The State of U. P.

Vs

Ram Chandra Trivedi

Civil Appeal No. 258 of 1976

(H.R. Khanna, R.S. Sarkaria, Jaswant Singh JJ)

01.09.1976

JUDGMENT

JASWANT SINGH J. -

1. This appeal by special leave is directed against the judgement and decree dated January 3, 1975 of the High Court of Judicature at Allahabad setting aside the judgement and decree dated July 27, 1965, of the Second Additional Civil Judge, Jhansi, whereby the latter affirmed the judgment and decree of the trial Court dismissing the respondent's suit for declaration that order dated November 29, 1961, passed by the Superintending Engineer, Circle IV, Irrigation Works, Jhansi, U.P. terminating the services of the respondent was void and ineffective in law and he was entitled to recover a sum of Rs. 2147 as arrears of pay and dearness allowance from the appellant.

2. The facts leading to this appeal are : The respondent herein was appointed as a temporary clerk in Gur Sarain Canal Division, Jhansi, on May 6, 1954. Seven years later, he was required to appear in a departmental examination which was held in July, 1961. On July 12, 1961, an optional typewriting test was held by the Department. In that test the Executive Engineer, Investigation and Planning Division, Jhansi, it is alleged, detected Gopal Deo Santiya, a clerk of Bhander Canal Division, attempting of both the clerks and reported the matter to the Superintending Engineer of his division. Considering the explanations tendered by the clerks to be unsatisfactory, the Superintending Engineer brought the matter to the notice of the Chief Engineer, Irrigation Department, Lucknow. The Chief Engineer wrote back to the Superintending Engineer asking him to award suitable punishment to the aforesaid two clerks. The Superintending Engineer thereafter issued orders terminating the services of both the clerks. The order that was passed in respect of and served on the respondent ran as follows :

#No. E-70/IV/259 Dated Jhansi, November 29, 1961 OFFICE MEMORANDUM##

Shri Ram Chandra Trivedi, Temporary Routine Grade Clerk is hereby served with one month's notice to the effect that his services shall not be required after one month from the date of receipt of this Notice.

Sd./- S. P. Sahni, Superintending Engineer##

3. The respondent attempted to have the above order rescinded by making representations to the Chief Engineer, and the Minister of Irrigation, U.P. which proved abortive. The respondent thereupon challenged the aforesaid order of termination of his services by instituting the aforesaid suit averring inter alia that the order not being an order of termination of his service simpliciter but

being one passed by way of punishment, attracted the applicability of Article 311 of the Constitution which not having been complied with rendered the order void and ineffective in law. The suit was resisted by the appellant on the ground that the respondent was only a temporary hand; that under the contract of service as also the rules applicable to temporary government servants, the respondent was liable to be discharged any time even though an enquiry in respect of a charge of misconduct might have been instituted against him; and that the impugned order not having been passed as a measure of punishment but being a simple order of termination of the respondent's services without casting any stigma on him or visiting him with evil consequences, was valid both under the aforesaid rules and the contract of service. The grounds of attack made against the impugned order did not find favour with the trial Court which dismissed the suit. Aggrieved by the judgment and decree of the trial Court, the respondent took the matter in appeal to the Second Additional Civil Judge, Jhansi, who affirmed the judgment and decree of the trial Court.

4. Both the courts found that the impugned order was valid in law as it was a simple order of termination of service and not having been passed by way punishment, it did not attract the provisions of Article 311(2) of the Constitution. Dissatisfied with these judgment, the respondent preferred a second appeal to the High Court of Judicature at Allahabad, which as already stated was allowed by a learned Single Judge of that court. While oversetting the concurrent findings of fact arrived at by courts below and decreeing the respondent's aforesaid suit, the learned Single Judge went through the official correspondence preceding the passing of the impugned order and observed that a close scrutiny of the facts on record showed that the order was passed by way of punishment on the basis of the enquiry proceedings and as a result of the recommendation made by the Executive Engineer should be suitably punished. It is against this judgment and decree that the present appeal has been preferred by the State of U.P.

5. Mr. Dixit, learned Counsel appearing on behalf of the appellant, has urged that the High Court acted illegally in reversing the concurrent finding of fact arrived at by the courts below and quashing the impugned order which was a simple order of termination of the respondent's services and had been validly passed in accordance with the rules relating to temporary government servants and the contract of service. He has further contended that the learned Single Judge could not probe into the departmental files to support his finding that the impugned order was passed against the respondent by way of punishment. He has, support of his submissions; relied upon a number of decisions of this Court.

6. As against this, it has been vehemently urged by Mr. Garg, learned Counsel for the respondent, that the constitutional position in regard to the order of the impugned nature is not well settled in view of the conflicting decisions of this Court particularly in view of the observations made in state of U. P. v. Sughar Singh ((1974) 2 SCR 335 : (1974) 1 SCC 218 : 1974 SCC (L&S) 124) and State of Punjab v. P. S. Cheema ((1975) 4 SCC 84 : 1975 SCC (L&S) 220). Mr. Garg has further contended that the circumstances attending the issue of the impugned order clearly establish that it was passed by way of punishment.

7. It would, in our opinion, be appropriate at the outset to refer to the decisions of this Court which have an important bearing on the instant case and to dispel the doubts sought to be created by Mr. Garg with regard to the constitutional position in relation to the applicability of Article 311(2) of the Constitution resulting from the said decisions.

8. In Satish Chandra Anand v. Union of India (1953 SCR 655 : AIR 1953 SC 250), it was held by his Court that any and every termination of service does not amount to dismissal or removal and a

termination of service brought about by exercise of a contractual right is not per se dismissal or removal. On the same reasoning, this Court laid down in Shyam Lal v. State of U. P. ((1955) 1 SCR 26 : AIR 1954 SC 369) that the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of punishment and does not attract 311(2).

9. In Parshotoam Lal Dhingra v. Union of India (1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544) which is regarded as the Magna Carta of the India Civil Servant, Das, C.J. speaking for the majority made the following illuminating observations :

> Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto. But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment. One test for determining whether the termination of the service of a government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases hereinbefore mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311. In other words and broadly speaking. Article 311(2) will apply to those case where the government servant, has he been employed by a private employer, will be entitled to maintain an action for wrongful dismissal, removal or reduction in rank. To put it in another way, if the Government has, by contract, express or implied, or under the rules, the right to terminate the employment at any time, them such termination in the manner provided by the contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Article 311.

It does not, however, follow that, except in the three cases mentioned above, in all other cases, termination of service of a government servant who has no right to his post, e.g. where he was appointed to a post, temporary or permanent, either on probation or on an officiating basis and had not acquired a quasipermanent status, the termination cannot, in any circumstance, be a dismissal or removal from service by way punishment. Cases may arise where the Government may find a servant unsuitable for the post on account of misconduct, negligence, inefficiency or other disqualification. If such a servant was appointed to a post, permanent or temporary, either on probation or on an officiating basis, then the very transitory character of the employment implies that the employment was terminable at any time on reasonable notice given by the Government. Again if the servant was appointed to a post, permanent or temporary, on the express condition or term that the employment would be terminable on say a month's notice as in the case of Satish Chandra Anand v. Union of India (supra), then the Government might at any time serve the requisite notice. In both cases the Government may proceed to take action against the servant in exercise of its powers under the terms of the contract of employment, express or implied, or under the rules regulating the conditions of service, if any be applicable, and ordinarily in such a situation the Government will take this course. But the Government may take the view that a simple termination

of service is not enough and that the conduct of the servant has been such that he deserves a punishment entailing penal consequences. In such a case the Government may choose to proceed against the servant on the basis of his misconduct, negligence, inefficiency or the like and inflict on him the punishment of dismissal, removal or reduction carrying with it the penal consequences. In such a case the servant will be entitle to the protection of Article 311(2)

The position may, therefore, be summed up as follows : Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chandra Anand v. Union of India. Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in Shyam Lal v. State of Uttar Pradesh. In either of the two above mentioned cases the termination of the service did not carry with in the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operative on the mind of the Government is, as Chagla, C.J. has said in Shrinivas Ganesh v. Union of India (AIR 1956 Bom 455 : ILR 1956 Bom 767 : (1957) 2 LLJ 189) wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his service cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstance be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although inform the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by

way of penalty. 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 herein-before referred to ? If the case satisfied either of the two tests then it must be 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.

10. In Gopi Kishore Prasad v. Union of India (AIR 1960 SC 689 : (1960) 1 LLJ 577), It was held by this Court that if the Government proceeded against the probationer in the direct way without casting any aspersion on his honesty or competence, his discharge would not have the effect of removal by way of punishment, but if instead of taking the easy course, the Government chose the more difficult one of holding an enquiry into his alleged misconduct and branded him as a dishonest and incompetent officer, it would attract Article 311(2) of the Constitution.

11. In State of Orissa v. Ram Narayan Das ((1961) 1 SCR 606 : AIR 1961 SC 177 : (1961) 1 LLJ 552) where on July 28, 1954, a notice was served on the respondent who was appointed as a Sub-Inspector on probation in the Orissa Police Force in the year 1950 to show cause why he should not be discharged from service for gross neglect of duties and unsatisfactory work and where the explanation tendered by him was considered to be unsatisfactory by the Deputy Inspector General of Police who passed an order discharging the respondent from service for unsatisfactory work and conduct and where the respondent contended that the order was invalid an two grounds : (i) that he was not given a reasonable opportunity to show cause against the proposed action within the meaning of Article 311(2), and (ii) that he was not afforded an opportunity to be heard nor was any evidence taken on the charge, it was held that the order of discharge did not amount to dismissal and did not attract the protection of Article 311(2) of the Constitution as the respondent was a probationer and had no right to the post held by him and his services were terminated in accordance with the rules which permitted his being discharged at any time during the period of probation.

12. The case of Madan Gopal v. State of Punjab ((1963) 3 SCR 716 : AIR 1963 SC 531 : (1964) 1 LLJ 68) where the order terminating the employment of the appellant who was a temporary government servant was quashed on the ground that it was in the nature of an order of punishment which had been passed without complying with the provisions of Article 311(2) of the Constitution is clearly distinguishable. In that case, the order of termination of the appellant's service which was preceded by an enquiry into his alleged misconduct was based on the finding of misconduct which amounted to casting a stigma affecting his future career.

13. In Rajendra Chandra Banerjea v. Union of India ((1964) 2 SCR 135 : AIR 1963 SC 1552) where the appellant was appointed as a probationer for one year (which was extended from time to time) on condition that his services might be terminated without any notice and cause being assigned during that period and he agreed and joined the service and where later on during the period of his probation, he was called upon to show cause why his services should not be terminated and he was finally informed that the explanation given by him was not satisfactory and his services would stand terminated on a specified date, it was held by this Court that the termination of his service was not by way of punishment and could not amount to dismissal or removal within the meaning of Article 311.

14. In Champaklal Chimanlal Shah v. Union of India ((1964) 5 SCR 190 : AIR 1964 SC 1854 : (1964) 1 LLJ 752) where the appellant, whose appointment being temporary was liable to be terminated on one month's notice on either side, was informed, without assigning any cause, after the expiry of about five years that his services would be terminated with effect from a specified date but before the termination, he was called upon to explain certain irregularities and was also asked to submit his explanation and to state why disciplinary action should not be taken against him and certain preliminary enquiries were also held against him in which he was not heard, but no regular departmental enquiry followed and the proceedings were dropped, it was held by this Court after considering the cases of Gopi Kishore Prasad v. Union of India (supra), State of Orissa v. Ram Narayan Das (supra), Madan Gopal v. State of Punjab (supra) and Jagdish Mitter v. Union of India (AIR 1964 SC 449 : (1964) 1 LLJ 418) that such a regular departmental enquiry though contemplated was not held against the appellant and no punitive action was taken against him, there was no question of the case being governed by Article 311(2) of the Constitution. It was further held in that case that it is only when the Government decides to hold a regular departmental enquiry for the purpose of inflicting one of the three major punishments that the government servant gets the protection of Article 311.

15. In State of Punjab v. Sukh Raj Bahadur ((19683 SCR 234 : AIR 1968 SC 1089 : (1970) 1 LLJ 373) where the Punjab Government reverted the respondent from his officiating appointment to the Punjab Civil Service (Executive Branch) to his substantive post in the Delhi Administration after issuing him a chargesheet to which the respondent replied but the enquiry was not proceeded with, it was held by this Court that the respondent could not complain against the order reverting him to his former post because the order of reversion was not by way of punishment. In that case, Mitter, J. who spoke for the Bench laid down the following propositions :

> 1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.
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> 2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.
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> 3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.
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> 4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.
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> 5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an Enquiry Officer is appointed, a chargesheet submitted, explanation called for and considered, and order of termination of service made there-after will attract the operation of the said article.

16. The principles laid down in Parshotam Lal Dhingra's case, Champaklal Chimanlal Shah's case and Sukh Raj Bahadur's case were reiterated by his Court in Union of India v. R. S. Dhaba ((1969) 3 SCC 603), State of Bihar v. Shiva Bhikshuk Mishra ((1971) 2 SCR 191 : (1970) 2 SCC 871) and R.

S. Sial v. State of U. P. ((1974) 3 SCR 754 : (1975) 3 SCC 111 : 1974 SCC (L&S) 501) where it was laid down that the test for attracting Article 311(2) of the Constitution is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary employee. The form of the order, however, is not conclusive of its true nature. The entirety of circumstances preceding or attendant on the impugned order must be examined by the court and the over riding test will always be whether the misconduct is a mere motive or is the very foundation of the order.

17. In R. S. Sial v. State of U. P. to which one of us (Brother Khanna, J.) was a party, it was made clear in unambiguous terms that it may be taken to be well settled that even though misconduct, negligence, inefficiency or other disqualifications may be the motive or the inducing factor which influence the Government to take action under the express or implied terms of the contract of employment or under the statutory rule, nevertheless if a right exists, under the contract or the rules to terminate the services the motive operating on the mind of the Government is wholly immaterial. The same rule would hold good if the order passed is not for termination of service but for reversion of a government servant from a higher post to a lower post which he holds in a substantive capacity.

18. The decision of this Court in State of Uttar Pradesh v. Sughar Singh (supra) where the order of the order of the respondent's reversion was held to have been passed by way of punishment to which our attention has been drawn by Mr. Garg and which has led to a certain amount of misunderstanding turned upon a clear statement made before the High Court by the Standing Counsel for the State that the foundation of the order of reversion was the adverse entry made in his confidential character roll.

19. The constitutional position has now been made crystal clear by a Bench of seven Judge of this Court in Shamsher Singh v. State of Punjab ((1975) 1 SCR 814 : (1974) 2 SCC 831 : 1974 SCC (L&S) 550) where the learned Chief Justice after an exhaustive review of the decisions of this Court observed : [SCC pp. 851-852 : SCC (L&S) pp. 571-572, paras 63 64 65 67].

> No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any rules governing a probationer in this respect the authority may come to the conclusion that on account of in adequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption, and if his services are terminated without following the provisions of

Article 311(2) he can claim protection. . . . .

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 service 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 enquiry 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 inform is made following a report based on misconduct.

20. The Division Bench judgment of this Court in P. S. Cheema's case on which strong reliance has been placed by Mr. Garg is also clearly distinguishable and no help can be derived therefrom by the respondent. In that case, both the trial Court and the first appellate Court had come to a concurrent finding of fact that the impugned order of termination was by way of punishment. It would also be seen that in that case on a representation being made by the respondent to the then Chief Minister of the State, the latter after consideration of the matter had ordered that in view of the respondent's previous good record, he did not deserve the punishment of termination of service of service only on account of a few bad reports and that the respondent should continue in service and his case should be reviewed after he earned another report from the Excise and Taxation Commissioner for the year 1964-65.

21. In a recent decision of this Court in Regional Manager v. Pawan Kumar Dubey ((1976) 3 SCC 334 : 1976 SCC (L&S) 436) to which one of us was a party, Sughar Singh's case which is the sheet anchor of Mr. Garg's contention was also adverted to and it was explained there in that case did not depart from earlier decisions on applicability of Article 311(2) or Article 16 of the Constitution. The following observations made in Pawan Kumar Dubey's case should suffice to clear the doubts that may still be lurking in some quarters as to the ratio decidendi of Sughar Singh's case : [SCC pp. 338, 340, 341 : SCC (L&S) pp. 440-441, 442, 443, paras 7,12,13]

> We think that the principles involved in applying Article 311(2) having been sufficiently explained in Shamsher Singh's case it should no longer be possible to urge that Sughar Singh's case 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 decidendi 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.

This Court's judgment in Sughar Singh's case shows that it was only following the law on Article 311(2) of the Constitution as laid down repeatedly earlier by this Court. It specifically referred to

the following case : Parshottam Lal Dhingra v. Union of India; State of Punjab v. Sukh Raj Bahadur; State of Orissa v. Ram Narayan Das; R. C. Lacy v. State of Bihar (C. A. 590 of 1962, decided on October 23, 1963); Jagdish Mitter v. Union of India; A. G. Benjamin v. Union of India ((1967) 1 LLJ 718); Ram Gopal Chaturvedi v. State of Madhya Pradesh ((1970) 1 SCR 472 : (1969) 2 SCC 240); Union of India v. Gajendra Singh ((1972) 2 SCR 660 : (1973) 3 SCC 797 : 1973 SCC (L&S) 269); Divisional Personnel Officer v. Raghavendrachar ((1966) 3 SCR 106 : AIR 1966 SC 1529 : (1967) 1 LLJ 401); Union of India v. Joswant Ram (AIR 1958 SC 905); Madhav v. State of Mysore((1962) 1 SCR 886 : AIR 1962 SC 8); State of Bombay v. Abraham (1962 Supp 2 SCR 92 : AIR 1962 SC 794 : (1963) 2 LLJ 422). In Sughar Singh's case, this Court summarised the propositions of law deducible from the cases mentioned above; and, while considering the applicability of some of the propositions of law to the facts of the case, it did observe that, on the face of it, the action against Sughar Singh did not appear to be punitive. Nevertheless, on a total consideration of all the facts, including the admission in the High Court before Verma, C.J. by the Standing Counsel appearing on behalf of the State, that the reversion order could not be explained except as a result of the adverse entry made two years earlier, it had finally applied the ratio decidendi of the State of Bihar v. Shiva Bhikshuk Mishra (supra), where this Court had affirmed the opinion of the High Court, on facts, that the reversion was not in the usual course or for administrative reasons but it was after the finding on an enquiry about some complaint against the plaintiff and by way of punishment to him.

On this view of the case, it was not really necessary for this Court to consider whether the reversion of Sughar Singh was contrary to the provisions of Article 16 also.

We do not think that Sughar Singh's case in any way, conflicts with what has been laid down by this Court previously on Article 311(2) of the Constitution or Article 16 of the Constitution.

22. Thus on a conspectus of the decisions of this Court referred to above, it is obvious that there is no real conflict in their ratio decidendi and it is no longer open to anyone to urge with any show of force that the constitutional position emerging from the decisions of this Court in regard to cases of the present nature is not clear. It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches. The proper course for a High Court in such a case, as observed by this Court in Union of India v. K. S. Subramanian ((1976) 3 SCC 677) to which one of us was a party, is to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself.

23. Keeping in view the principles extracted above, the respondent's suit could not be decreed in his favour. He was a temporary hand and had no right to the post. It is also not denied that both under the contract of service and the service rules governing the respondent, the State had a right to terminate his services by giving him one month's notice. The order to which exception is taken is ex facie an order of termination of service simpliciter. It does not cast any stigma on the respondent nor does it visit him with evil consequences, nor is it founded on misconduct. In the circumstances, the respondent could not invite the Court to go into the motive behind the order and claim the protection of Article 311(2) of the Constitution.

24. We, therefore, agree with the submission made on behalf of the appellant that the High Court was in error in arriving at the finding that the impugned order was passed by way of punishment by probing into the departmental correspondence that passed between the superiors of the respondent

overlooking the observations made by this Court in I. N. Saksena v. State of Madhya Pradesh ((1967) 2 SCR 496 : AIR 1967 SC 1264 : (1967) 2 LLJ 427) that when there are no express words in the impugned order itself which throw a stigma on the government servant, the Court would not delve into Secretariat files to discover whether some kind of stigma could be inferred on such research.

25. We also find ourselves in agreement with the contention advanced on behalf of the appellant that the High Court failed to appreciate the true legal and constitutional position and upset the concurrent findings of fact arrived at by the courts below that the impugned order was not by way of punishment ignoring the well settled principle of law that a second appeal cannot be entertained on the ground of erroneous finding of fact, however gross the error might seem to be. (See Pares Nath Thakur v. Mohani Dasi ((1960) 1 SCR 271 : AIR 1959 SC 1204); Sinna Ramanuja Jeer v. Ranga Ramanuja Jeer ((1962) 2 SCR 509 : AIR 1961 SC 1720); R. Ramachandra Ayyar v. Ramalingam ((1963) 3 SCR 604 : AIR 1963 SC 302) and Madamanchi Ramappa v. Muthaluru Bojjappa ((1964) 2 SCR 673 : AIR 1963 SC 1633))

26. For the foregoing reasons, the contentions of Mr. Dixit are upheld and those of Mr. Garg are repelled.

27. In the result, we allow the appeal, set aside the judgment and decree of the High Court, restore the judgments and decrees of the courts below and dismiss the respondent's suit. In the circumstances of the case, the parties are, however, left to pay and bear their own costs of this appeal.

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