CASE NO.:
Appeal (civil) 3725 of 2002

PETITIONER:
State of U.P. and Ors.

RESPONDENT:
Ram Bachan Tripathi

DATE OF JUDGMENT: 02/08/2005

BENCH:
Arijit Pasayat & H.K. Sema

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

The State of Uttar Pradesh is in appeal against the judgment rendered by a Division Bench of the Allahabad High Court holding that the order of termination dated 14.10.1992 terminating services of the respondent w.e.f 10.5.1988 was illegal, as held by State Public Service Tribunal, Lucknow, U.P. (in short 'the Tribunal'). Tribunal's view was that the order of termination was bad in law, the respondent was to be reinstated in service without all consequential benefits of pay, allowance etc., as per the prevailing rules. Liberty, however, was given to the State and its functionaries to initiate departmental proceedings for the alleged misconduct of respondent-employee.

Background facts which need to be noted in brief are as under:

The respondent-employee who was selected by the Uttar Pradesh Public Service Commission (in short 'the Commission') for appointment to the post of Medical Officer was posted in the District of Basti. On 29.2.1988 the Chief Medical Officer, Basti directed the respondent-employee to join the Primary Health Centre at Deno Kuiya, District Basti. He submitted the joining report on 29.2.1988. Subsequently, he was transferred to District Gorakhpur and the respondent-employee submitted his joining report on 15.7.1988. According to the appellant-State the respondent-employee was asked to take over charge on 15.7.1988(FN) and he was to join at Mirzapur Gorakhpur. The respondent-employee did not take over the charge at the said place and remained absent unauthorisedly. He did not even make any application for leave and also did not take over charge. He was absent from government service from 16.7.1988. Show cause notice was issued which was served on the respondent-employee and publication was also made in the newspaper of Gorakhpur. But there was no response to the show-cause notice. Therefore, his services were terminated w.e.f. 16.7.1988 i.e. the date from which he remain absent unauthorisedly. Respondent-employee took the stand that there was reply submitted to the show-cause notice as is evident from the communication dated 14.9.1991 addressed to the Deputy Secretary, Government of U.P., Medical Section-4. His further stand was that though he submitted the joining report on 11.8.1989, the same was not accepted. It was his further stand that the show-cause notice dated 11.1.1991 was responded to, but in the termination order it has been stated that no response was received. This is nothing else than stigma.

Questioning the order of termination the respondent-employee filed a claim petition before the Tribunal which by order dated 28.8.1999 allowed the petition. State's application for review of the same was rejected by order dated 18.4.2001. The writ petition filed before the High Court was dismissed on the ground that the order of termination contained stigma no opportunity of hearing was given and order of termination was, therefore, rightly set aside.

Learned counsel for the appellant-State and its functionaries submitted that the Tribunal and the High Court had erred in holding that no opportunity was given. In fact, opportunity was granted which was not availed. In any event, the respondent-employee did not work during the period he had remained unauthorisedly absent. That being so, he was not entitled to any service benefits. Further the order of termination did not contain any stigma and the Tribunal and the High Court were not right in their view.

Per contra, learned counsel for the respondent-employee submitted that the materials on record clearly show that the respondent had responded to the show-cause notice and erroneously without consideration thereof, the impugned order of termination was passed. When the respondent-employee had responded to the show-cause notice the mention that he had not submitted any reply constitutes stigma. Further without any justifiable reason the joining report was not accepted. Obviously, the service benefits cannot be denied to the respondent-employee.

We shall first examine the plea relating to the stigma. Usually a stigma is understood to be something that is detraction from the character or reputation of a person. It is blemish, imputation, a mark or label indicating a deviation from a norm.

Mere description of a background fact cannot be called as stigma. In the termination order it was merely stated that the show-cause notices were issued and there was no response. This can by no stretch of imagination be treated as a stigma as observed by the Tribunal and the High Court.

In Dhananjay v. Chief Executive Officer, Zilla Parishad, Jalna, [2003] 2 SCC 386 it was held that mere mention about the suspension of the employee in the order of termination did not make the order. In Union of India and Anr. v. Bihari Lal Sidhana, [1997] 4 SCC 385 also it was held that merely because the termination order indicated the factum that by then the employee was under suspension did not constitute any stigma. To that extent the Tribunal and the High Court were not justified in holding that the order of termination cast stigma.

The record is not very clear whether the respondent-employee had submitted his explanation as claimed. Unfortunately, no reply was filed when the claim petition was filed by the respondent-employee before the Tribunal. As a matter of fact, on the date of hearing before the Tribunal there was no appearance on behalf of the State. This illustrates lack of seriousness by the State and its functionaries in appearance before the Courts and the Tribunal. Therefore, the Tribunal was justified in setting aside the order of termination while granting liberty to the State to proceed afresh. As it is accepted by the learned counsel for the respondent-employee that show-cause notice has been served on the respondent-employee, let him file a reply before the concerned authorities within four weeks. We find that because of the orders passed by this Court the respondent-employee has not been allowed to join. Without prejudice to the claims of the parties, let him be permitted to join at such place as the State Government may direct. Necessary orders in this regard shall be passed within a month. The respondent-employee shall not be entitled to any service benefit for the period he remained unauthorisedly absent and for the subsequent period during which he had not rendered any service. But the latter period shall be counted for the purpose of continuity of service. While taking a final decision in the matter, the entitlement of the respondent for any service benefit, shall be dealt with, except to the extent dealt with by us, keeping in view the following observations of this Court in Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors., [1993] 4 SCC 727:

> ‘‘If the employee succeeds in the fresh inquiry and is directed to be re-instated, the authority should be at liberty to decide

according to law how it will treat the period from the date of dismissal till the re-instatement and to what benefits, he will be entitled. The re-instatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a re-instatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.''

It is fairly accepted by learned counsel for the appellant-State that the order dated 14.10.1992 giving retrospective effect from 16.7.1988 is not sustainable. The appeal is allowed to the aforesaid extent. There will be no order as to costs.