

CASE NO.:
Appeal (civil) 5242 of 2002

PETITIONER:
State of Uttar Pradesh and Ors.

RESPONDENT:
Vijay Shanker Tripathi

DATE OF JUDGMENT: 20/07/2005

BENCH:
ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Heard learned counsel for the parties.

The service of the respondent was terminated by an order dated 16.08.1988. It was indicated that his services were no longer required and, therefore, notice was given with the requisite one month pay and allowance. Such termination was questioned before the State Public Service Tribunal, Uttar Pradesh (in short 'the Tribunal'). The Claim petition No. 337/V/89 was dismissed holding that the order of termination was a termination simpliciter and no stigma was attached. It was found that there were certain allegations and the respondent-employee had more or less accepted the allegations. The order of termination was, therefore, neither attached with any stigma nor was visited by any punitive character. Accordingly, it was held that Article 311(2) of the Constitution of India, 1950 (in short 'the Constitution') was not attracted. The respondent-employee filed a writ petition only on the ground that Article 311(2) of the Constitution was required to be followed in the case of temporary government servants. High Court was of the view that Article 311(2) is required to be followed even in case of temporary Government employees. Accordingly, the order of termination was set aside and the writ petition was allowed.

In support of the appeal, learned counsel for the appellant-State and its functionaries submitted that the basic issue before the High Court was whether the order of termination was a termination simpliciter or there was any stigma attached. There is no quarrel to the proposition that Article 311(2) is attracted to temporary government servants. But whether on the facts of the case, the order of termination was legal, was not tested by the High Court. It was pointed out that there is nothing in the order of termination which even remotely shows any stigma and, therefore, the High Court was not justified in ignoring this aspect and allowing the writ petition. Learned counsel for the respondent, on the other hand, submitted that before the order of termination, an enquiry was purportedly conducted and some materials were taken on record. Without granting any opportunity to the respondent herein and without holding an enquiry, the order of termination was passed. According to him, the enquiry report was both the motive and the foundation for the order of termination.

We find that the High Court did not consider the question of stigma or the effect of any enquiry held before the order of termination was passed. The question whether the enquiry purportedly held was the motive or the foundation was required to be considered by the High Court in detail. That has not been done. The question whether termination of service is simpliciter or punitive has been examined in several cases e.g. *Dhananjay v. Chief Executive Officer, Zilla Parishad, Jalna*, [2003] 2 SCC 386 and *Mathew P. Thomas v. Kerala State Civil Supply Corporation Limited and Ors.*, [2003] 3 SCC 263. An order of termination simpliciter passed during the

period of probation has been generating undying debate. The recent two decisions of this Court in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta, [1999] 3 SCC 60 and Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences, [2002] 1 SCC 520 after survey of most of the earlier decisions touching the question observed as to when an order of termination can be treated as simpliciter and when it can be treated as punitive and when a stigma is said to be attached to an employee discharged during the period of probation. The learned counsel on either side referred to and relied on these decisions either in support of their respective contentions or to distinguish them for the purpose of application of the principles stated therein to the facts of the present case. In the case of Dipti Prakash Banerjee after referring to various decisions indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as a motive for passing such a simple order of termination. In para-21 of the said judgment a distinction is explained, thus:

“If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as ‘founded’ on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid. From a long line of decisions it appears to us that whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service.”

Therefore, without expressing any opinion on the merits of the case, we set aside the order of the High Court, remit the matter to the High Court for fresh consideration. It appears that counter affidavit was not filed by the appellant-State and its functionaries before the High Court. The same shall be filed within six weeks. If it is not filed, then, the High Court shall proceed on the materials before it. If any counter is filed and the respondent-employee wants to file any further affidavit, adequate time shall be granted by the High Court to the respondent-employee.

The appeal is, accordingly, disposed of with no order as to cost.