
(1997) 11 AHC CK 0097
In the Allahabad High Court
Case No : C.M.W.P. No. 37249 of 1991

Anil Kumar Tiwari

APPELLANT

Vs

Executive Engineer, Allahabad and another

RESPONDENT

Date of Decision : 19-11-1997

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1998) 1 AWC 383 : (1998) 2 UPLBEC 1098

Hon'ble Judges : Alope Chakrabarti, J

Bench : Single Bench

Advocate : B.D. Upadhyaya, for the Appellant;

Final Decision : Dismissed

Judgement

Alope Chakrabarti, J.—This writ petition was filed by the petitioner challenging the order of termination from service dated 7.12.1991 passed by the respondent No. 1 (Annexure No. 11 to the writ petition) and for other relief.

2. The case made out in the writ petition by the petitioner is that in pursuance of advertisement made by the Executive Engineer. Public Tubewell Construction Division, Fatehpur, the petitioner submitted application for appointment in the post of Tubewell Operator and after passing written examination and interview the petitioner was directed to submit his domicile certificate and the same was submitted by the petitioner. Thereupon one Sri Rajendra Singh submitted an application stating therein that the petitioner is not a permanent resident of village Tarna whereupon the matter was verified as regards petitioner's domicile certificate. After such enquiry, the petitioner was directed by the Executive Engineer, Public Tubewell Construction Division, Fatehpur for training for holding the post of Tubewell Operator and on completion of training, the petitioner was served an appointment letter as Tubewell Operator on part time basis. On 23.9.1988 the Executive Engineer, Public Tubewell Construction Division. Fatehpur directed the petitioner to show cause as regards domicile certificate and said notice was issued on the basis of the information given by the S.D.O., Chail,

Allahabad that the petitioner is not resident of village Tarna, District Allahabad. The petitioner submitted his reply along with a document showing that he is resident of village Tarna district Allahabad. A charge-sheet was issued on 14.2.1991 against the petitioner and he filed his reply along with domicile certificate and other documents. On 7.12.1991 the respondent No. 1 passed an order of termination against the petitioner. Hence this writ petition was filed challenging the said order of termination.

3. Sri Rajendra Singh filed impleadment application which was allowed by order dated 4.3.1994. The said impleaded respondent also filed counter-affidavit and contested the proceeding at the time of hearing,

4. After hearing the learned counsel for the contesting parties, I find that the contention of the learned counsel for the petitioner is that the termination order is bad as the same was passed on a ground that the petitioner was not resident of a particular village and such grounds are not available in view of the prevailing law of the country and in support of such contention learned counsel for the petitioner referred to the case of Union of India and others Vs. Sanjay Pant and others etc. etc., and the case of Radhey Shyam Singh and others v. Union of India and others JT 1996 (2) SC 33.

5. Relying on the aforesaid law, it is contended that the termination of the petitioner on such ground of not being a local resident is violative of Article 16 of the Constitution of India.

6. Learned counsel for the contesting respondent contended that the petitioner is not entitled to raise such contention as his appointment was made following an advertisement which required a local resident for appointment in the said post and the petitioner obtained the said post claiming his right as a local resident and produced a requisite certificate for the same and as such, the present termination was upon a finding that the certificate produced by the petitioner did not, in fact, give correct picture and the petitioner was not, in fact, a local resident as he claimed. On an enquiry giving the petitioner opportunity to show cause, a finding was arrived at that the petitioner obtained employment on wrong facts and, therefore, his service was terminated. It is contended on behalf of the respondents that in such circumstances, the termination was not, in fact, because of the fact that he was not a local resident but because he obtained the employment on a wrong basis. Learned counsel for the contesting respondents relied on the order dated 8.9.1988 passed by the Sub-Divisional Officer, Chail, Allahabad, a copy whereof has been annexed at Annexure No. 6 to the counter-affidavit. The said document disclosed a finding in the enquiry that the petitioner's residence in village Tarna was not proved.

7. Learned counsel for the petitioner contended that the said document Annexure No. 6 to the counter-affidavit dated 8.9.1998 was never supplied to the petitioner and as such, the same could not be relied in this proceeding.

8. Upon consideration of the aforesaid facts and the materials available on

record, 1 find that the petitioner himself obtained employment on the basis of his claim that he was resident of a particular village and thereafter an enquiry was held as regards the correctness of the said claim of the petitioner. On enquiry it came to be known to the respondents that the petitioner's claim of being resident of a particular village was not proved and in such circumstances, the petitioner's service was terminated by order dated 7.12.1991 at Annexure No. XI to the writ petition. From the recitals made in paragraph Nos. 6 to 10 of the writ petition, it is apparent that such finding was arrived at after giving opportunity of hearing to the petitioner. Therefore, the allegation of the petitioner that the termination was in violation of the principles of natural Justice, cannot stand.

9. Moreover, the contention of the petitioner that the termination order is bad because it was based on a finding that he was not resident of a particular village and this was in violation of Article 16 of the Constitution of India, is also not tenable. In the present case, the petitioner obtained employment on the basis of a Government Order at Annexure No. 1 to the counter-affidavit and clause 1 thereof provides for precondition that the candidate was to be resident of a particular village. The petitioner claimed himself to be the resident of the said village and as such satisfying the said clause he obtained the employment. On enquiry when it was found that he was not resident of the said village, the termination order was passed and, therefore, the said termination order did not violate the provision of Article 16 of the Constitution of India. If violation of the said provision of Article 16 was at all there, it was at the time of appointment of the petitioner. Therefore, the petitioner cannot challenge the said order of termination on the ground of violation of the provision of Article 16. The termination order was passed only on the ground that the claim of the petitioner that he was resident of the said village Tarna, was found to be incorrect. In such circumstances, the termination order does not suffer from any irregularity particularly when the petitioner was granted opportunity to show cause against the said charge and after considering the materials produced before the authority concerned, the finding was arrived at after giving the petitioner opportunity. Therefore, the said order of termination cannot be said to be in violation of the principles of natural justice.

10. In view of the aforesaid findings, the writ petition falls and the same is hereby dismissed. There will be no order as to costs.