

ITEM NO.102

COURT NO.7

SECTION XI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1698 OF 2003

STATE OF U.P. &ORS.

Appellant (s)

VERSUS

SURYA NARAIN

Respondent(s)

(With office report)

Date: 29/08/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE D.K. JAIN

For Appellant(s)

Mr. S. Wasim A. Qadri, Adv.

Mr. Kamendra Mishra, Adv.

Mr. Jamshed Khan, Adv.

Mr. Anuvrat Sharma, Adv.

For Respondent(s)

Mr. Dinesh Kumar Garg, Adv.

Mr. V.K. Bijju, Adv.

Mr. Bheem Pratap Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

SINGH)	(RAVI P. VERMA)	(ANAND
Master	Court Master	Court

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1698 OF 2003

STATE OF U.P. & ORS.

APPELLANT(S)

Versus

SURYA NARAIN

RESPONDENT(S)

O R D E R

Heard the parties.

The challenge in this appeal is to the order dated 20/11/2001 passed by the Division Bench of the High Court affirming the order dated 02/09/1989 passed by the U.P. Public Services Tribunal, in short 'the Tribunal'.

Few facts may be noted. Respondent was employed as a Forest Guard on

temporary basis by an order dated 15/06/1973. He was terminated by an order

dated 28/12/1976 stated to be termination simplicitor in terms of the condition of the

appointment order. Undisputedly, on the same day, i.e. 28/12/1976, an FIR was

lodged against the respondent. It is stated at the Bar that the respondent was

subsequently discharged from the criminal charge by the Court of competent

jurisdiction. The question that calls for determination is as to whether the

impugned order of termination dated 28/12/1976 is punitive or termination

simplicitor in terms of the appointment order. No doubt the order of appointment

states that the appointment is purely temporary and terminable without showing

any cause. But in the present case undisputed fact is that on the same day an FIR

was lodged against him for felling of trees in the forest. The respondent was also

terminated on the same day by an order dated 28/12/1976. In our view, considering

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the proximity of the lodging of the FIR and the order of termination, there is a

nexus between the lodging of FIR and the order of termination. In that view of the

matter, we are unable to accept the contention of the appellant that the termination

of the respondent is termination simplicitor in terms of the condition of his

appointment order. In the view that we have taken, the view of the High Court

cannot be said to be faulted. The appeal being devoid of merit is accordingly

dismissed.

This takes us to consider with regard to the payment of the backwages

and continuity of service and maintain seniority as ordered by the Tribunal. On the

application of doctrine of 'no work no pay' we are of the view that as the respondent

has not rendered any service since 28/12/1976 he would not be entitled to any

backwages. The respondent would, however, be entitled to be paid the salary

admissible to him from the date of his reinstatement into the post on temporary

basis. This order would not, however, preclude the appellant to draw up

disciplinary proceedings and pass appropriate necessary orders as deemed fit and

proper in accordance with law, if so advised. Needless to say that the respondent

shall be reinstated immediately.

It is also open to the appellant to place him under suspension in the event

the appropriate authority so decides to initiate a disciplinary proceedings, after

reinstatement. The appeal is dismissed in the above terms.

.....J.

(H.K. SEMA)

New Delhi;

.....J.

August 29, 2006.

(D.K. JAIN)