
(1996) 01 SC CK 0225

Supreme Court of India

Case No: Civil Appeal No. 388 Of 1993

State of U.P. and Others

APPELLANT

Vs

Krishna Kumar Sharma

RESPONDENT

Date of Decision: Jan. 30, 1996

Citation: (1996) 11 SCC 602

Hon'ble Judges: S. C. Agrawal, J; G. T. Nanavati, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The respondent, Krishna Kumar Sharma, was recruited as a Temporary Fireman Constable in the Office of the Superintendent of Police, in Police Fire Brigade with effect from 23/11/1971. By order dated 20/1/19800, his services were terminated by paying him one month's pay in lieu of notice under the U.P. Temporary government Servants (Termination of Services) Rules, 1975 (hereinafter referred to as "the Rules"). The respondent filed a claim petition before the U.P. Public Services tribunal (hereinafter referred to as "the tribunal") but the same was dismissed by the tribunal by its judgment dated 21/11/1985. Thereafter, the respondent filed a writ petition (CWP No. 3909 of 1986 in the Allahabad High court which has been allowed by the High court by the impugned judgment dated 10-12-1991. The High court has held that the termination of the services of the respondent was by way of punishment and since he was not afforded reasonable opportunity against the said action the said order was passed in violation of Article 311(2) of the Constitution. The High court has placed reliance on the averments contained in paragraph 19 of the counter-affidavit filed on behalf of the appellants wherein it has been stated that the work of the respondent was not satisfactory and he was a habitual absentee without leave and, therefore, his services have been terminated. According to the High court the said averments in the counter-affidavit indicate that the termination of services was by way of punishment.

2. In the context of the provisions contained in the Rules this court in State of U.P. v. Kaushal Kishore Shakla has laid down:

"UNDER the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant."

In that case an adverse entry had been awarded in the year 1977-78 that the work of the employee was poor and he should work hard and take interest in the work and there was report of a preliminary inquiry on a complaint with regard to unauthorised audit by the employee. This court held that the termination of the services of the employee in those circumstances could not be held to be by way of punishment so as to attract Article 311(2) of the Constitution.

3. In the present case, we find that in the character roll of the respondent for the years 1974, 1975, 1976 and 1979 there were the following remarks:

"1974

One lapse - overstaying from leave; work and conduct just satisfactory; integrity certified.

1975

In habit of overstaying from leave. Two lapses - work and conduct, other miscellaneous just satisfactory. Integrity certified.

1976

Work satisfactory. Conduct remains just average. Integrity

certified.

1979

Most undisciplined and undesirable type of constable who is disgrace to the police fire service. Developed immoral relations with a lady of easy virtue and continued to create problems in the public. Careless and habitual of leaving fire service station without leave or permission. Punished twice. Conduct disgraceful. Integrity certified for want of any specific complaint."

4. In addition, during the period from 1974 to 1979 the following petty punishments were awarded:

11/1979

Warned for future for returning late from one day's CL by 13 hrs. 20 mts.

18/1975

Severely warned for being absent from station barrack on 9-12-1974.

19/1975

Awarded 7 days' PD for being late by 7 days from one week short i.e. on 17-12-1974.

5/1979

Awarded 7 days' PD for being late by 2 hrs. for report to duty.

6/1979

Awarded 7 days' PD for being late by 1 and half hrs.

5. The case of the respondent is that the adverse remarks in the report for the year 1979 were communicated to him on 15/1/1980 and before he could submit a representation against the said remarks the order dated 20-1-1980 terminating his services was passed and that the respondent had no opportunity of making his representation against the said adverse remarks. We have, however, considered the general conduct of the respondent as reflected in his character roll. During the period prior to 1979 there were remarks indicating that his performance was not

quite satisfactory. He was found to have overstayed from leave and a number of penalty punishments were imposed on him. For the year 1979 there are remarks that he is most undisciplined and undesirable type of constable and he is careless and habitual of leaving fire station without leave or permission. These remarks reflect upon his performance in the earlier period. Keeping in view the said record of service of the respondent, the competent authority came to the conclusion that the performance of the respondent, who was only a temporary employee was not satisfactory and for that reason his services have been terminated. It cannot be said that the termination of the services of the respondent in these circumstances was by way of punishment which required compliance with the provisions of Article 311(2) of the Constitution.

6. As regards the averments contained in paragraph 19 of the counter affidavit filed on behalf of the appellants in reply to the writ petition of the respondent in the High court, it may be stated that the said averments were in reply to the averments contained in paragraph 19 of the writ petition wherein the respondent had made a grievance that by virtue of the order passed by the Inspector General of the fire services on 16/1/1980 all firemen stood confirmed with effect from 13/12/1978 but the respondent was not confirmed. With a view to explain why the respondent had not been confirmed though others were confirmed it was stated in paragraph 19 of the counter-affidavit that the work of the respondent was unsatisfactory and he was a habitual absentee without leave. In this context, it may also be mentioned that in paragraph 21 of the said counter-affidavit "it has been stated that the notification dated 16/1/1980 did not require that every person of the department be confirmed with effect from 1978 and the confirmation was to be done only if the work and conduct was found to be satisfactory and up to the mark. The averments in paragraph 19 of the said counter affidavit do not, therefore, alter the nature of the order of termination which was termination simpliciter in accordance with the Rules. The High court was in error in holding that the order of termination dated 20/1/1980 was passed by way of punishment.

7. The decision of this court in *Sumati P. Shere (Dr) v. Union of India* has no application in the facts of the present case because in that case it was found that the services were discontinued without informing the employee that his work and performance were not up to the mark at any earlier stage. Here we find that from time to time adverse remarks were made in the character roll of the respondent regarding the unsatisfactory nature of his performance which were communicated to him and punishments were also imposed on him of which he was aware. But he did not make any effort to improve his performance.

8. For the reasons aforementioned, the appeal is allowed, the judgment and order of the High court dated 10/12/1991 is set aside and the writ petition filed by the respondent is dismissed. No orders as to costs.