

STATE OF UTTAR PRADESH AND ORS.

A

v.

VIJAY SHANKER TRIPATHI

JULY 20, 2005

[ARIJIT PASAYAT AND H.K. SEMA, JJ.]

B

Service Law:

Constitution of India, 1950; Article 311(2):

C

Termination of services of an employee by employer without following the due procedure as indicated under Article 311(2)—Legality of termination order—Challenge to—Dismissed by Tribunal holding that the order of termination was a terminator simpliciter and Article 311(2) not attracted—Reversed by High Court—On appeal, Held: The question whether enquiry purportedly held before passing termination order was motive or the foundation was required to be considered by the High Court—Since High Court failed to express any opinion on the merits of the case, the matter is remitted to High Court for consideration afresh.

D

The services of the respondent were terminated after serving him notice as his services were no longer required. Such termination was questioned before the State Public Service Tribunal. The claim was dismissed by the Tribunal holding that the order of termination was a termination simpliciter and no stigma was attached and that Article 311 (2) of the Constitution was not attracted. The order was challenged by the employee. The High Court set aside the order of termination on the ground that Article 311(2) of the Constitution is required to be followed even while terminating the services of a temporary Government employee. Hence the present appeal.

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Disposing of the appeal, the Court

Held: The High court did not consider the question of stigma or the effect of any enquiry held before the order of termination was passed. The question whether the enquiry purportedly held was the motive or the foundation was required to be considered by the High Court in detail. The Order of the High Court is without expressing any opinion on the merits of

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A the case, hence set aside and remitted to the High Court for fresh consideration. [751-D, F]

B *Dhananjay v. Chief Executive Officer, Zilla Parishad, Jaina*, [2003] 2 SCC 386; *Mathew P. Thomas v. Kerala State Civil supply Corporation Limited and Ors.*, [2003] 3 SCC 263; *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta* [1999] 3 SCC 60 and *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*, [2002] 1 SCC 520, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5242 of 2002.

C From the Judgment and Order dated 5.11.99 of the Allahabad High Court in C.M.W.P. No. 28767 of 1998.

Mrs. Alka Agrawal, Garvesh Kabra and Ravi Prakash Mehrotra for the Appellants.

D Yatish Mohan and Vishwajit Singh for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Heard learned counsel for the parties.

E The service of the respondent was terminated by an order dated 16.08.1988. It was indicated that his services were no longer required and, therefore, notice was given with the requisite one month pay and allowance. Such termination was questioned before the State Public Service Tribunal, Uttar Pradesh (in short 'the Tribunal'). The Claim petition No. 337/V/89 was

F dismissed holding that the order of termination was a termination simpliciter and no stigma was attached. It was found that there were certain allegations and the respondent-employee had more or less accepted the allegations. The order of termination was, therefore, neither attached with any stigma nor was visited by any punitive character. Accordingly, it was held that Article 311(2) of the Constitution of India, 1950 (in short 'the Constitution') was not

G attracted. The respondent-employee filed a writ petition only on the ground that Article 311(2) of the Constitution was required to be followed in the case of temporary government servants. High Court was of the view that Article 311(2) is required to be followed even in case of temporary Government employees. Accordingly, the order of termination was set aside and the writ

H petition was allowed.

A a distinction is explained, thus:

B “If findings were arrived at in an enquiry as to misconduct,
C behind the back of the officer or without a regular departmental
D enquiry, the simple order of termination is to be treated as ‘founded’
E on the allegations and will be bad. But if the enquiry was not held,
no findings were arrived at and the employer was not inclined to
conduct an enquiry but, at the same time, he did not want to continue
the employee against whom there were complaints, it would only be
a case of motive and the order would not be bad. Similar is the
position if the employer did not want to enquire into the truth of the
allegations because of delay in regular departmental proceedings or
he was doubtful about securing adequate evidence. In such a
circumstance, the allegations would be a motive and not the foundation
and the simple order of termination would be valid. From a long line
of decisions it appears to us that whether an order of termination is
simpliciter or punitive has ultimately to be decided having due regard
to the facts and circumstances of each case. Many a times the
distinction between the foundation and motive in relation to an order
of termination either is thin or overlapping. It may be difficult either
to categorize or classify strictly orders of termination simpliciter falling
in one or the other category, based on misconduct as foundation for
passing the order of termination simpliciter or on motive on the ground
of unsuitability to continue in service.”

F Therefore, without expressing any opinion on the merits of the case, we
set aside the order of the High Court, remit the matter to the High Court for
fresh consideration. It appears that counter affidavit was not filed by the
appellant-State and its functionaries before the High Court. The same shall
be filed within six weeks. If it is not filed, then, the High Court shall proceed
on the materials before it. If any counter is filed and the respondent-employee
wants to file any further affidavit, adequate time shall be granted by the High
Court to the respondent-employee.

G The appeal is, accordingly, disposed of with no order as to cost.

S.K.S.

Appeal disposed of.