Supreme Court of India
Commissioner, Food And Civil ... vs Prakash C. Saxena on 5 May, 1994
Equivalent citations: 1994 SCC (5) 177, 1994 SCALE (3)12
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
COMMISSIONER, FOOD AND CIVIL SUPPLIES

Vs.

RESPONDENT:
PRAKASH C. SAXENA

DATE OF JUDGMENT05/05/1994

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

CITATION:
1994 SCC (5) 177 1994 SCALE (3)12

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Delay condoned. Leave granted.

2. Heard counsel for the parties. Respondent 1, while was working as Senior Inspector, District Supply Office, Lucknow, his services were terminated by proceedings dated 14-7-1965 : "The services of Shri Prakash Chandra Saxena, Senior Inspector, District Supply Office, Lucknow are terminated with effect from the date of service upon him of this order. He shall be paid one month's pay in lieu of notice." The said proceedings were challenged by Respondent 1 in the year 1978 by filing a claim petition before the Service Tribunal which was initially rejected by the Tribunal on the ground of delay. But the High Court remitted the matter for decision on merits and the Tribunal held that the order of termination had been made by way of punishment without enquiry and hence violated Article 311(2) of the Constitution. When it was challenged in Writ Petition No. 2016 of 1991 filed by the appellant, the High Court dismissed it by its order dated 5-3-1993, following the decision

of this Court in Samsher Singh v. State of Punjab' wherein it had been held that the Court had to lift the veil and find whether the ground of termination was the foundation or the motive and if it was found to be the foundation, the termination simpliciter would be illegal. It was pointed out that the enquiry initiated, when was stopped midway it would show that the enquiry into misconduct of Respondent 1 was abandoned while enquiry into the alleged misconduct had to be completed without which the termination would become illegal. The High Court was of the opinion that the ratio in Samsher Singh1 was, obviously, not brought to the notice of this Court, while deciding State of U.P. v. Kaushal Kishore Shukla2 and Triveni Shanker Saxena v. State of U.P.3 and hence they had been decided per incuriam. The High Court, therefore, applied the ratio of the decision in Samsher Singh, which according to it squarely applied to Respondent 1 and held that the termination of the services of the respondent was violative of Article 311(2) of the Constitution.

3. In our view, the High Court was not right in its approach in upholding the order of the Tribunal. What is overlooked by the High Court is that Samsher Singh case1 related to a judicial officer who had the protection of Article 355 of the Constitution and that, any enquiry conducted by the Executive, into an alleged misconduct of such judicial officer would be per 1 (1974) 2 SCC 931: 1974 SCC (L&S) 550 2 (1991) 1 SCC691:1991 SCC(L&S)587:(1991)16ATC498 3 1992 Supp (1) SCC 524: 1992 SCC (L&S) 440: (1992) 19 ATC 93 1: AIR 1992 SC 496 COMMISSIONER, FOOD AND CIVIL SUPPLIES v. PRAKASH C. SAXENA se illegal and without jurisdiction. In that factual matrix, this Court had to hold that an enquiry having been initiated against the delinquent, had got to be pursued to its logical conclusion, that is, till it ended either in imposition of penalty on proof of misconduct or having been found not guilty of the charge. That was the background in which this Court laid the law. The High Court has totally misunderstood the applicability of the judgment in Samsher Singh1. This Court has, indeed considered in catena of decisions, the nature of power of the Government exercisable in dismissal of a temporary government servant, in terms of the order of appointment or the rules entitled U.P. Temporary Government Servants (Termination of Services) Rules, 1975. Kaushal Kishore2 and Triveni Shanker Saxena3 are two decisions of this Court where on consideration of the scope of the said rules, it is held that the termination simpliciter is not a penalty and the Government has power and jurisdiction under the contract of employment or the Rules to terminate simpliciter the services of a temporary government servant without conducting an enquiry and such termination simpliciter does not amount to termination for misconduct. The decisions in the said cases are being followed by this Court consistently.

4. In this case, we have seen that the respondent was appointed in 1945 as a temporary government servant and remained in service up to 1965 as a temporary government servant. Although we have found that the High Court was not right in applying the ratio of Samsher Singh1 to case of Respondent 1 we do not consider it necessary to interfere with its conclusion in exercise of our discretionary power under Article 136 of the Constitution. Therefore, while we uphold the appellant's power to terminate the services of a temporary government servant under the said rules, without holding an enquiry, we do not propose to disturb the reinstatement of Respondent 1, since he was in service as a temporary government servant for nearly 20 years before his services were terminated and he has since been retired as well from service. Taking these facts into consideration, we hold that the respondent must be deemed to have been in service from the date of the termination till the date of his superannuation, but he is not entitled to the back wages from the date

of termination till the date of his filing the petition in the Services Tribunal, that is up to 31-12-1978. He will, however, be entitled to the arrears of salary from 1-1-1979 and other consequential benefits including pensionary benefits as if he had continued as a regular government servant till his superannuation. The appeal is accordingly allowed. No costs.