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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration No. 47 of 1986 (T)

Ram Sagar Singh . .vs. . Union of India and others

Hon'ble S.Zaheer Hasan, V.C.(J)

Hon'ble Ajay Johri, Member(A).

(Delivered by Hon. S.Zaheer Hasan,V.C.)

On 29.9.1983 Ram Sagar Singh filed a suit in the court of Munsif, Hawali, Varanasi, challenging the order of termination of his services. The case of the plaintiff is that he was appointed as a contingency paid Chowkidar on 29.4.1978. In the night of 27.12.1982 a theft took place and ultimately the Police submitted a final report. Thereafter the services of the plaintiff were terminated without giving him any opportunity, and thus there was violation of provisions of Article 311 of the Constitution. The defence is that on 29.4.1978 the plaintiff was appointed as contingency paid Chowkidar with specific condition that if was found sleeping during duty hours, his services would be terminated without any prior notice. A theft took place on 27/28.12.1982 when the plaintiff was on duty and articles worth Rs. 10,000/- and odd were stolen by breaking the locks. The plaintiff remained absent without any permission. In view of the contravention of the terms of appointment plaintiff's services were terminated by the Inspector of Post Offices vide order dated 31.12.1982. No temporary or permanent post of

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contingency paid chowkidar was sanctioned by the Union of India in the Department, but on contract basis this type of post was created only for specific work on specific terms and condition. The plaintiff used to receive salary on daily-wages basis amounting to Rs. 219.50 per month. So, his services could be terminated without any notice and there was no question of protection of Article 311 of the Constitution. The learned Munsif dismissed the suit. The plaintiff filed an appeal before the District Judge, Varanasi, which was transferred to this Tribunal.

According to the memo dated 24.4.1978 (Ext. Ka-1), a post of contingency paid chowkidar at Sindhora was sanctioned at the rate of Rs.105/- per month. It was clearly stated in this order that no other allowance would be payable. According to the memo dated 14.5.1978 (Ext. Ka-2), Ram Sagar Singh was appointed as Contingency Paid Chowkidar at Sindhora with immediate effect. He was allowed to work on temporary basis subject to regular employment. It was further ordered that he would have no claim for his regular employment. On 31.12.1982 following order was passed (Vide Ext. Ka-3):-

Services of Sri Ram Sagar Singh, Contingency Paid Chowkidar, Sindhora Sub-Post Office, are terminated with immediate effect.

In the cross-examination of Sri Gopal Ram, Inspector of Post Offices (D.W.1), it was elicited that due to negligence of duty the services of the plaintiff were

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terminated. The impugned order is an order of termination simpliciter and it does not cast any stigma nor does it show that it was passed by way of punishment. Of course, a theft was committed on 27.12.1982. So, it may be that this theft might have been in the mind of the authorities when this order was passed. In a case reported in A.I.R. 1980 S.C. page 1242 (Oil and Natural Gas Commission and others vs. Dr. Md. S. Iskander Ali) it was held that even though some sort of inquiry was started but it was not proceeded with and no punishment was inflicted it was open to the appointing authority to terminate the services of the probationer and it could not be said that the order of termination attracted the provisions of Article 311 when the appointing authority had the right to terminate the service without assigning any reason. In such a case even if mis-conduct, negligence, inefficiency etc. might be the motive or inducing factor which influenced the employer to terminate the services of the employee, a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service it could not be termed as penalty or punishment. In another case reported in A.I.R. 1981 S.C. page 957 (The Union of India and others vs. P.S. Bhatt) it was held that if any order terminating the services of a probationer be an order of termination simpliciter without attaching any stigma to the employee and if the said order is not an order by way of punishment, there will be no question of the application of Article 311. It was

Further observed that even if the conduct of the respondent in indulging in loose talks and filthy and abusive language may be considered to be the motive or the inducing factor which influenced the authorities to pass the impugned order, that order cannot be said to be by way of punishment. So, the motive behind the order of termination is immaterial. It is open to the Government to take the allegation into consideration and to come to the conclusion that the particular employee was not a proper person to be retained in service any further. If he is a purely temporary employee, his services can be terminated by an order simpliciter without casting any stigma. It is now well settled that even if an inquiry is held before termination, there is no element of punitive proceedings in such an inquiry which is held just to decide whether the employee deserves to be continued in service or not. If as a result of such an inquiry the authority comes to the conclusion that the temporary servant is not suitable to be continued it may pass a simple order of discharge by virtue of the power conferred on it by the contract or the relevant rule. In such a case it would not be open to the temporary servant to invoke the protection of Art. 311. What is important to bear in mind in this connection is that motive operating in the mind of the authority taking action in accordance with the rules of service is of no consequence, so what constituted the background for the action is entirely immaterial for determining the nature of action unless facts of case

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necessarily lead one to the conclusion that what purports to be an order of termination simpliciter is for all intents and purposes an order of dismissal or removal, for example, where on the face of the order a stigma was attached to the employee who was discharged, but where no stigma is attached nor any penal consequences follow such termination, the order of termination cannot be held as bad. It may be that the conduct of the employee might result in dismissal etc. after inquiry and the employer may without holding inquiry pass a discharge order simpliciter with a view to give the employee a licence to make good in other walks of life without casting a stigma. In the case before us, the plaintiff was a chowkidar paid from the contingency. According to the terms of appointment his services could be terminated at any time without any notice. An order simpliciter terminating his services was passed without casting any stigma, aspersion etc. on him. It is immaterial that the motive behind the order was that theft. Of course, the form of order is not conclusive and it is the substance of the matter that is to be looked into. Whether or not an order of termination is by way of punishment would depend upon the facts and circumstances of each case. Here there is no question of camouflaging any order. As ~~already held~~ ^{as mentioned above,} in the case of Union of India and others vs. P.S. Bhatt (Supra), ^{the} ~~that~~ the conduct of employee may be considered to be the motive or the inducing factor which influenced the authorities

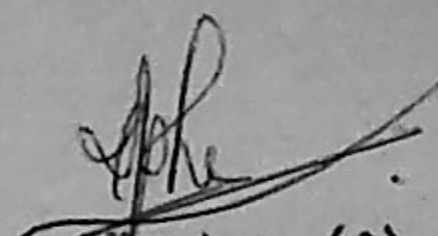
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to pass the order, but that order cannot be said to be by way of punishment. So, we find no good reason to interfere with the order of the learned Munsif.

The appeal is dismissed.

July 16th, 1986.
R.Pr.


Vice Chairman.


Member (A).