

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5037/1997@@
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A.P.State Fed. of Coop. Spinning Mills ..Appellants
Ltd. & Anr.

Vs.

P.V. Swaminathan ..Respondent

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The respondent had been appointed as General Manager (Finance) under Andhra Pradesh State Federation Cooperative Spinning Mills Ltd. for a period of 3 years with effect from 6.8.1991. While he was continuing as such, his services stood terminated on 10.6.1993. He therefore approached the High Court of Andhra Pradesh by filing a Writ Petition under Article 226 of the Constitution. The learned Single Judge dismissed the Writ Petition at the admission stage itself, though after hearing the employer. The learned Single Judge came to the conclusion that the order of termination being innocuous, it cannot be held to be penal in nature and termination of service is in accordance with the contract of service, since 3 months salary in lieu of 3 months notice had been paid. The respondent then approached the Division Bench. The Division Bench of Andhra Pradesh High Court allowed the appeal by the impugned judgment in Writ Appeal No. 1071/1993. The Division Bench came to the conclusion that a Writ would lie against the Andhra Pradesh State Federation of Co-operative Spinning Mills Ltd. as it would be a State within the meaning of Article 12 of the

- 2 -

Constitution. It also held that the impugned order, though on the face of it, appears to be innocuous, but if the attendant circumstances leading to the order of termination are examined, more particularly, the stand taken in the counter affidavit, the conclusion is irresistible that the order is penal in nature, and since the penalty has been imposed without following any procedure and without affording any opportunity to the delinquent to meet any charges, the said order cannot be sustained. It is this order of the Division Bench which is the subject matter of challenge in this appeal.

Mr. K.Ram Kunmar, learned counsel appearing for the appellants did not seriously press the question of non-maintainability of an application under Article 226 of the Constitution against the appellant in view of the several by-laws and regulations of the appellant society. He however seriously challenged the conclusion of the Division Bench that the order of termination was penal in nature on the ground that the order being innocuous, the statements made by the appellants, who was the opposite party in the counter affidavit, could not have formed the basis of conclusion of

said conclusion of the Division Bench of the Andhra Pradesh High Court requiring our interference.

The period of appointment of the respondent being for a period of 3 years, it stood expired on 6.8.1994. The order of termination was passed on 10.6.1993. Notwithstanding the conclusion that the order of termination is vitiated, the respondent cannot seek enforcement of re-instatement by way of a Mandamus but all the same he would be entitled to all his benefits flowing from the terms of appointment for the period 10.6.1993 to 6.8.1994. The appellant Federation is therefore directed to pay the necessary pecuniary benefits flowing from this direction of ours to the respondent within a period of 3 months from today after deducting the wages for 3 months which had been paid to him while passing the order of termination in lieu of notice. The appeal is disposed of accordingly.

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.....J.
(G.B. PATTANAİK)

New Delhi,
January 31, 2001

.....J.
(B.N. AGRAWAL)