

A U.P. STATE TEXTILE CORPN. LTD.

v.

SURESH KUMAR

(Civil Appeal No. 2080 of 2011)

B FEBRUARY 02, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]

C *Service law – Appointment of employee for a fixed tenure
of three years – Termination within two years on the ground
of unauthorized absence – Challenge to – Re-instatement with
continuity of service and back wages by courts below – On
appeal, held: Appointment itself was for a fixed period of three
years and no relief beyond that period could have been given
D to the employee by the courts below –Orders modified to the
extent that the employee would be deemed to be in service
up to the expiry of three years from the date of his joining and
not thereafter – As regards the grant of back wages, it is a
matter of discretion vested in the court – Conduct of the
E employee and the financial status of the employer, a defunct
organization, does not justify the payment of any back wages.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
2080 of 2011.

F From the Judgment & Order dated 21.05.2007 of the High
Court of Judicature at Allahabad in Civil Misc. Writ Petition No.
30651 of 1992.

Rakesh Uttamchandra Upadhyay for the Appellant.

G Subodh Kr. Pathak, Yash Anand, Dharmendra Kumar
Sinha for the Respondent.

The following order of the Court was delivered

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ORDER

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Leave granted.

The U.P. Textile Corporation Limited, the appellant herein is, as of today, we are told, a defunct organization and proceedings before the Board of Industrial and Financial Reconstruction (BIFR) are going on. The respondent, Suresh Kumar, was appointed as a Deputy Manager (Export) for a fixed tenure of three years vide order dated 21th april, 1987. As per this order his services would come to an end automatically on the expiry of three years from the date of his joining unless the term was extended as per Clause-1 thereof. It was also stipulated in the aforesaid order that the tenure of the appointment was terminable without assigning any reason on three months notice from either side or on payment of salary in lieu thereof. Admittedly the respondent joined the services of the appellant on the 7th September, 1987. His services were however terminated vide order dated 26th April, 1989 on the ground that he was in the habit of remaining absent for long periods of time without prior approval and that he had been on unauthorized absence from March, 1989. The order of 26th April, 1989 was challenged by the respondent before the U.P. Public Services Tribunal. The Tribunal vide its judgment dated 7.5.1992 held that the order impugned before it was stigmatic inasmuch that it referred to the continued absence of the respondent over a long period and in this view of the matter it could not be sustained. The relief of reinstatement with continuity of service and back wages was accordingly ordered by the Tribunal. This order was challenged by the appellant-Corporation before the Allahabad High Court. The writ petition has been dismissed vide judgment dated 21.5.2007 on similar grounds. It is in this background that the matter is before us.

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The learned counsel for the appellant has raised primarily two arguments before us. He has contended that the reference to the unauthorized absence of the respondent could not in any manner be said to be stigmatic and that the finding to the

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- A contrary was unsustainable. Alternatively he has contended that the respondent had joined the post on the 7th September, 1987 for a period of three years which would have come to an end on the 6th September, 1990 and as such the direction for reinstatement could not have been granted to him. It has been
- B pleaded that as a consequence of the order of the Tribunal and of the High Court, the respondent has been put back into service.

- C The learned counsel for the respondent has however supported the judgments of the Tribunal and the High Court.

- D In the facts of the case we need not examine the effect of the order dated 26th April 1989 whereby the services of the respondent had been terminated as being stigmatic or not as we are of the opinion that in the light of the fact that appointment
- E itself was for a fixed period of three years which would have come to an end on the 6th September, 1990, no relief beyond that period could have been given to the respondent by the Tribunal or the High Court. We accordingly feel that these orders need to be modified to the extent that the appellant shall
- F be deemed to be in service up to the 6th September, 1990 and not thereafter. The other question relates to the back wages for a period of one year and five months. We are of the opinion that the grant of back wages is a matter of discretion vested in the Court and the conduct of an employee is an extremely relevant factor on this aspect. The financial status of the employer must also be kept in mind. We are therefore of the opinion that the conduct of the respondent and the financial status of the appellant does not justify the payment of any back wages.

- G Accordingly, we allow the appeal in the above terms.

N.J.

Appeal allowed.