



2025:UHC:1562-DB

HIGH COURT OF UTTARAKHAND AT

NAINITAL

HON'BLE JUSTICE SRI MANOJ KUMAR TIWARI AND
HON'BLE JUSTICE SRI VIVEK BHARTI SHARMA

Special Appeal No. 346 of 2017

6th March, 2025

Hem Chandra Joshi

--Appellant

Versus

State of Uttarakhand and another

--Respondents

Presence:-

Mr. S.K. Mandal, Advocate for the appellant.

Mr. Atul Bahuguna, Standing Counsel for the State

Mr. Sandeep Kothari, Advocate for the respondent

The Court made the following:

JUDGMENT: (per Hon'ble Justice Sri Manoj Kumar Tiwari)

1. This intra Court appeal is directed against judgment dated 17.05.2017, passed by learned Single Judge in Writ Petition (S/S) No. 176 of 2015. By said judgment, the writ petition, filed by appellant, challenging his termination vide order dated 12.01.2015, was dismissed.

2. It is not in dispute that appellant was appointed as Group-D post on daily wages in Nainital Lake Region, Special Area Development Authority w.e.f. 11.09.1997 and he was being paid minimum of pay-scale in terms of order passed in a writ petition. His services were terminated by the Secretary of the Development Authority on the ground of unauthorized absence.



3. Appellant unsuccessfully challenged the termination order before writ Court. The writ court dismissed the writ petition by holding that since appellant was not a regular employee, therefore holding of regular disciplinary enquiry was not necessary for his dismissal and issuance of show cause notice was sufficient.

4. Learned counsel for appellant submits that since termination of services of the appellant was punitive in nature, therefore holding regular disciplinary enquiry was necessary and mere issuance of show cause notice cannot be held sufficient.

5. We have gone through the order of termination, passed by Secretary, Development Authority which is on record as Annexure-9 to the writ petition. From perusal of the termination order, it is revealed that services of the appellant were terminated for the charge of unauthorized absence and it was observed in the order that his conduct is against the conduct rules and amounts to disobedience. It is thus apparent that termination of services of appellant was founded on a charge and it was not a termination simpliciter for unsatisfactory work.

6. Hon'ble Supreme Court in the case of **Babu Lal Vs. State of Haryana and others, (1991) 2 SCC 335** was dealing with a case of an ad hoc employee who was suspended in view of criminal proceedings pending under Section 420 of Indian Penal Code and he was later terminated from service. In that backdrop, Hon'ble Supreme Court held that the order



of termination passed against the concerned employee is of penal nature, since it was passed without holding disciplinary enquiry, therefore, order of termination was liable to be quashed. Relevant extract of the said judgment is extracted below:

“8. Moreover, from the sequences of facts of this case the inference is irresistible that the impugned order of termination of the service of the appellant is of penal nature having civil consequences. It is well settled by several decisions of this Court that though the order is innocuous on the face of it still then the court if necessary, for the ends of fair play and justice can lift the veil and find out the real nature of the order and if it is found that the impugned order is penal in nature even though it is couched with the order of termination in accordance with the terms and conditions of the order of appointment, the order will be set aside. Reference may be made in this connection to the decision of this Court in *Rajinder Kaur v. State of Punjab* [(1986) 4 SCC 141 : 1986 SCC (L&S) 745] in which one of us is a party. It has been held that: (SCC HN)

“The impugned order of discharge though stated to be made in accordance with the provisions of Rule 12.21 of the Punjab Police Rules, 1934, was really made on the basis of the misconduct as found on enquiry into the allegation behind her back. Though couched in innocuous terms, the order was merely a camouflage for an order of dismissal from service on the ground of misconduct. This order had been made without serving the appellant any charge-sheet, without asking for any explanation from her and without giving any opportunity to show cause against the purported order of dismissal from service and without giving any opportunity to cross-examine the witnesses examined. The order was thus, made in total contravention of the provisions of Article 311(2) and was therefore, liable to be quashed and set aside.”

9. This case relied on the observations made by this Court in the case of *Anoop Jaiswal v. Government of India* [(1984) 2 SCC 369 : 1984 SCC (L&S) 256 : (1984) 2 SCR 453] wherein it has been observed that: (SCC p. 379, para 12)

“... where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the



order, in giving effect to the rights conferred by law upon the employee.”

10. Similar observation has been made by this Court in the case of Hardeep Singh v. State of Haryana [1987 Supp SCC 295 : 1988 SCC (L&S) 157 : (1987) 4 SLR 576] . It has been held in this case as under: (SCC p. 300, para 9)

“In the instant case it is clear and evident from the averments made in paragraph 3, sub-para (i) to (iii) and paragraph (v) of the counter-affidavit that the impugned order of removal/dismissal from service was in substance and in effect an order made by way of punishment after considering the service conduct of the petitioner. There is no doubt the impugned order casts a stigma on the service career of the petitioner and the order being made by way of punishment, the petitioner is entitled to the protection afforded by the provisions of Article 311(2) of the Constitution as well as by the provisions of Rule 16.24(IX)(b) of the Punjab Police Rules, 1934”

11. In the premises aforesaid, we are constrained to hold that the judgment rendered by the High Court is wholly illegal and unwarranted and as such we quash and set aside the same and affirm the judgment of the courts below. We direct that the appellant be reinstated in the service immediately and be paid all his emoluments i.e. pay and allowances from the date of the order of his suspension i.e. April 15, 1980 till the date of reinstatement into service minus the suspension allowance that had been received by the appellant during the period of his suspension (if any). The respondents are at liberty to consider the case of the appellant for regularisation in the light of the norms laid down in the executive instructions issued on January 1, 1980 by Notification No. G.S.R./Const./Art. 309/80. The appeal is allowed. There will be no order as to costs in the facts and circumstances of the case.”

7. A constitution Bench in the case of **Jagdish Mitter Vs. The Union of India, AIR 1964 SC 449**, held that every order terminating the services of a public servant who is either a temporary servant, or a probationer, will not amount to dismissal or removal from service within the meaning of Article 311. It is only when the termination of the public servant can be shown to have been ordered by way of punishment that it can be characterised either as dismissal or



removal from service. Para 9 of the said judgment is reproduced below:

“It is also now settled that the protection of Art. 311 can be invoked not only by permanent public servants, but also by public servants who are employed as temporary servants, or probationers, (vide Parshotam Lal Dhingra case 1958 SCR 888 and so, there can be no difficulty in holding that if a temporary public servant or a probationer is served with an order by which his services are terminated, and the order unambiguously indicates that the said termination is the result of punishment sought to be imposed on him, he can legitimately invoke the protection of Art. 311 and challenge the validity of the said termination on the ground that the mandatory provisions of Art. 311(2) have not been complied with. In other words, a temporary public servant or a probationer cannot be dismissed or removed from service without affording him the protection guaranteed by Art. 311(2).”

8. Similar was the view expressed by Hon’ble Supreme Court in the case of **Chandra Prakash Shahi Vs. State of U.P. and others**, reported as **(2000) 5 SCC 152**. Para 12 of the said judgment is reproduced below:

“12. Now, it is well settled that the temporary government servants or probationers are as much entitled to the protection of Article 311(2) of the Constitution as the permanent employees despite the fact that temporary government servants have no right to hold the post and their services are liable to be terminated at any time by giving them a month's notice without assigning any reason either in terms of the contract of service or under the relevant statutory rules regulating the terms and conditions of such service. The courts can, therefore, lift the veil of an innocuously-worded order to look at the real face of the order and to find out whether it is as innocent as worded. (See: Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36 : 1958 SCR 828] .) It was explained in this decision that inefficiency, negligence or misconduct may have been the factors for inducing the Government to terminate the services of a temporary employee under the terms of the contract or under the statutory Service Rules regulating the terms and conditions of service which, to put it differently, may have been the motive for terminating the services but the motive by itself does not make the order punitive unless the order was “founded” on those factors or other disqualifications.”



9. Learned counsel for the appellant submitted that appellant sought regularization of his services by filing Writ Petition No. 1770 of 2002 (S/B), which was decided in his favour, and authorities were directed to consider his claim for regularization; the order passed by this Court in his favour was not complied with, therefore he filed contempt petition which infuriated the authorities and as a consequence, appellant was terminated from service.

10. Learned counsel appearing for the Development Authority, however, refutes the allegation made on behalf of appellant and submits that the order impugned has nothing to do with the contempt proceedings initiated at the instance of appellant. He submits that other similarly situate persons were regularized in service in compliance of direction issued by writ Court, since appellant was terminated from service, therefore, his claim was not considered for regularization.

11. The reason assigned in the impugned judgment for dismissing the writ petition is that appellant was not a regular employee, therefore regular disciplinary enquiry was not needed for terminating his services.

12. The view taken by learned Single Judge is not sustainable as termination of service of appellant was founded on a charge, therefore, in view of the law of the land, a regular disciplinary enquiry was required to be held before passing order of termination or



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removal from service against him. Thus the impugned judgment deserves to be set aside on this short point alone.

13. Accordingly, the Appeal is allowed. Impugned judgment, rendered by learned Single Judge dated 17.05.2017 and also the termination order dated 12.01.2015, challenged in the writ petition are set aside.

14. Secretary, Development Authority shall reinstate the appellant in service within one week. Appellant shall be entitled to continuity of service and other benefits, however, he shall be entitled to salary only from the date of his reinstatement and arrears of salary would not be payable to him. However, this judgment will not preclude the respondents from initiating disciplinary enquiry against appellant, as per law, however such enquiry will have to be initiated within four weeks from the date of receipt of copy of this judgment.

MANOJ KUMAR TIWARI, J.

VIVEK BHARTI SHARMA, J.

Dt: 6th March, 2025
Mahinder