

Kanhialal

Vs

District Judge and Others

Civil Appeal No. 141 of 1983

(P.N. Bhagwati, E.S. Venkataramiah JJ)

10.01.1983

ORDER

1. Special leave granted.

2. It is clear on the facts of the present case and particularly from the order passed by the Administrative Judge on November 20, 1980 while disposing of the representation of the appellant that the only reason why he was discharged from service was that he was "prima facie" responsible for the loss of some document from the juridical record on account of his negligence and carelessness". The order of discharge passed against the appellant was, therefore, clearly penal in character and there can be no doubt that even if he was a temporary servant, he was entitled to the protection of Article 311 (2) of the Constitution and hence no penal order could be passed against him without complying with the requirements of that Article. Since admittedly the requirements of Article 311 (2) were not satisfied in the case of the appellant before terminating his service, we are of the view that the order passed by the learned District Judge terminating the service of the appellant must be held to be void. We accordingly allow the appeal and set aside the order terminating the service of the appellant. But while doing so, we may make it clear that it will be open to the District Judge or any other appropriate authority to take disciplinary action against the appellant, if thought fit and nothing that has been said in this judgment will act as a bar against their doing so.

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