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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

DA. No.1903 of 1989

New Delhi dated this the 22nd of April, 1994.

Shri C.J. Roy, Hon. Member(J)

Shri S.R. Adige, Hon. Member(A)

Suresh Singh @ Suresh Chand
S/o Shri Chhotu Ram,
Village & P.O. Narula,
Post Office : Mahamurpur,
Delhi 110 040.
(Income Tax Department)

... Applicant.

By Advocate : None.

versus

1. K. Rangarajan,
Director General of Income Tax,
4th Floor, Mayur Bhavan,
Connaught Circus, New Delhi
2. Income Tax Commissioner
I.P. Estate, New Delhi
3. Union of India
Service to be effected
through Secretary
Ministry of Finance,
Government of India,
New Delhi.

... Respondents

By Advocate: None

O R D E R (Oral)

By Hon. Member(J) Shri C.J. ROY

None present for either side even on the second call.

We waited for considerable time. We feel that the applicant is not interested to prosecute this case further and proceed to dispose of this case on merits.

2. The applicant was appointed as Driver on purely adhoc basis on 20.8.87. The appointment was only for one year and his services were extended upto 19.8.89.. That means the service of the applicant has been extended for one more year. In the meanwhile, the service of the applicant was

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terminated w.e.f. 31.1.89 and the applicant has filed this application praying for quashing the impugned order of termination and to reinstate him back in service. The appointment order of the applicant is at Annexure-A which is reproduced below:

"Shri Suresh Singh contingent paid staff car driver of this Directorate is hereby offered a temporary post of driver on ad-hoc basis till further order in the scale of Rs.950-20-1150-EB-25-1400 plus such allowances as sanctioned by the Government of India from time to time, if any.

The conditions for appointment are enclosed herewith. If he accepts the offer on these conditions he should report himself for duty to the undersigned by 27.8.1987. If he fails to do so, this offer shall be treated as cancelled."

The conditions of appointment categorically states that the appointment is purely on adhoc basis for a period of one year and is liable to be terminated without assigning any reasons. Annexure-B also brings the same condition.

3. The respondents have filed their counter in which it is stated that the applicant was working on daily wages basis and subsequently was appointed on adhoc basis for one year with a condition that his services may be terminated without notice.

4. Following the ratio of the Hon. Supreme Court judgement in the case of State of UP and Anr. versus Kaushal Kishore Shukla (JT 1991 (1) SC 108), we feel this case can also be decided on the same line and proceed to do so. The relevant portion of the above Hon. Supreme Court judgement is reproduced below for convenience:-

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"The principle of 'last come first go' is applicable to a case where on account of reduction of work or shrinkage of cadre retrenchment takes place and the services of employees are terminated on account of retrenchment. In the event of retrenchment the principle of 'last come first go' is applicable under which senior in service is retained while the junior's services are terminated. But this principle is not applicable to a case where the services of a temporary employee are terminated on the assessment of his work and suitability in accordance with terms and conditions of his service. If out of a several temporary employees working in a department a senior is found unsuitable on account of his work and conduct, it is open to the competent authority to terminate his services and retain the services of juniors who may be found suitable for the service.

Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

A temporary Govt. servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the protection of Article 311(2) in the same manner as a permanent Government Servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment.

It is now well settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order.

It is erroneous to hold that where a preliminary enquiry into allegations against a temporary govt. servant is held or where a disciplinary enquiry is held but dropped or abandoned before the issue of order of termination, such order is necessarily punitive in nature.

5. Further sub rule (i) of Rule-5 of the CCS (Temporary services) Rules 1965 will attract the provisions of Article-311 of the constitution and also cast stigma.

6. The respondents in the counter have further stated that

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that applicant has concealed the fact before appointment that there is a criminal case pending against him. It is also pertinent to note that on the similar grounds other people were also terminated. In the circumstances, we see no reason to interfere in the matter. The applicant has not made out a case for our interference. In the result, the OA is dismissed as devoid of merit. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER(A)
22.4.94.
/kam/

C.J. Roy
(C.J. ROY)
MEMBER(J)
22.4.94