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SH. HUKAM CHAND KHUNDIA

v.

CHANDIGARH ADMINISTRATION AND ANR.

OCTOBER 9, 1995

B

[G.N. RAY AND G.T. NANAVALI, JJ.]

*Service Law :*

C

*Temporary service—Probation—Employee's services found unsatisfactory—Termination simplicitor without enquiry—Held on facts order was not by way of punishment—Hence not violative of Article 311.*

D

The appellant was appointed as a temporary clerk by District and Sessions Judge, Chandigarh. However, during probation period his services were found not satisfactory by various judicial officers under whom he worked. Consequently, an order terminating his services was passed without conducting an enquiry. The petitioner unsuccessfully challenged this order before the Central Administrative Tribunal, New Delhi.

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In appeal to this Court it was contended that the termination order which was in fact by way of punishment, was violative of Article 311 of the Constitution as it was passed without conducting an enquiry.

Dismissing the appeal, this Court

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HELD : No discriminatory treatment has been meted out to the petitioner. His services were found unsatisfactory and as he was holding a temporary post and was on probation, an order of termination simplicitor was passed without attaching any stigma against him. The termination order is not arbitrary and capricious. In the aforesaid facts it cannot be said that in reality an order of punishment was passed in the cloak or pretence of termination simplicitor without holding any departmental proceeding thereby violating Article 311 of the Constitution. [147-G-H, 148-A-B]

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)

H No. 6503 of 1986.

From the Judgment and Order dated 23.4.86 of the Central Administrative Tribunal at Chandigarh in Case No. 19 of 1986. A

P.P. Rao and Rajesh for the Petitioner.

In-person (N.P) for the Respondents. B

The following Order of the Court was delivered :

The order of termination of the service of the petitioner was challenged by filing an application under Section 19 of the Administrative Tribunal Act, 1985 before the Central Administrative Tribunal, New Delhi. Such application has been dismissed by the impugned order. The applicant was appointed as a temporary clerk by the District and Sessions Judge, Chandigarh, vide order dated March 17, 1982. He was continuing in temporary service on probation but it appears that his service was not found satisfactory and as a matter of fact on a number of occasions he was found by the successive judicial officers under whom the appellant was working that his integrity was questionable. Considering his service records, the temporary service of the applicant has been terminated. C D

Mr. P.P. Rao, the learned senior counsel appearing for the petitioner has submitted that if termination has in fact been effected by way of punishment, the real purpose of the order and not the outer form of it, is required to be looked into by piercing the veil. He has submitted that if on the score of misconduct, the service, is terminated without holding any departmental proceeding and giving the petitioner a chance of showing cause, the order of *ex-parte* termination of service on the ground of misconduct is illegal and void. Even in the case of temporary service, the provisions of Article 311 of the constitution of India is applicable. In support of such contention, reference has been made to the decision of this Court in *Jarnail Singh and Ors. Etc. v. State of Punjab*, [1986] 2 SCR 1022. It, however, appears to us that no discriminatory treatment has been meted out to the petitioner as was done to the employee concerned in the said decision. It appears that the service of the petitioners was found unsatisfactory for the reasons indicated hereinbefore. Since the petitioner was holding a temporary service and was on probation, an order of termination simplicitor has been passed without attaching any stigma against him. As the service records were found unsatisfactory, the termination H

- A order cannot be held arbitrary and capricious. In the aforesaid facts, we do not think that in reality an order of punishment has been passed against the petitioner in the cloak or pretence of termination simplicitor without holding any departmental proceeding thereby violating Article 311 of the Constitution. We, therefore, find no merit in this petition and the same is dismissed.
- B

T.N.A.

Appeal dismissed.