

PETITIONER:
DR I.B. GUPTA

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT 14/01/1994

BENCH:

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. The admitted facts in the present case are that on October 26, 1973, the respondent was appointed as Deputy Superintendent, Government Approved School (now known as 'Juvenile Home'). Applications were invited for the posts of Probation Officers (ad hoc), on April 11, 1980 from departmental female candidates possessing requisite qualifications. The respondent applied for one of the posts, and pursuant to her selection, was appointed as Probation Officer with effect from June 2, 1980. On February 15, 1983, she proceeded on maternity leave which was duly sanctioned on February 14, 1983 by the District Magistrate who is the Controlling Officer under the Probation of Offenders Act, 1958. She resumed her duty on June 16, 1983 on the same post. It appears, however, that on February 4, 1983, an order was passed by the petitioner-State Government terminating her services. According to the petitioners, the termination became necessary because in the meanwhile, there were regular appointments through the Public Service Commission. According to the respondent, the order of termination was not communicated to her before she proceeded on maternity leave and hence the alleged termination should be deemed to have been of no effect and she should be deemed to have continued in service as Probation Officer. This is particularly so because she was allowed to resume service as Probation Officer on her return from leave on June 16, 1983 and subsequently by an order of November 1, 1989, the Additional Director also duly sanctioned the salary for the entire period of her leave from February 15, 1983 to June 15, 1983.

2. It appears that, in between, the Government had passed an order on February 26, 1983 appointing the respondent as ad hoc Probation Officer although she was on leave. She did not, of course, join the service pursuant to this order. Thereafter, another order was passed on June 4, 1983 against appointing her as ad hoc Probation Officer but as stated earlier, since her leave was duly sanctioned on February 14, 1983 and thereafter regularised by the order of November 1, 1989, it will have to be presumed that she had continued in service as ad hoc Probation Officer from her initial appointment, i.e., on June 2, 1980.

3. It further appears that in the meanwhile, U.P. Regularisation of Ad Hoc Appointments (on posts within the

purview of U.P. Public Service Commission) (Amendment) Rules, 1984 (hereinafter referred to as the 'Rules') came into force w.e.f. March 22, 1984. These rules made tile Regularisation Rules of 1979 applicable to the persons appointed on or before May 1, 1983. According to these rules, those who had put in ad hoc service for three years and were

37

continuing in service on the date of commencement of the rules, i.e., March 22, 1984, were to be regularised.

4. Subsequently, by an order of March 27, 1984, the respondent was reverted retrospectively, w.e.f. February 29, 1984 to the post of Assistant Superintendent, District Shelter Workshop which post she had never held and to which post she could not have been reverted even otherwise since she was directly appointed as Probation Officer though on ad hoc basis. On May 4, 1984, therefore, the respondent filed a writ petition before the High Court. By virtue of the interim order, the order of reversion was stayed and liberty was given to the petitioner-State Government to post her on any other post with the salary scale equivalent to that of Probation Officer. However, by the impugned order, the petitioner is directed to consider the respondent for regularisation under the rules.

5. The aforesaid facts make it clear that the petitioners had by their own actions, viz., the sanction of leave on February 14, 1983 and its regularisation by the order of November 1, 1989, have treated the respondent as being in continuous service as ad hoc Probation Officer w.e.f. June 2, 1980. Hence she is entitled to the benefit of the rules. She was in service on March 22, 1984 and on that day, she had completed more than three years' service in the post held by her. The attempt of the State Government to revert her by the order of March 27, 1984 w.e.f. an earlier date, viz., February 29, 1984 was obviously mala fide and made with the express purpose of depriving her of the benefit of the rules. This is apart from the fact that the reversion order was bad in law since being a direct appointee to the post of Probation Officer, she could not have been reverted to any post much less to the post of Assistant Superintendent, District Shelter Workshop which post she had never held. We are, therefore, of the view that she is entitled to be regularised as Probation Officer under the rules. Her seniority in that post will be fixed by the Government according to law. The special leave petition is dismissed accordingly.

38

HANUMAN v. STATE OF RAJASTHAN
ORDER

1. In respect of a murder that took place on September 11, 1978 one Shampooalias Surendra Pratap Singh was tried for the offence punishable under Section 302 of Indian Penal Code. He was convicted by the Sessions Court. The prosecution also relied on a dying declaration recorded by Dr I.B. Gupta and also by the Executive Magistrate. The convicted accused preferred an appeal to the High Court. The High Court acquitted him. However, in the course of the judgment the High Court commented on the conduct of Dr I.B. Gupta and observed that subsequently at the instance of the Investigating Officer the dying declaration of the deceased was interpolated as the dying declaration recorded by the Executive Magistrate and the same was not in conformity with regard to the participation of one Subhash. Thereafter the following observation is made by the High Court :

"The entire conduct of Dr I.B. Gupta in the

circumstances of the case is highly undeserving of a Medical Officer. He is not fit to be retained in Government service."

2.It may be mentioned here that the State had preferred an appeal to this Court against the order of acquittal passed by the High Court and as that appeal was pending in this Court Dr I.B. Gupta filed the present appeal for expunging the remarks and special leave is granted. It appears that the State appeal is abated since the respondent died. In this appeal it is submitted that Dr I.B. Gupta, the appellant, only acted in discharge of his official duty and it was a typographical mistake, namely, that the timing was 1.45 a.m. instead of 1.45 p.m. when the dying declaration was recorded and observation made is of serious nature affecting his career and his promotion also.

3.We have perused that part of the judgment of the High Court. The observation is made mainly relying on the statement of the Investigating Officer who is said to have recorded the statement of the doctor under Section 161 CrPC. Relying on the statement, the High Court reached the conclusion that the doctor also connived to bring the dying declaration in conformity with the prosecution version. This observation in any event overlooks the fact that the Investigating Officer is also responsible and the observation is not strictly called for against the doctor who only treated the injured and attended on him at that stage. The doctor has not disowned any of those irregularities which by themselves could happen in discharge of his official duty but on the basis of those irregularities the observation that he is not fit to be retained in Government service is rather damaging and far-fetched, without any further inquiry as to the alleged conduct of the doctor. Any such stricture which affects his career rather amounts to condemn him without being heard. In these circumstances, this observation in tile form of stricture is quashed. The appeal is allowed accordingly.