

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.03.2019

Pronounced on: 12.04.2019

CORAM :

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 2873 of 2013

The Chief Administrative Officer
(Constructions),
Southern Railway, Egmore,
Chennai - 8. Petitioner

vs.

1. The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court,
Chennai.

2. A.Natarajan Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, calling for the records of the first respondent relating to the impugned award of the first respondent in I.D.No.12 of 2011 dated 20.09.2012 and quash the same.

For Petitioner : Mrs. T.P.Savitha

For Respondents : Mr.L.Chandrakumar for R2
for R1 - Tribunal

O R D E R

This writ petition is direct against the award dated 20.09.2012, passed by the Central Government Industrial Tribunal cum Labour Court, Chennai, in Industrial Dispute No.12 of 2011.

2. The respondent offered his services for being appointed a Bungalow Lascar to Deputy Chief Engineer, GCI/TPJ, by letter dated 07.04.2005. The writ petitioner by a letter dated 25.05.2005, communicated the approval of the respondent as a fresh face Substitute Bungalow Lascar in the scale of pay of Rs.2550-3200 to Sri Himanshu Goswari, Dy.CE/CC/1/TRJ. An office order dated 16.06.2005, was issued regarding the appointment of

the respondent as Substitute Bangalow Lascar, in the scale of pay of Rs.2550-3200 to Dy.CE/GC/I/TPJ. The terms of appointment reads as under:-

"1. The above appointment has the sanction of G.M vide CPO/MAS Lr.No.P(S)269/T/1/CN/Vol.II dt. 25.05.2005.

The appointment is only as a substitute and you will have no claim of a Railway Servant.

2.You will be eligible for assigning temporary status on successful completion of 120 days continuous service, and will henceforth be eligible for the privileges applicable to such temporary Railway Servants.

3.The Service rendered prior to completion of 4 months service will not count for any purpose, like reckoning for retrenchment benefits, leave, increments etc.

4.You are liable to be terminated at any time if found unsatisfactory by the Officer to whom you have been appointed duly observing the conditions applicable to substitute/temporary servants.

5.Your services are liable to be terminated in the event of transfer long leave of the Officer before your completing one year of continuous service.

6.On completion of three years of continuous service, you will become eligible for regularization against vacancies in the open line, Field units only taking into account your fitness in medical classification, particularly in the department of the Officer concerned.

7.Your appointment being in the construction organization you will be regularised in the open line of the neighbouring in other than Peon or office category. On regularization the lien will be maintained in that cadre/category and seniority maintained for further promotion in the respective cadre in which you are regularized.

8.In the event of transfer of the officer within this Railway you will be transferred along with the Officer subject to other service conditions. Such transfer will however be considered as transfer on administrative interest and you will be provided with the benefit of transfer in administrative interest. If the transfer is ordered after you have been provided seniority in a particular unit on completion of three years, your lien will be maintained in that unit only.

9. In the event of your being rendered surplus after completion of one year service consequent on

a.The Superannuation/Voluntary retirement of the Officer.

b. The transfer of the officer outside the railway and

c. The Officer proceeding on long leave for studies, prolonged illness, Deputation for Foreign training for long periods etc.(long periods Generally mean a period not less than a year)

You will be considered for posting as substitute Group 'D' service in any field unit (Open line) and subsequently absorbed on completion of three years service.

10.You will be governed by the New Pension Scheme introduced vice Railway Board's Lr.No.F(E)HI/2003/PN. 1/24 dt.31.12.04 (RBE-225A3 circulated as PBC 22/2004 dt. 13.02.04; and Railway Board 's Lr.No.2004/AC-U/21/1 dt. 19.2.04 circulated as PBC 36/2004 dt. 11.3.2004 under File No.P(R) 500/P/Vol.II dt.11 3.2004.

11.You will be governed by any other rule as specified from time applicable to substitute/temporary Railway Servants."

3. The appointment order was issued on 01.07.2005, to the respondent. This appointment was subject to the conditions mentioned in the office order extracted supra. On 14.10.2005, the service of the writ petitioner was terminated with effect from 12.09.2005. The office order terminating the petitioner reads as under:-

"OFFICE ORDER No. 269/GC/TPJ DATED 14.10.2005

Sub: Termination of Group D Staff Shri A.Natarajan Substitute Bungalow Lascar in scale Rs.2550 -3200 to DYCE / GCI/TPJ-Reg.

Ref: 1. CPO/MAS oo No. P (s) 269/1/1/CN/Vol,II Dated 25.05.2005

2.CAO/CN/MS/Letter No. P.269/1/CN/BP /Vol II Dated 27.05.2005.

The services of Shri A.Natarajan (OBC) S/ o. Sri.V.Admimoolam Substitute Bungalow Lascar in scale Rs.2550-3200 to Shri Himanshu Goswami, DY .CE/GC/I/TPJ is terminated with effect from 12.09.2005 for the following reasons.

- (a) His services are found unsatisfactory
(b) He was unauthorised absent for duty with effect from 12 day 2005.

Office of the Dy, Chief Engineer/1
Gauge Conversion
Tiruchirappalli Dated 14.10.2005

sd/-
DEPUTY CHIEF ENGINEER GCT
TIRUCHIRAPALLI"

4. The respondent challenged the order of termination before the Central Government Industrial Tribunal Cum Labour Court, Chennai, by filing an Industrial Dispute No.12 of 2011. The Industrial Dispute referred for by the Central Government adjudication reads as under:-

"Whether the action of the management of Southern Railway, terminating the services of Shir.A.Natarajan, son of V.Adimoolam w.e.from 12.09.2005 is legal and justified? If not what relief the workman is entitled?"

5. The main contention of the respondent was that, the action of the writ petitioner in terminating his services without an enquiry for alleged unauthorized absence and unsatisfactory services is illegal. It is also contended that, the termination is violation of Section 25G and 25H of the Industrial Dispute Act, 1947.

6. The writ petitioner filed a counter stating that the respondent herein was not even given a temporary status. The officer in-charge with whom the petitioner was working as Substitute Bungalow Lascar found that, his performance is unsatisfactory and further he was absent without getting permission. The writ petitioner herein therefore contended that the respondent herein was only temporary employee. He had no right to the post. It is contended that, the termination of the respondent herein on the ground of unsatisfactory work without holding any enquiry is valid and is not punitive. The Labour Court framed the following points for consideration.

"Points for consideration are:

(i) Whether the termination from service of Sri.A.Natarajan by Southern Railway w.e.f. 12.09.2005 is legal and justified?

(ii) To what relief the concerned workman is entitled?"

7. The Labour Court held that the services of the respondent herein was terminated without holding an enquiry and therefore, it is illegal. It also held that the termination is punitive in

nature for which a departmental enquiry is sine qua non and should have been conducted. The Labour Court therefore set aside the order of termination and directed that the respondent should be reinstated in the service forthwith. It is this order which is challenged by the employer.

8. Heard the counsel for the parties.

9. The learned counsel for the writ petitioner has argued that the respondent herein was only appointed as Substitute Bungalow Lascar. He was eligible for temporary status only after the completion of 120 days continuous service. The learned counsel for the petitioner contend that, it is as per the appointment order the respondent can be terminated any time if his services were found unsatisfactory. The respondent also relied on Clause 1501 and 1502 of the terms and conditions, applicable to Railway Servant and substitutes in temporary service are reads under:-

"TERMS AND CONDITIONS APPLICABLE TO RAILWAY
SERVANTS AND SUBSTITUTES IN TEMPORARY SERVICE
Non-gazetted Staff

1501.(i) Temporary Railway Servants

Definition - A "temporary railway servant" means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour", including 'casual labour with temporary status', a "contract" or "part-time" employee or an "apprentice".

1502. Termination of service and periods of notice.-

1. When a person without a lien on a permanent post under Government is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of the termination of his service, if such termination is due to the expiry of the sanction of the post which he holds or the expiry of the officiating vacancy, or to his compulsory retirement due to mental or physical incapacity or to his removal or dismissal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution of India. If the termination of his service is due to some other cause, he shall be entitled to one month's notice provided he was engaged on a contract for a definite period and the contract does not provide for any other period of notice; and to a notice of 14 days if he was not engaged on a contract. Temporary railway servants

with over three years continuous service shall, however, be entitled to a month's notice. The periods of notice specified above shall apply on either side, and steps should be taken to bring this condition under the notice of the Railway servants concerned."

10. The counsel for the writ petitioner would contend that the order of termination of the petitioner not being punitive and in any event, the respondent being only a temporary employee, the order of termination without enquiry is valid.

11. Per contra, the learned counsel for the respondent would contend that the respondent had completed 120 days of service and was therefore entitled to temporary status. The learned counsel for the respondent was also contended that the termination is punitive in nature and therefore the petitioner ought to have conducted an enquiry before terminating the respondent.

12. The respondent is a temporary employee. There are two reasons to terminate the respondent:-

- a) The services were found unsatisfactory
- b) He unauthorizedly absent himself from duty with effect from 12.09.2005.

13. It is well settled that the termination of the services of the temporary employee on the ground of unsatisfactory cannot be held as punitive and therefore, no enquiry need to be conducted. The Hon'ble Supreme Court of India in the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and Another, reported in 2002 (1) SCC 520, observed as under:-

"21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

14. The Hon'ble Supreme Court of India, in the case of Abhijit Gupta Vs S.N.B. National Centre, Basic Sciences & Others, reported in 2006 (4) SCC 469, observed as under:-

"14. The real test to be applied in a situation where an employee is removed by an

innocuous order of termination is: Is he discharged as unsuitable or is he punished for his misconduct? In Allahabad Bank Officers' Assn. v. Allahabad Bank [(1996) 4 SCC 504 : 1996 SCC (L&S) 1037] this Court was considering a challenge to a compulsory retirement and formulated a practical test to answer the question posed above. This Court (vide para 17) observed that if the order of compulsory retirement from the service casts a stigma in the sense that it contains a statement casting aspersion on his conduct or his character, then it can be treated as an order of punishment but not if it merely amounts to highlighting the unsuitability of the employee. As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service.

15. The learned counsel for the appellant, however, strongly contends that the "stigma" cast on the employee may not be confined to his personal character but may also affect his capacity to work. The test, learned counsel for the appellant submitted, is that, if what is stated in the order of termination is read by a future employer, it prejudices the future employment of the employee. In the face of the law laid down in the judgment just referred, we are unable to accept this as the correct test.

16. In Ravindra Kumar Misra v. U.P. State Handloom Corpn. Ltd. [1987 Supp SCC 739 : 1988 SCC (L&S) 361 : (1988) 6 ATC 617 : AIR 1987 SC 2408] this Court pointed out that in a large corporation administration is bound to be impersonal and in regard to public officers assessment of service has got to be in writing for purposes of record, though it cannot be assumed that such an assessment recorded and the order of termination made with reference to that record would automatically take a punitive character."

15. Similarly, the Hon'ble Supreme Court of India, in the case of reported in 1987 Supp SCC 739, observed as under:-

"5. It cannot be disputed that temporary service can be terminated by notice. The order of appointment in the appellant's case made it abundantly clear that with a month's notice or payment of salary in lieu of notice such termination could be effected by either side. Rule 63 of the Corporation Rules made in

exercise of Article 127 of the Articles of Association of the Uttar Pradesh State Handloom Corporation Limited recognised such a power. That Rule provides:

"1. The appointing authority may, at any time, during the pendency of the temporary tenure terminate the services of a temporary employee by giving him one month's notice or emoluments for such lesser period by which the notice falls short of one month.

2. The temporary employee, on his part, shall have the option of quitting service by giving one month's notice to the appointing authority or paying to the Corporation an amount equal to his one month's pay...."

The order of termination of service in this case is indeed innocuous. The appellant is not entitled to the protection of Article 311(2) of the Constitution not being a member of a civil service of the Union or a State nor holder of a civil post under the State but his own Service Rules provide under Rule 68 that if the punishment of discharge or dismissal is imposed, an enquiry commensurate with requirements of natural justice is a condition precedent. Admittedly no such enquiry has been held. The question that crops up here for determination, therefore, is whether the impugned order was an order of termination simpliciter or really amounted to an order of dismissal. In *Parshotam Lal Dhingra v. Union of India* [AIR 1958 SC 36 : (1958) SCR 828 at 863-64] a Constitution Bench of this Court stated:

"The use of the expression 'terminate' or 'discharge' is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

This view has been approved by another Constitution Bench of this Court in *Champaklal Chimanlal Shah v. Union of India* [AIR 1964 SC 1854 : (1964) 5 SCR 190 at 204-5, 206-7]. After indicating approval, Wanchoo, J. as he then was, spoke for the Constitution Bench thus:

"It is well known that Government does not terminate the services of a public servant, be he even a temporary servant, without reason; nor is it usual for Government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case, there is nothing further to be said and his services terminate when the post comes to an end. Similarly a government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the Government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and/or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction with the work and/or conduct of a temporary servant may arise on complaint against him. In such cases two courses are open to Government. It may decide to dispense with the services of the servant or revert him to his substantive post without any action being taken to punish him for his bad work and/or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Article 311(1). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what maybe called a preliminary inquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary inquiry the explanation of the government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary inquiry makes out a prima facie case against the servant concerned that charges are then framed against him and he is asked to show cause why disciplinary action be not taken against him. An

enquiry officer (who may be himself in the case where the appointing authority is other than the Government) is appointed who holds inquiry into the charges communicated to the servant concerned after taking his explanation and this inquiry is held in accordance with the principles of natural justice. This is what is known as a formal departmental enquiry into the conduct of a public servant.....

Generally therefore a preliminary inquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary inquiry is usually held to satisfy the Government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already the Government does not usually take action of this kind without any reason. Therefore when a preliminary inquiry of this nature is held in the case of a temporary employee or a government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary inquiry) when the Government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant. Therefore, so far as the preliminary inquiry is concerned there is no question of its being governed by Article 311(2) for that enquiry is really for the satisfaction of Government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary government servant or a servant holding higher rank temporary to which he has no right. In short a preliminary inquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary inquiry may even be held ex parte, for it is merely for the satisfaction of the Government, though usually for the sake of fairness, explanation

is taken from the servant concerned even at such an inquiry."

Both Parshotam Lal Dhingra case [AIR 1958 SC 36 : (1958) SCR 828 at 863-64] and Champaklal case [AIR 1964 SC 1854 : (1964) 5 SCR 190 at 204-5, 206-7] were referred to and relied upon in Samsher Singh v. State of Punjab [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192 : (1975) 1 SCR 814] . This is a case which was heard by a seven-Judge Bench. Ray, C.J., who spoke for the majority of five considered all the cases rendered by this Court till then touching on the point and at p. 841 of the Report stated as follows: (SCC p. 855, para 80)

"The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an inquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity."

In Samsher Singh case [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192 : (1975) 1 SCR 814] the ratio of the two earlier Constitution Bench judgments was approved. On facts it was found that the order of termination though innocuous in form was really an order by way of punishment removing the appellant from service on the basis of charges of gross misconduct found to have been established by an ex parte inquiry conducted by the S.P. Vigilance Department with the only object of ascertaining truth of the alleged misconduct and for the purpose of dismissing or removing the appellant, if charges were found established. It was ultimately on the basis of specific findings recorded by the S.P. Vigilance that the appellant's services were terminated. The court found that the enquiry by the S.P. Vigilance was essentially and in character and object different from the informal inquiry into the suitability of the appellant. Ray, C.J., in Samsher Singh case [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192 : (1975) 1 SCR 814] further pointed out: (SCC pp. 851-52, paras 65 and 67)

"The fact of holding an inquiry is not always conclusive. What is decisive is whether the order is really by way of punishment A probationer whose terms of services provided that it could be terminated without any notice and without any cause

being assigned could not claim the protection of Article 311(2).....

An order terminating the services of a temporary servant or probationer under the Rules of Employment and without anything more will not attract Article 311. Where a departmental inquiry is contemplated and if an enquiry is not in fact proceeded with, Article 311 will not be attracted unless it can be shown that the order though unexceptionable in form is made following a report based on misconduct."

In Regional Manager v. Pawan Kumar Dubey [(1976) 3 SCC 334 : 1976 SCC (L&S) 436 : AIR 1976 SC 1766 : (1976) 3 SCR 540] it was observed by this Court thus: (SCC p. 338, para 7)

"We think that the principles involved in applying Article 311(2) having been sufficiently explained in Samsher Singh case [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : AIR 1974 SC 2192 : (1975) 1 SCR 814] it should no longer be possible to urge that Sughar Singh case [State of U.P. v. Sughar Singh, (1974) 1 SCC 218 : 1974 SCC (L&S) 124] could give rise to some misapprehension of the law. Indeed, we do not think that the principles of law declared and applied so often have really changed. But, the application of the same law to the differing circumstances and facts of various cases which have come up to this Court could create the impression sometimes that there is some conflict between different decisions of this Court. Even where there appears to be some conflict, it would, we think, vanish when the ratio decided of each case is correctly understood. It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

6. As we have already observed, though the provisions of Article 311(2) of the Constitution do not apply, the Service Rules which are almost at par make the decisions of this Court relevant in disposing of the present appeal. In several authoritative pronouncements of this Court, the concept of "motive" and "foundation" has been brought in for finding out the effect of the order of termination. If the delinquency of the officer in temporary service is taken as the operating motive in terminating the

service, the order is not considered as punitive while if the order of termination is founded upon it, the termination is considered to be a punitive action. This is so on account of the fact that it is necessary for every employer to assess the service of the temporary incumbent in order to find out as for whether he should be confirmed in his appointment or his services should be terminated. It may also be necessary to find out whether the officer should be tried for some more time on temporary basis. Since both in regard to a temporary employee or an officiating employee in a higher post such an assessment would be necessary merely because the appropriate authority proceeds to make an assessment and leaves a record of its views the same would not be available to be utilised to make the order of termination following such assessment punitive in character. In a large democracy as ours, administration is bound to be impersonal and in regard to public officers whether in government or public corporations, assessments have got to be in writing for purposes of record. We do not think there is any justification in the contention of the appellant that once such an assessment is recorded, the order of termination made soon thereafter must take the punitive character.

7. There may be cases where an inquiry is undertaken and prima facie material for serious charges are found; by disclosing the result of such preliminary inquiry, the officer concerned is put under suspension in contemplation of disciplinary action. After such steps have been taken, the employer/appropriate authority decides not to continue the departmental proceedings but makes an order terminating the service, as has been done in this case.

8. Counsel for the respondents pointed out that in the matter of ordering termination of service of a temporary employee, the order follows a review of his working. Unless the termination is ordered because there is no need for the post, in the absence of reasons for termination, the action is open to challenge as arbitrary, particularly when other similarly situated employees are continued in service. When reasons are given, they are bound to disclose adverse features of the employee and disclosure of such features become the ground of challenge of the order on the plea that termination

is not innocuous. To meet this position, the distinction between "motive" and "foundation" has been adopted by the courts. As long as the adverse feature of the employee remains the motive and does not become transformed as the foundation of the order of termination it is unexceptionable. No strait-jacket test can be laid down to distinguish the two and whether "motive" has become the foundation has to be decided by the court with reference to the facts of a given case. The two are certainly two points of one line – ordinarily apart but when they come together "motive" does get transformed and merges into foundation.

9. As has been held by a three-Judge Bench in State of U.P. v. Ram Chandra Trivedi [(1976) 4 SCC 52 : 1976 SCC (L&S) 542 : AIR 1976 SC 2547 : (1977) 1 SCR 462] the position in regard to cases of the present nature is clear and the examination of the decisions of this Court shows that there is no real conflict in their ratio decidendi. On facts as established in different cases, courts have applied the known tests and in order that complete justice may be done on the facts found, there have been permissible deviations.

10. We may point out that this Court in a Constitution Bench judgment in the case of State of Orissa v. Ram Narayan Das [AIR 1961 SC 177 : (1961) 1 SCR 606] indicated:

"[T]he fact of the holding of an enquiry is not decisive of the question. What is decisive is whether the order is by way of punishment, in the light of the tests, laid down in Parshotam Lal Dhingra case [AIR 1958 SC 36 : (1958) SCR 828 at 863-64] ."

11. Keeping in view the principles indicated above, it is difficult to accept the claim of the appellant. He was a temporary servant and had no right to the post. It has also not been denied that both under the contract of service as also the Service Rules governing him the employer had the right to terminate his services by giving him one month's notice. The order to which exception is taken is expressly an order of termination in innocuous terms and does not cast any stigma on the appellant nor does it visit him with any evil consequences. It is also not founded on misconduct. In the circumstances, the order is not open to challenge."

16. The Hon'ble Supreme Court of India in the case of Kunwar Arun Kumar Vs. U.P.Hill Electronics Corporation Ltd & Others, reported in 1997 (2) SCC 191, held as under:-

"2. This special leave petition arises from the order and judgment of the Division Bench of the Allahabad High Court dated 3-7-1996 made on 3-7-1996 in Writ Petition No. 6676 (S/S) of 1992.

3. The petitioner was appointed on 15-1-1990 in the pay scale of Rs 550-1100 with allowance; total remuneration was coming to Rs 1991.40. He was put on probation as contemplated under clause (2) of the letter of appointment which reads as under:

"You will be on probation for a period of 12 months from the date of your joining, which period may be extended from time to time at the discretion of the Management. During the period of probation, your services may be terminated without assigning any reason therefor."

4. His service was terminated by proceedings dated 16-1-1991 which reads as under:

"During the period of probation your work performance was found unsatisfactory. Therefore, your services are hereby terminated with effect from 16th January, 1991 as per clause (2) of your appointment letter referred to above."

5. The petitioner challenged the order of termination in the High Court. The High Court without going into the question whether or not it is a stigma, came to the conclusion that the respondents had totally lost confidence in the appellant and that he was totally unsuitable for the job for which he was employed and, therefore, he was found not entitled to any enquiry. Consequently, it dismissed the writ petition. Shri Sehgal, learned Senior Counsel for the petitioner, contends that the finding recorded amounts to a stigma; action taken without conducting enquiry and giving an opportunity to the petitioner, is violative of Article 311(2) of the Constitution and the rules made thereunder. Therefore, he is entitled to an opportunity of being heard and be dismissed only on the ground of misconduct and not by termination simpliciter. We do not agree with the learned counsel. The reasons mentioned in the order may be a motive and not a foundation as a ground for dismissal. During the period of probation, the authorities are entitled to

assess the suitability of the candidates and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. Under these circumstances, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period, the work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of the letter of appointment without conducting any enquiry. That does not amount to any stigma. If the record does not support such a conclusion reached by the authorities, a different complexion would arise. In this case, they have recorded the finding that the petitioner was regularly absent on one ground or the other. Under these circumstances, the respondents terminated his services. We do not find any illegality in the action taken by the respondents.

6. The special leave petition is accordingly dismissed."

(emphasis supplied)

In this case also, the respondent's services were found to be unsatisfactory and as stated by the Hon'ble Supreme Court of India, the fact that he was absent without permission is not the motive for termination. The conditions of appointment of the respondent shows that the petitioner is only a temporary employee, whose services could be terminated without holding an enquiry.

17. In view of the above said judgments, the findings of the Labour Court that the order terminating the respondent is punitive cannot be sustained. Since the order terminating respondents is not punitive and since the respondent is only a temporary employee, it was not mandatory to conduct any enquiry. The order of the Labour Court therefore cannot be sustained. The writ petition is allowed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Pkn

Sub Assistant Registrar

To

The Presiding Officer,
Central Government Industrial Tribunal
Cum Labour Court,
Chennai.

+1 cc to M/s.T.P.Savitha, Advocate, S.R.No.36635

+1 cc to M/s.L.Chandrakumar, Advocate, S.R.No.36533

W.P.No. 2873 of 2013

SKV(CO)
SSM(10/05/2019).



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