

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.1299 of 1992(O&M)

Date of Order:11.10.2023

Punjab State**.Appellant****Versus****Kirandeep****..Respondent****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. Vikas Arora, AAG, Punjab**

**Mr. Naresh Parbhakar, Advocate
for the respondent.**

ANIL KSHETARPAL, J

1. Sh. Naresh Parbhakar, Advocate, had entered appearance on behalf of the respondent in the year 1993. He submits that he could not trace out the file in his office, however he had prepared brief by taking a photocopy from the State counsel. He submits that he does not possess power of attorney from the respondent, however, he is prepared to assist the court. His gesture has been appreciated.

2. The correctness of the concurrent findings of fact arrived at by the courts below is assailed by the State of Punjab (defendant) in this second appeal.

3. After having heard the learned counsel representing the parties, the question which arises for consideration is as to “Whether before terminating the services of a temporary employee in accordance with the terms of the appointment a regular departmental inquiry is required to be held?”

4. The respondent was appointed as a Chowkidar in October/November 1980, on a temporary basis. His services were

terminated on 26.08.1983. He filed a suit for grant of decree of declaration that the order dismissing him from service is illegal, null and void. It was alleged that before terminating his service, prescribed procedure for dismissing him from the service has not been followed.

5. On 08.09.1992 the operation/execution of the decree was stayed and the respondent has remained out of service on account of interim order granted.

6. The defendant (appellant herein) while contesting the suit claimed that the plaintiff was only a temporary employee and his work was not satisfactory. It was alleged that he remains absent from duty without any prior intimation repeatedly and he has been convicted under Section 120 of the Indian Railways Act, 1890.

7. Both the courts have held that the order terminating the respondent from his service was in the nature of punitive evidence and therefore the procedure as prescribed under Article 311 of the Constitution of India was required to be followed before terminating his service.

8. On one hand, the learned counsel representing the State of Punjab submits that on a careful perusal of the order of termination, it is evident that the services of the respondent were terminated in terms of the appointment letter. He submits that both the courts have erred in drawing the conclusion that the order is punitive in nature.

9. On the other hand, the learned counsel representing the respondent submits that once the service of the respondent has been terminated on account of absence and conviction for the offence under Section 120 of the Indian Railways Act, 1890, therefore the courts below have rightly concluded that the order is punitive in nature.

10. The order Annexure P-4 has been translated by the First Appellate Court which read as under:-

“Services of Shri Kirandeep son of Jagdish Ram, P.R. Chowkidar are hereby terminated w.e.f. the afternoon of 25.08.1983 on the basis of letter of his appointment.”

11. It is evident that the order passed is neither stigmatic nor can be said to be on account of any misconduct. The services of the respondent were dispensed with in accordance with the terms of the appointment letter. There is a stark difference between security of service available to a regular employee and a temporary employee. The services of the temporary employee can be terminated in accordance with the terms of the appointment. Reliance in this regard can be placed on a judgment passed by 3 Judge Bench of the Supreme Court in *State of Uttar Pradesh and another vs. Kaushal Kishore Shukla, (1991) 1 SCC 691*. It was not appropriate for the courts below to assume that the order was punitive in nature even if it was a simpliciter order terminating the services of the respondent in accordance with the terms of the appointment.

12. Keeping in view the aforesaid facts, the judgments passed by the courts below are set aside. The suit filed by the plaintiff shall stand dismissed.

13. The regular second appeal is allowed.

14. All the pending miscellaneous applications, if any, are also disposed of.

October 11, 2023

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Whether speaking/reasoned

Whether reportable

:YES/NO

:YES/NO

(ANIL KSHETARPAL)
JUDGE