

# ALLAHABAD HIGH COURT

Jayanti Prasad

Vs.

The State of U. P

Civil Misc. No. 7749 of 1951

(Agarwala and Brij Mohan Lall, JJ.)

23.05.1951

## JUDGMENT

### **Agarwala, J.**

1. This is an application of one Jayanti Prasad Srivastava, an employee in the Civil Supplies Department of the State of Uttar Pradesh, for the issue of a writ of mandamus directing the State of Uttar Pradesh, the District Magistrate of Mirzapur and the District Supply Officer of Mirzapur, not to terminate the services of the applicant without complying with Article 311, sub-clause (2) of the Constitution of India, and praying further that the notice of termination of service dated 26th April 1951 given by the District Magistrate, Mirzapur, be declared to be inoperative and bad in law. The facts disclosed in the affidavit submitted along with the application are as follows.

2. The applicant is employed as supply inspector in the District Supply Office at Mirzapur. On the 24th April 1951, the Hon'ble Sri Chandra Bhan Gupta, Minister for Food and Civil Supplies, State of Uttar Pradesh visited the district of Mirzapur. At the instance of the said Minister, the applicant was served with a notice dated the 26th April 1951, under the signature of the District Magistrate, Mirzapur, notifying that the applicant's services were to be terminated on the expiry of one month's notice, that is, with effect from the 26th May 1951. The notice was in the following terms :

"All the posts in the Food and Civil Supplies Department are temporary posts and these have been extended from time to time according to the requirements. The conditions of service of these posts stipulate that the services of the incumbents are liable to termination with one month's notice.

2. Due to his bad reputation in the Rationing and Supply organisation it has been decided to retrench Sri Jayanti Prasad Srivastava, Supply Inspector.

3. Article 311 of the Constitution of India requires that every person who holds any civil post

under the Union shall before dismissal or removal or reduction in rank be given an opportunity of showing cause against the action proposed to be taken in regard to him. It is not admitted that this provision has any application to the category of personnel in question, but assuming that it does, I am satisfied that in view of the person involved Jayanti Prasad

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involved and the nature of reasons for retrenchment it does not seem reasonable to give the individual an opportunity to show cause why his services should not be terminated.

4. It is, therefore, ordered that the services of Sri Jayanti Prasad Srivastava, Supply Inspector, shall be terminated after a month of the service of this notice.

One month's notice as stipulated in the condition of service is hereby given to him.

N.S. Sirohi,

District Magistrate, Mirzapur.

April 26, 1951."

3. The applicant alleges that his reputation was not bad as the previous quarterly reports would show, that he made a representation to the District Magistrate on the 10th May 1951 questioning the basis of the charge of bad reputation against him and that the District Magistrate thereupon ordered the withdrawal of the charge of bad reputation while confirming the previous order of termination of service. The case for the applicant is that Article 311 of the Constitution applies to his case and that the State Government was not entitled to terminate his services without following the procedure laid down in Clause (2) of that Article. Clause (a) provides,

"No such person as aforesaid (that is a person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State) shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him." There are three provisos to this clause under which the clause will not apply. One of these provisos (b) is

"Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause."

4. It is in order to bring proviso (b) into operation that in the notice it was mentioned that "in view of the person involved and the nature of reasons for retrenchment it does not seem reasonable to give the individual an opportunity to show cause why his services should not be terminated." The case of the applicant with regard to this clause is that the reasons given in the notice, for saying that it is not reasonably practicable to give the individual an opportunity of

showing cause, are not sufficient in law to bring the case under proviso (b) to Clause (a) of Article 311 of the Constitution.

5. The first point that is to be considered is whether the main Clause (2) of Article 311 at all applies to a case of this kind. It will be noticed that the applicant was a temporary employee whose contract of service laid down that his services were liable to termination with one month's notice. One month's notice was duly given to him and in accordance with the conditions of service, his services would terminate upon the expiry of the period specified in the notice. From the 26th May 1951 the applicant cannot claim to remain as an employee of the State. He would no longer after that date hold a "civil post" - it is conceded that he is not a member of the civil service of the State or of the Union. Article 311 applies only to a case in which a person is dismissed or removed or reduced in rank. These are technical words used in cases in which a person's services are terminated for misconduct. They do not apply to cases in which a person's period of service determines in accordance with the conditions of his service. It is not so much a question of the post being held temporarily or it being of a permanent nature; the real question is whether a person's services are being dispensed with before his normal period of service has terminated by reason of misconduct on his part, or otherwise. If a person's services are sought to be terminated before the period of his service has expired, on account of some misconduct, then, whether the employee is temporary or permanent, the procedure prescribed in Article 311 has to be followed unless of course the case falls within any one of the three provisos to Clause (2). If, on the other hand, a person's services are sought to be terminated at the expiry of the term for which he was engaged, or at the expiry of the period of notice by which, in accordance with the conditions of his service, his services could be terminated, there is no question of dismissal, removal or reduction in rank and Article 311 does not come into operation.

6. Article 311 not being applicable to a case of this kind, it is not necessary to decide whether the reasons given in the notice, for not giving an opportunity to the applicant to show cause against the termination of his services, were sufficient or not, within the meaning of proviso (b) to Article 311 (2).

7. We see no force in this application and dismiss it.

8. We certify that this case involves a substantial question of law as to the interpretation of the Constitution.

Application dismissed.