

(1995) 08 AHC CK 0129

Allahabad High Court

Case No: C.M.W.P. No. 18277 of 1987

N.K. Tripathi

APPELLANT

Vs

U.P. State Yarn Co. and Another

RESPONDENT

Date of Decision: Aug. 17, 1995

Citation: (1996) AWC 421 Supp

Hon'ble Judges: A. Chakrabarti, J

Bench: Single Bench

Advocate: Arvind Kumar, for the Appellant;

Final Decision: Allowed

Judgement

A. Chakrabarti, J.

Challenging the order dated 11.5.1987 and for consequential benefits, the present writ petition was filed.

2. According to the Petitioner, the facts of the case are that the Petitioner was appointed by order dated 1.9.1986 with effect from 25.4.1986 and, in fact, the Petitioner was working since 25.4.1986. The Petitioner's service was terminated by order dated 11.5.1987 at Annexure No. 2 to the writ petition. The Petitioner complained of arbitrary action of the Respondents in the matter of his termination and that the persons junior to the Petitioner including one B.N. Sachan, have been retained in service.

3. The Respondents filed counter-affidavit with the contention that the Petitioner's service was dispensed with by a simple order of discharge and for passing such order, the grounds have been stated in the counter affidavit which included the grounds that the Petitioner was not suitable for the post, there were reports of inefficiency against the Petitioner and the Petitioner was in the habit of going on leave without proper sanction not even making any leave application.

4. The Petitioner filed his rejoinder-affidavit.

5. Learned Counsel for the Petitioner contends that the impugned order, though apparently appears to be a termination simpliciter, but the same, in fact, is a penalty imposed for specified reasons. The facts stated in paragraph No. 4 of the counter-affidavit has been relied upon and special reference was made to the ground that the Petitioner was absent without obtaining leave and without making proper leave application. The reference was also made to the fact that the employees junior to the Petitioner have been retained. The increment granted to the Petitioner by order dated 30.12.1986 (Annexure No. 3 to the rejoinder-affidavit) has also been referred to show that the Petitioner could not be treated as unsuitable and there could not be a termination order a few months thereafter on the ground of unsuitability.

6. On behalf of the Petitioner several case laws have been referred to including the case of [The Manager, Government Branch Press and Another Vs. D.B. Belliappa](#), [S.L. Kapoor Vs. Jagmohan and Others](#), [L. Robert D'Souza v. Executive Engineer, Southern Railway AIR 1982 SC 854](#), [K.C. Joshi Vs. Union of India \(UOI\) and Others](#), [Dr. Mrs. Sumati P. Shere Vs. Union of India \(UOI\) and Others](#), [Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another](#), [Kesho Ram v. G.B. Pant University 1993 \(1\) UPLBEC 170](#); [D.K. Yadav Vs. J.M.A. Industries Ltd.](#), [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.](#), [Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another](#), [G.S. Asthana v. U.P. Textile Corporation Ltd. and Anr. 1994 \(3\) UPLBEC 1835](#).

7. Learned Counsel for the Respondents contended that the impugned 1 termination was on the ground of unsuitability and his services have been found not proper as stated in the counter-affidavit. It has been contended by the learned Counsel for the Respondents that in such circumstance, termination simpliciter is fully permissible and the learned Counsel referred to the cases of [Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another](#), [State of U.P. and Anr. v. Kaushal Kishore Shukla 1991 UPLBEC 153](#); [State of U.P. and another State of U.P. and another Vs. Km. Prem Lata Misra and others](#), and the case of [G.B. Pant Agricultural and Technology University v. Kesho Ram 1994 UPLBEC 1095](#).

8. Upon hearing the respective contentions of the parties and considering the law referred to by them, I And that in the present case admittedly one of the grounds for passing the impugned order was the charge that the Petitioner used to remain absent without obtaining leave.

9. In this connection, it appears that the law has been settled and discussed in various cases including the cases of L. Robert D'Souza (supra) and D. K. Yadav (supra). It has been held in the aforementioned cases that it is not open to the employer to terminate the service of an employee without notice and enquiry or without complying with the principle of natural Justice when service was terminated on account of absence without leave.

10. In the aforesaid circumstances, in the present case also, the impugned termination is liable to be struck down, there being no compliance of the principle of natural Justice and one of charges of termination is "he was also in the habit of going on leave without proper sanction, for example he was unauthorisedly absent from 6.5.1987 to 12.5.1987."

11. In the aforesaid circumstances, the impugned order dated 11.5.1987 is hereby set aside. The writ petition thus succeeds and is allowed. There will be no order as to costs.