veil and find the cause for terminating the temporary employment. If it is by way of punishment, then necessarily an inquiry has got to be made in accordance with the rules. Otherwise, it is open to the authorities, in terms of the order of appointment or the relevant rules, to terminate the service of a temporary employee without conducting an inquiry. The finding of the district court as confirmed by the High Court is that the respondent is a temporary employee. The action was taken for the reason that the respondent was irregularly absent without obtaining leave and that therefore his services were terminated. Termination simpliciter is not per se by way of punishment nor does it visit with penal consequences. So it cannot be said to be for misconduct. The effect of the order has to be looked into. In this case, since the authority has got power and had exercised it under condition 9 of the conditions of appointment, the termination per se is not illegal. Since the university is not governed by Article 311(2), the finding of the High Court that the order of termination is violative of Article 311(2) is clearly illegal. Though clause 14 of the terms of appointment envisages arbitration between the parties, in view of the facts in this case, we need not consider that question. Therefore, that question is left open.

5. This Court by interim order dated 2-2-1993, had given direction to the appellant to reinstate the respondent into the service and his payment of arrears would be subject to further orders. In implementation thereof, since the respondent has been reinstated and ever since has been working, though we uphold the power of the appellant that they are entitled to terminate the service of a temporary employee, exercising the power under condition 9 of the terms of appointment, on the facts in this case we do not propose to interfere with the decree of the High Court confirming the decree of the trial court reinstating the respondent into the service, though for different reasons. However, the respondent will not be entitled to any back wages. His previous service would be counted only for the purpose of pensionary benefits and other service benefits.

6. The appeal is accordingly dismissed but without costs.