

A

STATE OF U.P. AND ORS.
v.
SMT. KAMLA DEVI AND ANR.

MAY 9, 1996

B

[K. RAMASWAMY, FAIZAN UDDIN AND G.B. PATTANAIK, JJ.]

Service Law :

U.P. Temporary Government Services Rules, 1975.

C

R. 14(a)—Employee appointed on ad hoc basis—Frequent absence from duty—Services terminated in terms of appointment letter—Claim for reinstatement and back wages—Tribunal setting aside order of termination holding the same as violative of Article 311(2) of the Constitution—Held, when Government exercised statutory power, need to conduct inquiry as contemplated under Article 311(2) by necessary implication got obviated.

D

Constitution of India, 1950.

Article 311(2)—Termination of services of temporary employee without inquiry—Government of U.P. terminating services of employee appointed on ad hoc basis, exercising power under Rule 14(a) of U.P. Temporary Government Services Rules, 1975—Held, in view of exercise of statutory power, order of termination is not violative of Article 311(2).

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8996/1996.

F

From the Judgment and order of the 5.4.1994 of the Allahabad High Court in W.P. 1589(SS) of 1994.

Irshad Ahmad from the Appellants.

G

Pravir Choudhary for the Respondents.

The following Order of the Court was delivered :

Leave granted.

H

We have heard learned counsel for the parties.

Though the respondent was appointed on February 14, 1972 on *ad hoc* basis, she was posted at different places during which period she remained either on leave or absconded from duty, except joining the places nearer to her native place Lakhimpur Kheri. Consequently, authorities had taken action on September 23, 1980 to terminate her service in terms of letter of appointment. The respondent had approached the Tribunal for reinstatement with back wages. The Tribunal has set aside the order of termination holding that the termination is violative of Article 311(2) of the Constitution since no enquiry was conducted against the respondent. The same came to be upheld by the High Court in the impugned order in Writ Petition No. 1589(SS)/94 passed on April 5, 1994.

The question, therefore, is : whether it is necessary for the Government to conduct an enquiry as contemplated under Article 311(2) read with the statutory rules ? In the State of U.P., there are statutory rules, viz., U.P. Temporary Government Services Rules, 1975. Rule 14(a) of the said Rules provides for termination of the service of temporary Government servant either with one month's notice or pay in lieu thereof.

Under these circumstances, when the Government exercised the statutory power, the need to conduct enquiry as contemplated under Article 311(2) by necessary implication got obviated. The High Court, therefore, was wrong in holding that the enquiry under Article 311(2) needs to be conducted to terminate the services of even the temporary Government servant.

The appeal is accordingly allowed. However, any salary paid to the respondent during the continuance in services pursuant to the interim direction would not be recovered from her. There will be no order as to costs.

R.P.

Appeal allowed.