

STATE OF U.P. AND ANR.

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v.

Km. PREM LATA MISRA AND ORS.

APRIL 21, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

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Constitution of India 1950 :

Articles 14, 16(1) and 311(2)—Temporary appointment—Termination of by giving one month's pay and allowances in lieu of one month's notice in terms of order of appointment and rules—Held, termination valid.

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Service Law :

U.P. Temporary Government Servants (Termination of Service) Rules, 1975—Order terminating services of temporary Government servant—Whether misconduct is the foundation or motive—Held, where misconduct is the foundation for the order an inquiry is necessary, but where it is the motive it is not incumbent to have an inquiry.

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The order appointing the respondent to an ex-cadre temporary post of Asst. Project Officer under the National Adult Education Scheme of the Govt. of U.P. indicated that her services would be terminated at any time by giving one month's notice or one month's pay. Her services were terminated in exercise of the power under Termination of Services U.P. Govt. Temporary Govt. Services Rules, 1975 giving one month's pay in lieu of notice. The High Court while allowing the Respondent's Writ Petition directed her reinstatement with all consequential benefits. The Govt. was given the liberty to conduct an enquiry, if it so desired in accordance with rules. Against this order, State preferred the present appeal.

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Allowing the appeal, this Court

HELD : 1. The termination of services of the respondent is for her unsuitability or unfitness but not by way of punishment as a punitive measure and one in terms of the order appointment and also the Rules. Two higher officers have submitted their reports concerning the performance of the duties by the respondent. She was regularly irregular in her duties, insubordination and left the office during office hours with out permission etc. On consideration thereof, the competent authority found

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A that the respondent was not fit to be continued in service as her work and conduct were unsatisfactory. [617-A-B]

State of U.P. v. Kaushal Kishore Shukla, [1991] 1 SCC 691, relied on.

B 2. The court can lift the veil of the innocuous order to find whether misconduct is the foundation or motive to pass the offending order. If misconduct is the foundation for passing the order then an inquiry into misconduct should be conducted and an action according to law should follow. But if it is motive, it is not incumbent upon the competent officer to have an enquiry conducted and the service of a temporary employee could be terminated, in terms of the order of appointment or rules giving one month's notice or pay salary in lieu thereof. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment. [616-E-G]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4075 of 1994.

From the Judgment and Order dated 27.11.92 of the Allahabad High Court Court in W/P. No. 7524 of 1988.

D.V. Sehgal and R.B. Misra for the Appellants.

E Arvind Verma and S.Murlidhar for the Respondents.

The following Order of the Court was delivered :

Delay condoned. Leave granted.

F This appeal, by special leave, is from the order of the Division Bench of the High Court of Allahabad at Lucknow Bench in W.P. No. 7524/88, dated November 27, 1992. The respondent was temporarily appointed as Assistant Project Officer by the proceedings dated May 20, 1980. The order of appointment recites that she was appointed to an ex-cadre temporary post of Asstt. Project Officer in the pay scale of Rs. 950-1950 by direct recruitment through Departmental Selection Committee under National Adult Education Scheme. The appointment order also shows that her appointment is a temporary one from the date of the joining the duty and it would be terminated "at any time by giving one month's notice or one month's pay". The superior officers have reported on two occasion, first on April 21, 1982 and secondly on May 18, 1982 informing the competent authority of the unsatisfactory work of the respondent. In consequence, by

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order dated June 8, 1982, exercising the power under Termination of Services U.P. Govt. Temporary Govt. Service Rules, 1975, The service of the respondent was terminated giving one month pay and allowances in lieu of one month's notice. Challenging the order, the respondent filed a representation before the service Tribunal, which was dismissed by the Tribunal. Thereafter, the respondent filed the aforesaid writ petition in the High Court. The Division Bench, by the impugned order, allowed the writ petition and directed reinstatement of respondent with all consequential benefits with liberty to the appellant to conduct an inquiry, if they so desire, in accordance with rules.

It is contended for the Government that two modes of exercise of power are available to the Govt., namely, that if the Govt. are of the view that the acts complained of are misconduct, it would be open to the Govt. to conduct an inquiry, after giving reasonable opportunity to the delinquent and then to take action according to law; alternatively, if the competent authority, in terms of the order of appointment or as per rules takes an action, it would be in accordance with the terms of appointment or the rules and in that event, the need to conduct an inquiry does not arise. In support thereof, Sri Sehgal, the learned Senior counsel placed reliance on the judgment of this Court in *State of U.P. v. Kaushal Kishore Shukla*, [1991] 1 SCC 691 in which self-same rules were interpreted.

It is contended for the respondent by her learned counsel that the termination is by way of a punishment visiting with civil consequences and as a result the only course open to the appellants was to conduct an enquiry, after giving an opportunity to the respondent, to vindicate her innocence and then to take appropriate action according to law. The High Court has considered all the facts and circumstances of this case and found that action taken was punitive and that an inquiry is needed and that, therefore, it is not a case warranting interference by this Court.

Giving anxious consideration to the respective contentions, we are of the considered view that the High Court had not considered the matter in its proper perspectives. This Court, interpreted the self-same rules, and held in *K.K. Shukla's* case (supra) in paragraph 7 that :

"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

A 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 of the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Art. 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Art. 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is an accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment."

This Court, considered the entire case law elaborately and had held that the termination is in terms of the order of appointment and that therefore, it is not by way of punishment as punitive measure. Accordingly the need to conduct an inquiry into the alleged misconduct does not arise and the termination of service in terms of the contract was held to be valid. It is settled law that the court can lift the veil of the innocuous order to find whether it is the foundation or motive to pass the offending order. If misconduct is the foundation to pass the order then an enquiry into misconduct should be conducted then an action according to law should follow. But if it is motive, it is not incumbent upon the competent officer to have the enquiry conducted and the service of a temporary employee could be terminated, in terms of the order of appointment or rules giving one month's notice or pay, salary in lieu thereof. Even if an enquiry was initiated, it could be dropped midway and action could be taken in terms of the rules or order of appointment. The same principle applies to the facts in this case. It is seen that the respondent was appointed by direct recruitment by selection committee constituted by the Government in this behalf and on finding about the suitability to the post as an Asstt. Project Officer, the respondent was appointed and was posted to the place where she had joined. Thereafter, her work was supervised by the higher officers

and two officers have submitted their reports concerning the performance of the duties by the respondent. She was regularly irregular in her duties, insubordination and left the office during office hours without permission etc. On consideration thereof, the competent authority found that the respondent is not fit to be continued in service as her work and conduct were unsatisfactory. Under these circumstances, the termination is for her unsuitability or unfitness but not by way of punishment as a punitive measure and one in terms of the order of appointment and also the Rule. Accordingly, the High Court has gone against settled law in allowing the writ petition. A B

The appeal is allowed and the writ petition stands dismissed, but in the circumstances, without costs. If the salary to the respondent, during the period in which she worked, had not been paid, appellants are directed to pay the same within a period of one month from the date of the receipt of this order. C

S.M.

Appeal allowed.