

(A)

Jhulai Yadav Appellant

Vs.

Union of India and
3 others Respondents.

(By Hon. G.S.Sharma, Member (J))

2. Briefly stated, the material facts of the case are that the plaintiff-appellant was appointed as a contingency paid Chaukidar on 3.7.1976 at the Sub Post Office, Terhi in district Azamgarh. He was removed from service on 16.10.1979 by the Inspector of Post Offices without any formal enquiry. It is not disputed that there was a theft in the Terhi Sub Post Office in October 1979 and on account of the alleged negligence of the appellant in that connection, he was summarily removed from service. The suit was accordingly filed by him for a declaration that the order dated 16.10.1979 removing him from service was illegal, void and ultra-vires.

It was contested on behalf of the defendant-respondents nos. 1, 3 and 4 and it was pleaded by them that the appellant was appointed only provisionally as contingency paid servant on daily wages and was not a civil servant. As such, he was not protected under Article 311 of the Constitution and as he was negligent in performing his duties even previously, he was rightly removed from service and the order of his removal from service was perfectly in accordance with law.

3. The learned Munsif framed 4 issues in the case and held that the plaintiff-appellant does not come ~~even~~ under the definition of civil servant and he being a casual worker ^{could} ~~can~~ be removed from service without any formal departmental proceedings and there was no illegality in the order of his removal from service. His suit was accordingly dismissed with costs. Aggrieved by this order, the plaintiff had preferred this appeal.

4. On ~~being~~ ^{his} a notice of this case ~~being~~ ^{by} issued to the appellant, appearance was put in on behalf of his learned counsel but on the date fixed for hearing of the appeal, he did not appear and as such, we had to hear the arguments of the respondents in his absence and were deprived of the assistance of his learned counsel.

5. Paper no. 22-C on record is the copy of the appointment order dated 5.4.1976 of the appellant stating that he was appointed provisionally as C.P. (Contingency paid) Chaukidar, Terhi purely on temporary basis and his services could be terminated at any time without assigning any reason therefor. No other order subsequently modifying the terms and conditions of the service is

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available on record. The plaintiff did not plead for any regular pay scale and it was stated by him in his cross-examination as P.W.1 before the trial Court that he was not a contingency type of employee but was paid a monthly salary. There is no evidence in support of this contention. On the other hand, Sri Nand Lal Pandey, D.W.1 the Inspector of Post Offices, North Sultanpur has stated that the plaintiff was contingency paid Chaukidar and there was no pay scale for this job and he was paid for his service on daily basis. The copy of the order (paper no. 18-C) of the removal of the plaintiff from service also mentions him as C.P. Chaukidar. There is thus nothing on the record to show that after his appointment, the plaintiff acquired any better status or right to claim regularity or permanency in service. There was, therefore, no violation of law or the provision of Article 311 of the Constitution in his case and his appeal thus has no merit and deserves to be dismissed.

6. The appeal is accordingly dismissed but the parties shall bear their own costs of the appeal.

Member (A)

Member (J)

Dated 28.6.1986.
kkb