

(23) Shri J. L. Gupta, learned counsel for the respondents has submitted that the instances given by the petitioners relate to Medical Colleges. Senior Doctors are reluctant to take up teaching jobs. There is a dearth of Professors. He further submitted that action had not been taken against any College after this Hon'ble Court had granted stay in the present case. In any non-action or passivity of the University in any particular case will not entitle the petitioners to claim that Regulation 7 should not be applied to their College.

(24) We find merit in this submission of Shri Gupta. Regulation 7 has been made applicable to all the non-Government Colleges affiliated to the Panjab University. Even if the explanation given by Shri Gupta for taking no action against the Colleges detailed in the rejoinder is not accepted, that will not furnish any ground to the petitioners to claim that the provisions of Regulation 7 should not be invoked in their case. The respondents are duty bound to enforce Regulation 7. The petitioners cannot claim issuance of a Writ of Mandamus against the respondents restraining them from taking any action against the petitioner in accordance with law. A Regulation validly framed by a competent authority prescribing the age of superannuation is binding on the petitioners. They have to follow it.

(25) In the result the writ petition has no merit and the same is dismissed, with no order as to costs.

N.K.S.

Before : J. V. Gupta, J.

STATE OF HARYANA,—*Defendant-Appellant*

versus

LOK NATH,—*Plaintiff-Respondent.*

Regular Second Appeal No. 1655 of 1985.

February 4, 1986.

Constitution of India, 1950—Article 311(2)—Ad hoc employee placed under suspension—No enquiry held—Services of such an employee thereafter terminated as no longer required—Employee—Whether entitled to full salary for the suspension period—Order of

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termination mentioning the factum of suspension—Whether casts a stigma on the employee so as to attract Article 311.

Held, that it is always a question to be determined in each case as to whether the order terminating the services of an employee when read as a whole casts any stigma or not. Simply by mentioning therein that the orders regarding payment of subsistence allowance during the suspension period would be issued separately does not render the order illegal in any manner. It has been specifically stated therein that the services of the employee were being terminated as no longer required and since he was appointed on *ad hoc* basis, his services could validly be terminated in view of the terms of his appointment. (Para 3).

Regular Second Appeal from the decree of the Court of Shri S. K. Jain, District Judge, Karnal, dated the 22nd day of January, 1985, reversing that of Shri K. C. Dang Senior Sub-Judge, Karnal, dated the 9th day of April, 1984, and passing a decree for declaration in favour of the plaintiff and against the defendant to the effect that orders, dated 15th March, 1982 and 18th March, 1982 passed by the State Transport Controller, Haryana, Chandigarh by which the services of the plaintiff were terminated and the pay and allowance of his suspension period were restricted to the subsistence allowance already paid o him, are illegal, void and against the rules of natural justice and leaving the parties to bear their own costs.

P. M. Anand, Advocate, for A.G. (Haryana), for the Appellant.

M. R. Agnihotri, Advocate with Deepak Agnihotri, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

1. This is defendant's second appeal against whom the suit for declaration was dismissed by the trial Court but decreed in appeal.

2. Lok Nath, plaintiff-respondent, joined the Haryana Roadways, Karnal, on February 1, 1975, as an Assistant Store-keeper,—*vide* appointment letter, Exhibit P. 1, dated January, 30, 1976, His appointment was on *ad hoc* basis. His services were liable to be terminated any time without giving any notice or assigning any reasons. On July 16, 1979,—*vide* order, Exhibit P.2, he was placed under suspension. Notice, dated April 6, 1981, was served upon him to show cause why the payment of his dues for the period of his suspension from service be not restricted to the amount already

paid to him as the subsistence allowance. However, meanwhile, his services were terminated,—*vide* order, Exhibit P-3, dated March 15, 1982, as the same were no longer required. The plaintiff filed the suit for the grant of the declaration to the effect that the order, Exhibit P.3, dated March 15, 1982, and the subsequent order, Exhibit P.5, dated March 18, 1982, restricting the payment, for his suspension period, i.e., from the date of suspension to the date of the termination of his services, to the subsistence allowance already paid to him, were illegal, against the rules, arbitrary and against natural justice. In the written statement filed on behalf of the State of Haryana, certain preliminary objections were taken. On merits, it was asserted that the plaintiff was an Assistant Cashier on *ad hoc* basis without being sponsored by the Employment Exchange. Only a non-availability certificate was issued by the Employment Exchange. The factum of the suspension of the plaintiff and the payment of the subsistence allowance to him during the period of his suspension were admitted. Termination of his services by a simple order of termination without casting any stigma or aspersion on his conduct were asserted. It was averred that his services were terminated in accordance with the terms and conditions of his appointment. Retrenchment compensation as required under section 25-F of the Industrial Disputes Act was alleged to have been paid to him. The learned trial Court found that the order terminating his services, Exhibit P.3, and the order, Exhibit P.5, were both legal and valid and consequently, dismissed the plaintiff's suit. In appeal, the learned District Judge reversed the said findings of the trial Court and came to conclusion that the order terminating his services carried stigma that he was a suspended officer and any future employer may reasonably think that he must have been suspended from service on some serious allegations and may refuse employment to him on that ground alone. Therefore, Article 311(2) of the Constitution was attracted and since no opportunity was given to the plaintiff, the said order was illegal. Consequently, the order, Exhibit P.5, restricting the payment for his suspension period to the subsistence allowance already paid to him, was also held to be illegal. With these findings, the appeal was allowed, the judgement and decree of the trial Court was set aside and the plaintiff's suit was decreed. Dissatisfied with the same, the defendant has filed this second appeal in this Court.

3. The short question to be decided in this appeal is as to whether the order, dated March 15, 1982. Exhibit P-3, attaches a

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stigma to the respondent or not. The said order reads,—

“Services of Shri Lok Nath, *ad hoc* Assistant Cashier, Haryana Roadways, Karnal (under suspension) office of the General Manager, Haryana Roadways, Karnal, are hereby terminated being no longer required. Orders regarding payment of subsistence allowance during suspension period will be issued separately. He will however be entitled to the compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months under article 25F(b) of Industrial Disputes Act, 1947”.

According to the plaintiff, since there is a mention of payment of subsistence allowance during the suspension period, it carried stigma and, therefore, was violative of Article 311(2) of the Constitution. Reliance in this behalf was placed on *N.B. Chakraborty v. Union of India* (1). Reading the order as a whole, it could not be successfully argued that there was any stigma attached to the plaintiff, as alleged. Simply mentioning therein that the orders regarding payment of subsistence allowance during suspension period will be issued separately does not render the order illegal in any manner. The order is to be read as a whole. It has been specifically stated therein that the plaintiff's services were being terminated as no longer required. Not only that, it has been further stated that he will, however be entitled to the compensation, which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months under section 25F(b) of the Industrial Disputes Act. *N. B. Chakraborty's case* (supra), relied upon by the lower appellate Court is quite distinguishable. Therein, the impugned order was in the following terms,—

“In pursuance of sub-rule (1) of R.5 of the Central Civil Services (Temporary Services) Rules, 1965, I hereby give notice to Shri N. B. Chakraborty, Field Exhibition Officer, *ad hoc* at present under suspension that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on him.”

In the said order, it had not been stated that the services were being terminated as the same were no longer required. Moreover,

(1) AIR 1970 Assam and Nagaland 98.

it will be a question to be determined in each case whether the order if read as a whole carries any stigma or not. Thus, the view taken by the lower appellate Court in this behalf is not warranted from the impugned order, Exhibit P.3. Since the plaintiff was appointed on *ad hoc* basis, his services were rightly terminated in view of the terms of his appointment letter, Exhibit P.1.

4. As regards the order, dated March 18, 1982, Exhibit P. 5, whereby the payment for his suspension period to the date of his termination of services was restricted to the subsistence allowance already paid to him, the same was not justified. Admittedly, no enquiry was held against the plaintiff after placing him under suspension and he was never found guilty of any charge. Under the circumstances, he was entitled to the full pay for that period, particularly when his services were terminated subsequently without holding any enquiry. It is most unfortunate that the plaintiff remained under suspension for over two years while his services could be terminated immediately he being an *ad hoc* employee. The order, Exhibit P. 5 could not be justified by the department. The plaintiff was entitled to full pay during that period.

5. Consequently, this appeal succeeds to the extent indicated above. The judgment and decree of the lower appellate Court is partly set aside and the plaintiff's suit is decreed only to the extent that the order, dated March 18, 1982, Exhibit P. 5, was illegal and that the plaintiff was entitled to his full pay and allowances for the period of his suspension whereas the order terminating his services, Exhibit P.3, is held to be legal and his suit *qua* the said order is dismissed with no order as to costs.

6. A time has come when the Government should fix the liability of the officers concerned for whose illegal orders or inaction the State is to suffer and ultimately the money is paid from the public exchequer to the aggrieved party on account of the illegal orders having been set aside in a Court of law. Under the circumstances, it will be advisable that the amount thus paid from the public funds is realised from the officer concerned who has passed the illegal order. In the present case, the suspension order remained in operation for over two years without any rhyme or reason. Ultimately, the services of the plaintiff were terminated being a an *ad hoc* employee which order could be passed even in the year 1979, when he was placed under suspension.

N.K.S.