**(2009) 12 AHC CK 0346**

**Allahabad High Court**

**Case No:** None

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| Suresh Chandra | | APPELLANT |
| | Vs | |
| State of U.P. and Others | | RESPONDENT |

**Date of Decision:** Dec. 4, 2009

**Acts Referred:**

- Constitution of India, 1950 - Article 311

**Citation:** (2010) 2 AWC 1213 : (2010) 124 FLR 594

**Hon'ble Judges:** Sanjay Misra, J

**Bench:** Single Bench

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

Sanjay Misra, J.
Heard Sri S.S. Tripathi learned Counsel for the petitioner.

2. The petitioner is aggrieved by the order whereby his services have been terminated by giving him one month''s notice/pay in lieu thereof.

3. According to Sri Tripathi the petitioner was appointed as a safai karmchari on temporary basis vide office order dated 15.11.2008 and he states that the provisions of the U.P. Temporary Government Servants (Termination) Rules, 1975 are governing the field. According to learned Counsel for the petitioner under the conditions of the appointment letter a simplicitor termination by giving one month''s notice/pay in lieu thereof was within jurisdiction of the authority but when a charge or imputation has been made in the termination order which is the basis of the impugned order then the principles of natural justice would be attracted and the petitioner would enjoy the protection of Article 311 of the Constitution of India even if the rules governing the field did not provide for any show-cause notice.

4. Having considered the submission of learned Counsel for the petitioner and perused the record it appears that there were two reasons why the petitioners temporary services were terminated. The first reason was that an inspection was made on 16.10.2009 and it was found that the petitioner who is a safai karmi had not performed his work and that the petitioner was not himself performing any works but had engaged some outsider in his place. The aforesaid reasons led the authority to conclude that they do not require the services of the petitioner and hence the impugned order.

5. In the case of State of Punjab and Others Vs. Balbir Singh, the Apex Court has clearly laid down the law. Paragraph 7 of the judgment is reproduced hereunder :

Thus, the principle that in order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the "object of the enquiry". If the enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. This principle was laid down by Shah, J., (as he then was) as early as 1961 in the case of State of Orissa v. Ram Narayan Das. It was held that one should look into "object or purpose of the enquiry" and not merely hold the termination to be punitive merely because of an antecedent enquiry. Whether it (order of termination) amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. On the facts of that case, the termination of a probationer was upheld inasmuch as the purpose of the enquiry was held to be to find out if the employee could be confirmed. The purpose of the enquiry was not to find out if he was guilty of any misconduct, negligence, inefficiency or other disqualification.

6. In the present case, it was an assessment of the petitioner that was made for determining his suitability for the particular job. The petitioner was admittedly working in a temporary capacity. Therefore, when the purpose was to assess his suitability, the reasons in the impugned order cannot be brought within the ambit of an object of finding out any misconduct on the part of the petitioner. When the object was to find his suitability then the recitation of his suitability in the impugned order cannot be held to be arrived at for finding out any misconduct. Hence, the impugned order is a termination simplicitor and is not punitive in nature. That being the circumstance no opportunity was required to be given to the petitioner prior to passing the impugned order and giving of one month''s notice/pay in lieu thereof was in accordance with law.

7. In so far as the impugned order on its merits is concerned one of the reason is that the petitioner being a safai karmchari has engaged outsiders to perform his job therefore it is a case where the petitioner was found not to be working himself but claiming his renumeration. There is nothing on record to show that the reason given is in any manner

incorrect.

8. There are vague allegation of bais alleged in the petition. Neither the persons who are stated to have a bais against the petitioner have been named nor they have been made party to this writ petition. Hence, in view of such vague allegations no finding can be recorded by this Court in its writ jurisdiction.

9. Under such circumstances there is no error in the impugned order nor any illegality therein.

10. The writ petition has no force and it is accordingly dismissed. No order is passed as to costs.