

**IN THE SUPREME COURT OF INDIA**  
**CIVIL APPELLATE JURISDICTION**  
**SPECIAL LEAVE PETITION (C) NO. 11757 OF 2007**

**STATE OF U.P. & ANR.**

**... Petitioner(s)**

**Versus**

**RAM VINAI SINHA**

**... Respondent(s)**

**ORDER**

Having regard to the explanation offered by the petitioners regarding the reason for the delay in filing the special leave petition, we are satisfied that sufficient grounds have been made out for condoning such delay and such delay is, therefore, condoned.

This special leave petition is directed against the judgment and order dated 21<sup>st</sup> October, 2003 passed by the Lucknow Bench of the Allahabad High Court dismissing the writ petition No. 6244 of 1982 filed by the State of U.P. in which the judgment and order dated 7<sup>th</sup> September, 1992, passed by the U.P. Public Service Tribunal setting aside the order of termination of the services of the respondent No. 1 issued by the State Government on 18<sup>th</sup> August, 1981, was challenged.

The respondent No.1 was appointed as Assistant Engineer in the Irrigation department of the State Government on 14<sup>th</sup> May, 1973 on an ad hoc basis and his services were regularised on 20<sup>th</sup> March, 1980 from the date of his initial joining.

Subsequently, on 25<sup>th</sup> May, 1981, the respondent No.1 was trapped allegedly taking a bribe, as a consequence whereof, a case under Section 161 I.P.C. and Section 5(2) of the Prevention of Corruption Act, 1947 was registered against him and he was taken into custody. Subsequently, on 26<sup>th</sup> May, 1981, he was granted bail. On 18<sup>th</sup> August, 1981, the State Government terminated the services of the respondent No. 1 on the ground that his services were no more required.

The said order of termination of his services was challenged by the respondent No. 1 before the U.P. Public Service Tribunal, primarily on the ground that the same had been passed by way of punishment and was arbitrary and unreasonable. It was also submitted that such order had been passed without waiting for the outcome of the criminal proceedings, which was still pending. One of the other grounds taken by the respondent No. 1 was that a large number of employees, who were junior to the respondent No. 1 had been retained in service, while his services had been terminated.

By its judgment and order dated 7<sup>th</sup> September, 1982, the Tribunal set aside the order of termination on the ground that from the circumstances and the submissions advanced on behalf of the parties, it clearly emerged that there was

nothing adverse against the respondent, on the basis of which his services could have been terminated because of his involvement in a criminal case, which was made the sole basis for judging his suitability. The learned Tribunal also held that in such a situation, the order of punishment was bad since the procedures indicated under Article 311(2) of the Constitution had not been adopted.

As mentioned hereinabove, the order of the Tribunal was challenged before the High Court. The High Court while considering the matter also took note of the submissions made on behalf of the petitioners herein that the main reason for termination of the services of the respondent No. 1 was on account of his involvement in the criminal case. The High Court recorded in its judgment that once it was admitted by the writ petitioners that the respondent No. 1 was declared unsuitable on the basis of his arrest, then the order of termination could not be termed as termination simpliciter. Thereafter applying the well-established principle that while discharging an employee with a stigma, an opportunity of hearing was required to be given to him, which was not given in the instant case, the High Court upheld and confirmed the order of the Tribunal.

The Special Leave Petition has been filed against the said order of the High Court and appearing on behalf of the petitioners, Mr. S.R. Singh urged that whatever may have been submitted before the Tribunal or the High Court could not have an overriding effect over the language used in the order of termination itself. According

to him, the order of termination clearly indicates that the termination of the services of the respondent No. 1 was without any stigma and was a termination simpliciter.

Mr. Singh submitted that having regard to the nature of the facts involved, the High Court should have interfered with the order of the Tribunal and should have set aside the said order.

On the other hand, Mr. Nagender Rai, learned senior counsel, appearing for the respondent submits that in view of the finding of the Tribunal, as well as the High Court that the termination of the services of the respondent No. 1 was not a simple termination, but termination on the basis of a decision arrived at on account of the involvement of the respondent No. 1 in the criminal case, the order passed, both by the Tribunal and also of the High Court, was not required to be interfered with.

As per the order of termination, the services of the respondent were terminated on the ground that his services were not required. At the same time, it is not disputed that his juniors were retained in service. Termination of the services of the respondent while retaining his juniors in service was sought to be justified on the ground that he was found unsuitable in view of the criminal case registered against him. Hence, it was not a termination simpliciter. But before holding that he was unsuitable and terminating his services, no notice was issued to the respondent and no enquiry was conducted and he was not given any opportunity of being heard. Therefore, the impugned termination of service was in violation of the principles of

natural justice, illegal and arbitrary. It also offended the provisions in Art. 311(2) of the Constitution of India. Hence, the Tribunal was justified in quashing the order of termination of service of the respondent and the High Court rightly refused to interfere with the order of the Tribunal. The fact that the respondent was subsequently convicted by the criminal court and the matter is pending in appeal will not change the legal position regarding the illegality of the impugned order of termination of service.

In that view of the matter, we see no reason to interfere with the order of the High Court. The Special Leave Petition is, accordingly, dismissed.

There will be no order as to costs.

.....J.  
(ALTAMAS KABIR)

.....J.  
(CYRIAC JOSEPH)

New Delhi,  
March 17, 2009.