

CASE NO.:
Appeal (civil) 2438 of 2006

PETITIONER:
KAUSHAL KISHORE

RESPONDENT:
CANE COMMISSIONER, U.P. & ORS

DATE OF JUDGMENT: 19/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO.2438 OF 2006

This appeal is directed against the judgment and order dated 14.10.2003 passed by the High Court dismissing the appellant's writ petition and the Special Appeal.

Brief facts leading to the filing of this appeal are as follows :

The appellant was appointed on temporary basis. This is not disputed. By an order dated 16.06.1997 several charges were levelled against him. A show cause notice was thereupon issued to him to be replied within 15 days. Show cause notice was replied by the appellant by letter dated 30.06.1997 that is within 15 days' time. Curiously enough, the enquiry report was submitted on 27.06.1997 even before the show cause reply was received. Thereafter, the appellant's service was done away with by order dated 22.8.1997. In a democratic country like ours governed by the rule of law such arbitrary action of the respondent cannot be said to be passed in accordance with law. The procedure adopted by the respondents is unknown to the law.

On the other hand, the appellant's termination order dated 22.08.1997 is not a termination simplicitor. We have been taken through the order of termination. In the order of termination the entire facts leading to the filing of the charges of embezzlement alleged to have been committed by the appellant has been recited. Therefore, the order of termination cannot be treated as simplicitor but it is by way of punitive action recording stigma on the conduct of the appellant. In such a situation it is a bounden duty to hold an inquiry when opportunity could have been afforded to the appellant in terms of Article 311(2) of the Constitution. But in the instant case as already noticed the enquiry report was submitted even before the receipt of the show cause reply by the appellant. Even if the charge was framed and the enquiry report was submitted, the respondents could have terminated the services of the appellant by way of a termination simplicitor without stigma, because the appellant was a temporary employee. This has not been done in the present case.

In the result, the order of termination cannot be said to be order of termination simplicitor. The order of termination dated 22.08.1997 is accordingly set aside. The orders of Single Judge and Division Bench of the High Court are set aside. The writ petition of the appellant stands allowed. Consequently, this appeal is allowed. No costs.

We, however, give liberty to the respondent to initiate a fresh inquiry, if so advised. On such an occasion it is open to the respondent to place the appellant under suspension, after reinstatement and question of back wages payable be decided after the inquiry. (See: Managing Director ECIL, Hyderabad vs. B. Karunakar and others, 1993(4) SCC 727)