

SUPREME COURT OF INDIA

State of U.P.

Vs.

Ashok Kumar

C.A.No.7901 of 2002

(H.K.Sema and Dr. A.R.Lakshmanan JJ.)

13.12.2005

JUDGMENT

H. K. Sema, J.

1. Heard the parties.
2. This appeal is preferred by the State of U.P. against an order of the High Court affirming the order of tribunal.
3. Briefly stated the facts are as follows:

The respondent was recruited as constable and he was undergoing training. It is not in dispute that his regular appointment was to be preceded by the successful completion of training. While he was undergoing training he was terminated by an order dated 15-2-1983 (termination simpliciter) by resorting to *Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975* (hereinafter the 'Rules'). The order of termination reads:

"In terms of the provisions of the *Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975*, published by Appointment Sec. 3 vide notification No. 20/1/74 Appointment-3 dated 11-6-1975, the undersigned Sri Haramol Singh, Superintendent of Police, Mathura, do hereby give notice to temporary recruit constable Ashok Kumar that his services are no longer required and his services shall be deemed to have been terminated from the date of receipt of this notice."

4. The respondent preferred an appeal before the Appellate Authority who is Deputy Inspector General of Police. The appeal was dismissed by an order dated 28-9-1989 on the ground that there was no violation of Art. 311(2) of the Constitution of India. The order further stated that he may be paid one month's pay in lieu of the notice. Aggrieved thereby, he filed an application before the State Public Services Tribunal. The Tribunal after hearing

the submission of the respondent and the appellant was of the view that the termination of the respondent's services by the impugned order was violative of Article 311(2) of the Constitution as no reasonable opportunity of hearing has been afforded to the respondent as provided under Article 311(2) of the Constitution. Aggrieved thereby, the appellant filed a writ petition before the High Court. The High Court on the same ground affirmed the view of the Tribunal. Hence, the present appeal.

5. Both the tribunal and the High Court held that the service of the respondent was temporary. However, while holding that the service of the respondent was on the temporary basis they were erred in law in holding that the allegation by the respondent that the appellant was found using unfair means while undergoing training along with other trainees, is the foundation of the termination order and, therefore, is violative of Article 311(2) of the Constitution.

6. The order of termination simpliciter as referred above does not disclose any stigma. Whether a complaint is the motive leading to the termination simpliciter or it is the foundation of the termination order has been considered by this Court and held consistently by this court that when there is no inquiry resulting in the termination order the complaint is the motive of the order of termination on the other hand whether the complaint leads to the inquiry resulting the termination order it is the foundation of the order of termination. This Court in a recent decision in the case of *State of Haryana and another v. Satyender Singh Rathore*¹]. After discussing the various decisions of this court held in paragraph 9 of the judgment as under:

"9. We find the High Court did not consider the question of stigma or the effect of any enquiry held before the order of termination was passed. The question whether the enquiry purportedly held provided the motive or the foundation was required to be considered by the High Court in detail. That has not been done. The question whether the termination of service is simpliciter or punitive has been examined in several cases e.g. *Dhananjay v. Chief Executive Officer, Zilla Parishad Jalna*, 0, and *Mathew P. Thomas v. Kerala State Civil Supply Corpn. Ltd.*, . An order of termination simpliciter passed during the period of probation has been generating undying debate. The recent two decisions of this Court in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences*, , and *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences*, 44, after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation. The learned counsel on either side referred to an relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of *Dipti Prakash Banerjee* (supra) after referring to various decisions it was indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as a motive for passing such a simple

order of termination. In para 21 of the said judgment a distinction is explained thus: (SCC pp. 71-72)

"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is then or overlapping. It may be difficult either to categorise or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service."

7. The facts of the case at hand are clearly covered by the decision rendered in the Satyender Singh Rathore (*supra*). In this view of the matter we are clearly of the view that both the Tribunal and the High Court were erred in law for setting aside the order of termination simpliciter. Accordingly, this appeal is allowed by setting aside the order dated 27-8-1994 passed by the Tribunal and by the High Court dated 24-11-2001. No costs.

¹2005 (6) SCJ 663