

A COMMISSIONER, FOOD AND CIVIL SUPPLIES, LUCKNOW,
U.P. AND ANOTHER

v.

PRAKASH CHANDRA SAXENA AND ANOTHER

B MAY 5, 1994

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

Service Law :

C *U.P. Temporary Government Servants' Protection Rules, 1975 - Temporary Govt. Servant—Termination of—Simpliciter—Held, does not amount to punishment.*

Constitution of India—Article 311(2)—Termination of Temporary Govt. servant without enquiry—Held valid.

D **The Respondent who was working as a temporary servant for 20 years in the office of the Appellant was terminated with a non-speaking order without holding any enquiry.**

E **On challenge before the Service Tribunal, it was held that the order of termination had been made by way of punishment without enquiry and hence violated Article 311(2) of the Constitution.**

F **In a writ petition by the Appellant, the High Court following the Judgment in *Shamsher Singh's*, [1974] 2 SCC 831 case held that the order of termination was illegal and the writ petition was dismissed. The High Court opined that decisions in *Kaushal Kishore v. State of U.P.*, [1991] 1 SCC 691 and *Triveni Shankar Saxena v. State of U.P.*, AIR (1992) S.C. 496 were *per incuriam* since the decision in *Shamsher Singh's* case was not considered by the Court therein.**

G **Allowing the Appeal by the Appellant, this Court**

H **HELD : 1. The High Court was not right in its approach in upholding the order of the Tribunal. The High Court has totally misunderstood the applicability of the judgment in *Shamsher Singh*. The decision in that case related to a judicial officer whereas the present case is on relating to a temporary Government employee. [932-F-H]**

Shamsher Singh v. State of Punjab, [1974] 2 SCC 831, explained and distinguished. A

2. The termination simpliciter is not a penalty and the Government has power and jurisdiction under the contract of employment or Rules to terminate simpliciter the services of temporary Government servant without conducting an enquiry and such termination simpliciter does not amount to termination for misconduct. [933-B] B

Kaushal Kishore v. State of U.P., [1991] 1 SCC 691 and *Triveni Shanker Saxena v. State of U.P.*, AIR (1992) SC 496, relied on.

3. It is not necessary to interfere with the High Court judgment under the facts and circumstances of the case. The Respondent must be deemed to have been in service from the date of termination till the date of his superannuation, but he is not entitled to backwages from the date of termination till the date of filing the petition in the Tribunal i.e. 31.12.1978. However he will be entitled to arrears of salary from 1.1.1979 and other consequential benefits. [933-C-F] C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4617 of 1994.

From the Judgment and Order dated 5.3.93 of the Allahabad High Court in W.P.No. 2016 of 1991. E

D.V. Sehgal and A.K. Srivastava for the Appellants.

S.A. Syed for the Respondents.

The following Order of the Court was delivered : F

Delay condoned. Leave granted.

Heard counsel for the parties. Respondent No. 1, while was working as Senior Inspector, District Supply Office, Lucknow, his services were terminated by proceedings dated 14.7.1965 : G

"The services, of Sri Prakash Chandra Saxena, Senior Inspector, District Supply Office, Lucknow are terminated with effect from the date of service upon him of this order. He shall be paid one month's pay in lieu of notice." H

- A The said proceedings were challenged by Respondent-I in the year 1978 by filing a claim petition before the Service Tribunal which was initially rejected by the Tribunal on the ground of delay. But the High Court remitted the matter for decision on merits and the Tribunal hold that the order of termination had been made by way of punishment without enquiry and hence violated Article 311(2) of the Constitution. When it was challenged in Writ Petition No. 2016 of 1991 filed by the appellant, the High Court had dismissed by its Order dated 5.3.1993, following the decision of this Court in *Shamsher Singh v. State of Punjab*, [1974] 2 SCC 831, wherein it had been held that the Court had to lift the veil and find whether the ground of termination was the foundation or the motive and if it was found to be the foundation, the termination simplicitor would be illegal. It was pointed out, that the enquiry initiated, when was stopped midway, it would show that the enquiry into misconduct of Respondent-I was abandoned while enquiry into the alleged misconduct had to be completed without which the termination would become illegal. The High Court was of the opinion that the ratio in *Shamsher Singh* (supra), was, obviously, not brought to the notice of this Court, while deciding *Kaushal Kishore v. State of U.P.* [1991] 1 SCC 691 and *Triveni Shanker Saxena v. State of U.P.*, AIR (1992) SC 496 and hence they had been decided *per incuriam*. The High Court, therefore, applied the ratio of the decision in *Shamsher Singh* which according to it squarely applied to respondent-I and held that the termination of the Services of the respondent was, violative of Article 311(2) of the Constitution.

- In our view, the High Court was not right in its approach in upholding the order of the Tribunal. What is overlooked by the High Court is that *Shamsher Singh's* case (supra) related to a judicial officer who had the protection of Article 355 of the Constitution and that, any enquiry conducted by the Executive, into an alleged misconduct of such judicial officer would be *per se* illegal and without jurisdiction. In those factual matrix, this Court had to hold that an enquiry having been initiated against the delinquent, had got to be pursued to its logical conclusion, that is, till it ended either in imposition of penalty on proof of misconduct or having been found not guilty of the charge. That was the background in which this Court laid the law. The High Court has totally misunderstood the applicability of the judgment in *Shamsher Singh*. This Court has, indeed considered in catena of decisions, the nature of power of the Government exerciseable in dismissal of a temporary Govt. servant, in terms of the order of appoint-

ment or the rules entitled U.P. Temporary Government Servants Protection Rules, 1975. *Kaushal Kishore* and *Triveni Shanker Saxena* are two decisions of this Court where on consideration the scope of the said rules, it is held that the termination simplicitor is not a penalty and the Government has power and jurisdiction under the contract of employment or the Rules to terminate simplicitor the services of a temporary Govt. servant without conducting an enquiry and such termination simplicitor does not amount to termination for misconduct. The decisions in the said cases are being followed by this Court consistently.

In this case, we have seen that the respondent was appointed in 1945 as a temporary Government Servant and remained in service upto 1965 as a temporary Government servant. Although we have found that the High Court was not right in applying the ratio of *Shamsher Singh* to case of Respondent-I we do not consider it necessary to interfere with its conclusion in exercise of our discretionary power under Article 136 of the Constitution. Therefore, while we uphold the appellant's power to terminate the services of a temporary Government servant under the said rules, without holding an enquiry, we do not propose to disturb the reinstatement of Respondent-I, since he was in service as a temporary Government servant for nearly 20 years before his services were terminated and he has since been retired as well from service. Taking these facts into consideration, we hold that the respondent must be deemed to have been in service from the date of the termination till the date of his superannuation, but he is not entitled to the back wages from the date of termination till the date of his filing the petition in the Services Tribunal that is upto December 31, 1978. He will, however, be entitled to the arrears of salary from 1.1.1979 and other consequential benefits including pensionary benefits as if he had continued as a regular Government servant till his superannuation. The appeal is accordingly allowed. No costs.

V.M.

Appeal allowed.