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**(1997) 03 AHC CK 0194**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 36185 of 1995

Darbari Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** March 21, 1997

**Acts Referred:**

- Constitution of India, 1950 - Article 311(2)
- Penal Code, 1860 (IPC) - Section 409

**Citation:** (1997) AWC 77 Supp

**Hon'ble Judges:** S.L. Saraf, J

**Bench:** Single Bench

**Advocate:** R.D. Agarwal, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

S.L. Saraf, J.

Heard, Sri R. D. Agarwal learned Counsel for the Petitioner and Sri A. N. Rai, learned standing counsel appearing for the Respondents.

2. The brief fact of the case is that the Petitioner was appointed to the post of Panchayat Sewak under the Block Development Officer, Nawabganj, Bareilly vide appointment order No. 1223-24, dated 7.6.1960 in grade Rs. 50-2-60-75 issued by Respondent No. 2. The said order of appointment is annexed as Annexure-1 to the writ petition. It appears that the Petitioner continued in the said service for a period of twenty years but thereafter on 11th December, 1979 a first information report was lodged against the Petitioner u/s 409, I.P.C. The said criminal proceedings continued for fifteen years and by an order dated 17th October, 1995 the Petitioner was acquitted by the VIth Additional Chief Judicial Magistrate, Bareilly on a finding that the Petitioner was not guilty of any offence u/s 409, I.P.C. In the meanwhile by an order dated 20th February, 1980 an order for termination of service was passed by the District Panchayat Raj Officer, the Respondent No. 2 in the following words:

Services of Sri Darbari Lal Sharma, Panchayat Sewak, Fatehganj, West Block are no more required with immediate effect.

3. The aforesaid order discloses no reasons as to why the services of the Petitioner was terminated but it is abundantly clear that the services of the Petitioner were terminated on the ground that there was a criminal case pending against him at that time. It also does not appear that any departmental disciplinary proceedings were initiated against the Petitioner to show cause as to why the services were to be terminated nor the Petitioner was given any opportunity to be heard in the matter. It appears that the order was passed arbitrarily and in violation of the principles of natural justice. An employee who has been working for a period of about 20 years with the department no longer remains as a temporary employee and cannot be treated as such. The position of such an employee is either semi-permanent or permanent, though no order to that effect has been passed by the authorities. The authorities cannot take advantage for keeping a poor employee for twenty years without regularising his services nor making his services permanent. In the fact of this case, it appears that the authority has acted in a most high-handed and arbitrary manner and has terminated the services of the Petitioner without giving him any opportunity nor following the rules of natural justice. The authorities have not complied with the rules regarding the services of the employee nor have referred to the same while passing the said impugned order dated 20th February, 1980. Further, since the Petitioner has been totally acquitted by the criminal court, there is nothing against the Petitioner and I find no reason why his services should not be reinstated. As such I quash the order dated 20th February, 1980 and direct the authorities to immediately reinstate the services of the Petitioner on receipt of the copy of this order. He shall also be entitled to all the back wages and other financial benefits to which he was entitled to as he was in service.

4. In this connection, I refer to the decision of the Supreme Court in Deputy Director of Collegiate Education (Administration), Madras v. S. Nagoor Meera 1995 SCC 686, in which in paragraph 9, the Apex Court has held as follows:

The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under Clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification of the said view. The more appropriate course in all such cases is to take action under Clause (a) of the second proviso to Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be, if, however, the Government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz. to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a Criminal Court. It should be

remembered that the action under Clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in *Shankar Dass v. Union of India* SCC 362, para 7.

Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge" But that power like every other power has to be exercised fairly, justly and reasonably. Surely the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since Clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act Justly.

5. In view of the above observation of the Supreme Court, the authorities are bound to reinstate the Petitioner and to pay him all his back wages and I direct them to do so within a period of three weeks from the date of service of the order upon the Respondents.

6. In the result, the petition succeeds and is allowed. There will be no order as to costs.