

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 411 of 2023

Appellant :- Mukesh Kumar Yadav

Respondent :- Union of India Thru. Secy. Central Reserve Police Force New Delhi and others

Counsel for Appellant :- V.K. Srivastava

Counsel for Respondent :- A.S.G.I.,C.S.C., Raj Kumar Singh

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Jaspreet Singh,J.

1. Heard learned counsel for the appellant on application seeking condonation of delay in filing the appeal. The appeal is barred by 34 days.
2. For the reasons indicated in the application seeking condonation of delay, supported by affidavit, the same is allowed. The delay in filing the appeal is condoned.
3. The appeal is directed against the order dated 29.03.2023 passed by learned Single Judge, whereby the writ petition filed by the petitioner has been dismissed.
4. The writ petition was filed by the petitioner aggrieved of the order of termination dated 30.12.2011 passed by Commandant, 91th Battalion, Group Center, Central Reserve Police Force, District Lucknow and the appellate order dated 24.11.2012 passed by Inspector General of Police, Central Sector, Central Reserve Police Force, Lucknow. The plea raised was that the petitioner was appointed on the post of Constable by order dated 20.08.2011 and by order impugned, with reference to Central Civil Services (Temporary Service) Rules, 1965, it has been ordered that the services of the petitioner at the end of one month would stand terminated.

5. Submissions were made that as the petitioner had remained absent for 22 days, on the said count, the services of the petitioner were terminated with reference to Rule 5 of the Rules of 1965, which is not justified, as the petitioner was not afforded any opportunity of hearing. Further submissions have been made that no enquiry was conducted and on that count, the termination being contrary to Article 311(2) of the Constitution of India, the same deserves to be set aside.

6. The plea was contested by the respondents and the learned Single Judge, after hearing the parties and referring to large number of cases, came to the following conclusion:

"22. In the present case, the petitioner was on probation; he was appointed just three months' back; he was unauthorizedly absent from duty for a period of 22 days, therefore, the competent authority has rightly terminated the services of the petitioner under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 after giving one month's notice by a simplicitor order, which is neither punitive in nature nor stigmatic. Terminating the services of the petitioner in exercise of employer's right to dispense with the services of such employee within a period of probation, would not make an otherwise innocuous order of discharge or termination of service punitive in nature."

7. Learned counsel for the appellant reiterated the submissions that without holding an enquiry in relation to the charges of unauthorized absence, the respondents could not have terminated the appointment of the petitioner and, therefore, on that count, the order impugned deserves to be set aside. Reliance has been placed on judgment in **Bhagwan Lal Arya vs. Commissioner of Police, Delhi and others : (2004) 2 UPLBEC 1294.**

8. Learned counsel for the respondents submitted that the order passed is a termination simplicitor. No stigma has been cast and therefore as the petitioner was on probation, he was not entitled to any notice and/or holding of any inquiry in this regard. Submissions have been made that law in this regard is well

settled and therefore, the order impugned does not call for any interference.

9. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

10. The order impugned is an order of termination simplicitor, no reason has been indicated which can be called punitive or penal so as to call the said order as stigmatic. Admittedly, the petitioner was on probation during the said period and in terms of Rule 5 of the Rules of 1965 as well as the order of appointment, the termination could take place. Further, admittedly, within a period of three months, the petitioner has remained un-authorisedly absent for a period of 22 days and in those circumstances, it cannot be said that the respondents were not justified in passing the order impugned.

11. So far as the judgment in the case of **Bhagwan Lal Arya (supra)** is concerned, the same pertains to a case of punishment after holding an inquiry, which has no application to the facts of the present case.

12. Consequently, there is no substance in the appeal. The same is therefore dismissed.

Order Date :- 19.12.2024

Asheesh/P.Sri.

(Jaspreet Singh, J) (Arun Bhansali, CJ)