

(1990) 11 AHC CK 0132

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20658 of 1988

Bhuwnesh Chandra Nautiyal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-11-1990

Acts Referred:

Constitution of India, 1950 — Article 311(1)

Citation : (1991) 1 AWC 26

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Advocate : R. Pande and S. Dhulia, for the Appellant;

Final Decision : Allowed

Judgement

N.L. Ganguly, J.—In this writ petition, the Petitioner challenges the termination order dated 5-9-1988 passed by Executive Engineer, Rural Engineering Services Pauri Garhwal. The petitions was terminated according to the provisions of U.P. Temporary Government Servant Service Termination Rules, 1975. The Petitioner had been working in the Department as a Drafts-man since November, 1984. The initial appointment was made by the appointment letter dated 12th November, 1984 on the post of Draftman for the period of one year or till regularisation of his services. He joined and was working in the Department. The Petitioner was given letter for interview for regularisation of his services on 23rd March, 1983. He had been working at Ghaziabad since November, 1984 and was transferred on 14th May, 1985 to Tehri Garhwal on the same post. After working at Tehri Garhwal for about a year, he was informed on 25th January, 1986 that his services were extended for further period of one year or till regularisation of his services. The Petitioner had already appeared for regularisation on 11-4-1985 but no result of the said interview was published. Again on 30th October 1986, the Petitioner was directed to appear for interview for regularisation on the post on 18-11-1986. He continued working and no result of the interview was communicated. Suddenly on 3-3-1987, the Petitioner received a letter of

termination passed by the Executive Engineer, Rural Engineering Services, Tehri Garhwal. The Petitioner instead challenging the said order of termination, submitted a representation before the Chief Engineer, Rural Engineering Services, Lucknow for regularising him on the post of Draftsman on which he was working since 1984. The Chief Engineer, Rural Engineering Services transmitted the Petitioner's representation to the Superintending Engineer, Rural Engineering Service Dehradun. The Superintending Engineer, Rural Engineering Service, Dehradun issued a fresh letter of appointment for the post of Tracer by order dated 21st April, 1987. He was given a pay scale of Rs. 330-360. The Petitioner has enclosed a copy of the letter of appointment dated 21st April, 1987 as Annexure 7 to the writ petition. It is clear from the order of appointment of the Petitioner, Annexure 7, that the appointment was made by the Superintending Engineer Rural Engineering Services, Dehradun. The Petitioner continued working on the post of Tracer. The Petitioner was served with an order of termination dated 5th September, 1988 passed by the Executive Engineer, Rural Engineering Services, Pauri Garhwal. The Petitioner has challenged the said order of termination.

2. The sole contention of the Petitioner's counsel is that the Petitioner was appointed as a Tracer by the orders of the Superintending Engineer and the orders of termination have been passed by the Executive Engineer who is a Junior Officer in rank. It is urged that the order of termination is violative of Article 311(1) of the Constitution. A counter affidavit has been filed by the Respondents. The stand taken by the Respondents is that according to the Departmental Rules, the Executive Engineer is the appointing authority for the post of Tracer. The Superintending Engineer is stated to be not the appointing authority for the post of Tracer. In para 14 of the counter affidavit, it has been stated that "the Superintending Engineer to safe-guard his interest appointed him as Tracer although the appointing authority in case of Tracer vests in Executive Engineer." It is, thus, not disputed by the State that the letter of appointment of the Petitioner was given by the Superintending Engineer, who admittedly is a superior officer, than the Executive Engineer. The other stand taken by the State is that only one post of Tracer was sanctioned in the Establishment on which Sri Bhagwan Singh Negi was working, hence the services of the Petitioner had to be terminated. It was further stated that there was no vacant post of Tracer in the Rural Engineering Service, Division Pauri Garhwal.

3. Without entering into the controversy that after the appointment on 11-11-1984 on the post of Draftsman, the Petitioner continued for more than two year and his services stood regularised. The writ petition can be adjudicated finally on the question of violation of Article 311(1) of the Constitution.

4. The provision of Article 311(1) of the Constitution of India are reproduced as under:

No person who is a member of a civil Service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall

be dismissed or removed by an authority subordinate to that by which he was appointed.

5. It is not disputed that the Petitioner was holding a civil post under the State to attract the provisions of Article 311(1). It is abundantly clear from the perusal of the appointment letter and letter of termination that appointment was made by orders of the Superintending Engineer and termination order was passed by the Executive Engineer, a subordinate Officer. The learned Standing Counsel submitted that Petitioner was appointed temporarily and on adhoc basis. Thus, he was not entitled to protection of Article 311(1) of the Constitution. The learned Standing Counsel further submitted that there was no vacancy of the post of Tracer in the Pauri Division. His services were liable to be terminated on this ground also. In *Union Territory of Tripura v. Gopal Chandra Dutta Chaudhery* 1963 ALJ 321, the Constitution Bench of the Supreme Court held that provisions of Art, 311 applied to temporary and permanent public service. At page 325 the Hon"ble Supreme Court observed:

A public servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed and that he cannot be dismissed or removed or reduced in rank untill he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

6. The learned Counsel for the Petitioner also cited AIR 1956 SC36. The said authority also fully applied to the present case.

7. After hearing the learned Counsel for the parties and scrutiny of the record, it is clear that the order of termination was passed against the Petitioner without any prior notice or opportunity to the Petitioner and the order of termination passed against him is by an Officer subordinate to the appointing authority. The order of termination passed by the Executive Engineer dated 5-9-1988 cannot be allowed to stand. It is hereby quashed.

8. The writ petition is accordingly allowed. No order as to cost. It is directed that the Respondents may reinstate the Petitioner to the post of Tracer from which he had been terminated by the impugned order. The Petitioner shall benefited for the emoluments during the period he remained unemployed after the order of termination. The Respondents shall pay the entire amounts of arrears of salary to the Petitioner within a period of three months from the date on which the certified copy of this order is produced before the Respondents.

9. A certified copy of the order be issued to the learned Counsel for the parties on payment of usual charges within a week from the date of the order.