



Amulya M. Bhat
Associate

TERMINATION OF CONTRACTUAL EMPLOYEE FOR MISCONDUCT

The Supreme Court (SC), in the in the *UPSRTC v. Brijesh Kumar* case,¹ held that when the termination of a contractual employee is stigmatic (i.e., on grounds of misconduct), principles of natural justice must be followed.

A. Brief Facts:

Brijesh Kumar (**Kumar**)’s father was a conductor with Uttar Pradesh State Road Transport Corporation (UPSRTC), the appellants before the SC. He died in 2003 while in service. Kumar’s mother had applied for a compassionate appointment for Kumar. When rejected, his mother again moved an application seeking compassionate appointment for him under the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (**Rules**), to which she received no adequate response.

Subsequently, in October 2012, UPSRTC wrote to Kumar that he was appointed as a contract conductor on a preferential basis in connection with his application for appointment on a compassionate basis. However, during his service, he was found guilty on two occasions of carrying three passengers without valid tickets and one occasion where a passenger was found carrying extra luggage. Hence, Kumar’s services were terminated in January 2016 on grounds of misconduct.

Kumar challenged the termination through writ petition alleging that since he was appointed on a compassionate basis, his employment was permanent. Hence, his services could not be terminated prior to holding a disciplinary inquiry.

The writ petition was initially allowed by a Single Judge of the Allahabad High Court (HC) in January 2018, and that decision was upheld by a Division Bench of the HC in September 2018, which ruled that Kumar’s appointment was indeed on compassionate grounds, classifying him as a permanent employee, whose services could not be terminated without due process.

UPSRTC appealed the HC’s decision before the SC.

¹ U.P. *State Road Transport Corporation & Ors. V. Brijesh Kumar & Anr.*, S.L.P (C) No.10546 Of 2019 (**Judgement**).

A copy of the Judgement can be accessed [here](#).

B. SC's Judgement & Analysis:

While partly allowing the appeal, the SC observed that:

- According to records, Kumar was not offered a compassionate appointment under the Rules but was rather extended a benefit based of a policy of 2012. This policy envisaged to offer preferential treatment in the matters of appointment on contractual basis to the dependents of the deceased employees.²
- A plain reading of the policy, the offer letter and the agreement signed by Kumar and UPSRTC make it clear that he “*was appointed on preferential basis being the son of a deceased employee, and not on a compassionate basis.*”³
- There appears no document on record to prove Kumar’s appointment was on compassionate basis, and his appointment was on a simple contract basis. Hence, his appointment cannot be treated as permanent.⁴
- The HC erroneously held that Kumar’s appointment to be on compassionate basis and that he is liable to be treated as a permanent employee.⁵
- “*The services of [Kumar] have been terminated solely on the ground of misconduct as alleged but without holding any regular inquiry or affording any opportunity of hearing to him. The termination order has been passed on the basis of some report which probably was not even supplied to [Kumar]. No show cause notice appears to have been issued to [Kumar]. Therefore, the order of termination of his services, even if on contractual basis, has been passed on account of alleged misconduct without following the Principles of Natural Justice. The termination order is apparently stigmatic in nature which could not have been passed without following the Principles of Natural Justice.*”⁶
- The HC had rightly set aside the termination, though it was on different grounds.

Counselence Comment: This apex court judgment underscores the importance of an employer following the principles of natural justice when effecting stigmatic termination of an employee. This is irrespective of the employee’s nature of appointment – permanent or contractual.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For any clarifications, please contact us at: info@counselence.com. Past issues of *Counselence Connect* are available at the ‘Newsletters’ page of our website (www.counselence.com).

² Paragraph 14 of the Judgement.

³ Paragraph 15 of the Judgement.

⁴ Paragraph 17 of the Judgement.

⁵ Paragraph 18 of the Judgement.

⁶ Ibid.