

**(2002) 09 AHC CK 0222****Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 39229 of 1992

Mahendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Sept. 4, 2002**Acts Referred:**

- Constitution of India, 1950 - Article 14, 21, 309

**Citation:** (2002) 3 UPLBEC 2737**Hon'ble Judges:** Rakesh Tiwari, J**Bench:** Single Bench**Advocate:** Umesh Shankar and G.R. Jain, for the Appellant; S.C, for the Respondent**Final Decision:** Allowed

### **Judgement**

Rakesh Tiwari, J.

The petitioner was appointed by the Deputy Commissioner, Sales Tax, Meerut Range as Chowkidar on 4.4.1977. In 1978, he was transferred to Muzaffarnagar. When he had put in a continuous service of about 8 years, he all of a sudden was terminated from service on 21.1.1985 by the Assistant Commissioner, Sales Tax, respondent No. 2, *inter alia*, on the ground that his services were no longer required. The said order of termination has been appended as Annexure-4 to the writ petition.

2. The petitioner moved a representation dated 15.6.1988 which was dismissed by the Deputy Commissioner, Sales Tax, Saharanpur Range, Saharanpur, vide letter dated 27.12.1989. The matter did not rest there. The petitioner was served by an order dated 27.12.1989 issued by the Deputy Commissioner (Administration), Sales Tax, Saharanpur Range, Saharanpur in continuation to the letter dated 31.1.1985 of the Assistant Commissioner (Judicial), Sales Tax, Muzaffarnagar Range, Muzaffarnagar. It was decided that services of the petitioner are no longer required and are terminated with retrospective effect in terms of the conditions contained in the order of the Assistant Commissioner (Judicial), Muzaffarnagar.

3. Aggrieved by the aforesaid order of the petitioner filed an appeal, dated 13.3.1990. Vide letter dated 24.4.1991, the petitioner was directed by respondent No. 1 to appear before him on 7.5.1991. Vide letter dated 27.5.1991, the petitioner was informed by the Additional Commissioner that his appeal was dismissed. The petitioner has assailed the aforesaid orders on the following grounds :

(a) The Government by G.O. No. 20/1/72-Appointment-3, dated 10.8.1972 laid down that services of Class IV employees of long standing should not be terminated without sufficient grounds and without examining the past record of service (Annexure-10).

(b) By Circular No. Astha.-4-Samanya-23-856/Bikri Kar, dated 21.5.1985. issued by the Commissioner, Sales Tax, U.P., Lucknow, it was laid down that services of temporary Class IV employees should not be terminated without following the procedure of CCA. Rules where the employee has put in service of three years or more (Annexure-11).

(c) By Government Order No. 13/17/87-Ka-1988, dated 19.2.1988 issued by the Personnel Department, it was laid down that the authorities referred in the G.O. dated 10.8.1972 and Circular dated 21.5.1985 shall be empowered to terminate the services which made the appointment notwithstanding any subsequent delegation of power to lower authority than the one which had made the appointment. (Annexure-12).

4. The petitioner contends that the termination of his services on the aforesaid grounds is illegal and without jurisdiction as it is in violation of the provisions contained in Annexures-10, 11 and 12 filed along with the writ petition. He further contends that termination of services with retrospective effect cannot be sustained. He submits that as per provisions of the Government Order (Annexure-10 to the writ petition), reasons ought to have been given before terminating the services, which have not been given, as such the order of termination is illegal. He further contends that even no reasons have been given in the order dismissing the appeal.

5. The case of the respondents on the other hand is that the petitioner was a temporary employee and worked as a Chowkidar prior to 1.10.1984. He remained absent from duty with effect from 1.10.1984 and by letter dated 29.10.1984 was required to submit his explanation as to why he is absent without any application. It is alleged that the notice was served on the petitioner on 31.10.1984 but the petitioner did not submit any explanation to the notice dated 29.10.1984 and as such a notice dated 31.1.1985 was further sent to the petitioner by the then Drawing and Disbursing Officer/Assistant Commissioner (Judicial), Sales Tax (A), Muzaffarnagar intimating that in pursuance of notification dated 30.1.1953 read with general rules, notice is hereby being given that the services of the petitioner are not required and further that his services shall be deemed to be automatically terminated after one month from the date of service of the notice. It is further

submitted that the petitioner was Class IV employee and the Appointing Authority of Class IV employee is Drawing and Disbursing Officer.

6. Apart from the above, in Paragraph "V" of the counter-affidavit, it is stated as under :

"(v) That it is also relevant to mention here that even prior to 1.10.1984 the petitioner has been negligent toward his duty and his integrity also have been doubtful. In view of the fact that vide letter No. 856, dated 5.1.1979 fine was imposed on the petitioner. Vide Order No. 880, dated 10.1.1979 the petitioner was penalised and was directed to deposit the cost of the gross loss on 17.6.1979 and explanation was called from the petitioner for absent from duty, who has tendered his apology and vide Order No. 386, dated 25.6.1979 he was given warning in the years 1978-79, 1979-80 and 1983-84 who was given adverse entry and it was specifically recorded that he is indiscipline and unsuitable employee and is habitual of being absent from his duty. Copy of the aforesaid order dated 2.1.1979, 5.1.1979, 10.1.1979, 22.6.1979, apology tender by the petitioner dated 23.6.1979 and warning letter dated 25.6.1979 are being collectively filed and marked as Annexure-3 to this counter-affidavit.

Aforesaid entry in the character roll awarded to the petitioner in the years 1978-79, 1979-80 and 1983-1984 are being collectively filed and marked as Annexure-4 to this counter-affidavit."

7. A perusal of Annexure-3 to the counter-affidavit would show that the alleged gross loss said to have been suffered by the department of Rs. 11.20 Paise pertained to two items :-

(i) Two parts of Sales Tax Cases.	Rs. 6.00
(ii) One Government Pen	Rs. 5.20
Total: Rs. 11.20	

8. Though the order of termination passed against the petitioner is very innocuously worded, but on lifting the veil, it is apparent that the services of the petitioner were terminated as a measure of punishment.

9. It has further been submitted by the respondents that though opportunity was granted to the petitioner to submit his explanation for being absent from duty but the petitioner did not avail the same but remained absent from duty and his services were, therefore, rightly terminated. From the record, it appears that only explanation was called for from the petitioner for allegedly remaining absent on unauthorised leave, but no enquiry was held. In 2001 (2) ESC 720 K.P. Giri v. State of U.P. and Ors., (Paras 7 and 8), it has been held :-

"Even in the absence of any reply submitted by the petitioner to the charge-sheet, it was incumbent upon the Inquiry Officer to fix the date in the enquiry and to

intimate the petitioner about the same which has not been done in the present case.....Thus the entire proceedings have been conducted in gross violation of equity, fairplay and is in breach of the principles of natural justice."

10. In 2000 (2) ESC 1173 Bajrang Prasad Srivastava v. U.P. Pariyojna Prabandha, U.P. State Bridge Corporation Ltd. and Anr., also the same principle has been reiterated.

11. In Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd, Kanpur and another, it has been held, in Paragraph 15, as under :--

"In our opinion, after the petitioner replied to the charge-sheet, a date should have been fixed for enquiry and the petitioner should have been intimated the date, time and place of the enquiry and the date the oral and documentary evidence against the petitioner should have been laid in his presence and he should have been given the opportunity to cross-examine the witnesses against him and also he should have been given an opportunity to produce his own witnesses and evidence. If the petitioner in response to this intimation has failed to appear for the enquiry, then an ex parte enquiry should have been held but the petitioner's service should have not been terminated without holding an enquiry. In the present case, it appears that no regular enquiry was held at all. All that was done that after receipt of the petitioner's reply to the charge-sheet, he was given a show cause notice and thereafter the dismissal order was passed. In our opinion, this was not a correct legal procedure and there was violation of the rules or the natural justice. Since no date for enquiry was fixed nor any enquiry held in which evidence was led, in our opinion, the impugned order is clearly violative of natural justice."

12. It has been settled by the Apex Court in Meenglas Tea Estate Vs. Its Workmen, that a person charged was required to know not only the accusation but also the testimony by which such accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and cross-examine the witnesses. Then he must be given a chance to rebut evidence led against him. This is an honest requirement of any enquiry of this character and requirement must be substantially fulfilled before the enquiry can be accepted.

13. The respondents have not conducted the enquiry muchless according to the procedure prescribed. Reliance has also been placed by the petitioner in this regard on the Judgment of this Court in (2001) 2 UPLBEC 1976 Radhey Shyam Pandey v. The Chief Secretary, State of U.P. and Ors., in which the order of dismissal of the petitioner was held to be not justifiable. It was held that-

"No specific date, time and place of enquiry was fixed or documentary evidence against the petitioner should have been adduced in his presence and he should have been given an opportunity to cross-examine the witness against him and also he should have been given an opportunity to produce his own witnesses and evidence. A dismissal order is a major punishment having serious consequences and hence should be passed only after complying the rules of natural justice. Since in the

present case, no regular and proper enquiry was held.....It is clear cause that the petitioner has not been afforded a fair opportunity muchless a reasonable opportunity to defend himself that has resulted in violation of principles of natural justice and fair play."

14. The facts and circumstances of the instant case are similar to that of the case referred to above. Neither any enquiry is said to have been held in the charge of misconduct of remaining unauthorisedly absent nor the petitioner was informed about any date, time and place of hearing of the enquiry.

15. In D.K. Yadav Vs. J.M.A. Industries Ltd., the Apex Court in Paragraphs 13 and 14 held as under :

"13. In *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress and Ors.*.. this Court held that right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Articles 14 and 21 etc. All matters relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Article 309 of the Constitution or the statutory provisions or the rules, regulations or instructions having statutory flavour. They must be conformable to the rights guaranteed in Part-III and IV of the Constitution. Article 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Articles 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice is an integral part of the guarantee of equality assured by Article 14. Any law made or action taken by an employer must be fair, just and reasonable. The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of natural justice. Articles 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the Court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, Procedural as well as substantive. This substance of the order is the soul and the affect thereof is the end the result.

14. It is thus well settled law that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put fort his case is given and domestic enquiry conducted complying with the principles of natural justice. In *D.T.C. v. D.T.C. Mazdoor Congress and Ors.*, (supra) the Constitution Bench, per majority, held that termination of the service of a workman giving one month's

notice or pay in lieu thereof without enquiry offended Article 14. The order terminating the service of the employees was set aside."

In this case, the Apex Court dealt the question of relief in the following manner:--

"The management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances 50 per cent of the back wages would meet the ends of justice."

16. In this view of the matter, the relief, in the present case, also requires to be moulded. From the appointment letter, it is apparent that the petitioner was appointed by the Deputy Commissioner, Sales Tax but his services were terminated by the Assistant Commissioner, Sales Tax, who is lower in rank. The petitioner had completed 8 years of continuous service and could not have been removed from service by an innocuous order without holding any enquiry and following the procedure under the C.C.A. Rules with retrospective effect. I think ends of justice would be met by directing the respondents to reinstate the petitioner in service with 50 per cent back wages and after reinstatement the petitioner shall be paid his salary regularly month to month. I order accordingly.

17. with the aforesaid directions, the writ petition is allowed. The impugned orders dated 21.1.1985, 27.12.1989 and 27.5.1991 are quashed. No order as to costs.