
(1999) 04 AHC CK 0064
In the Allahabad High Court
Case No : Writ Petition No. 6456 of 1988

Birinda Prasad Srivastava

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (1999) 3 AWC 2046

Hon'ble Judges : R.P. Nigam, J; R.H. Zaidi, J

Bench : Division Bench

Advocate : K.C. Tripathi, D.N. Saha and Rajesh Nath, for the Appellant; C.S.C., for the Respondent

Judgement

R.H. Zaidi and R.P. Nigam, JJ.—By means of this writ petition, the petitioner prays for issue of a writ of certiorari quashing the order dated 24.9.1984 passed by opposite party No. 3 terminating the services of the petitioner and the judgment and order dated 6.6.1988 passed by U. P. Public Services Tribunal rejecting the claim petition of the petitioner.

2. It appears that the petitioner was appointed as Lekhpal in officiating capacity in the vacancy caused by promotion of Srt Babu Lal to the post of Consolidator in officiating capacity on 16.12.1982. Thereafter several persons, namely, Sri Sant Ram. Sri Bhudev, Sri Chander Bhan Singh. Sri Brijesh Kumar and Sri Krishan Swarup Sharma were appointed as consolidation lekhpals in the department. It was on 4.9.1984 that Babu Lal was promoted to the post of consolidator in district Aligarh as it is evident from Annexure-2 to the rejoinder-affidavit. On 24.9.1984. the services of the petitioner were terminated. It was also stated that order of reversion was passed against Babu Lal by the District Magistrate on 28.9.1984. a copy of which has been filed along with the counter-affidavit as Annexure-1. Challenging the validity of order of termination, the petitioner filed claim petition before the U. P. Public Services Tribunal. It was pleaded that persons who were junior to the petitioner and were appointed after his

appointment, were retained in service and the services of the petitioner were terminated arbitrarily. The order of termination was, therefore, liable to be set aside.

3. On behalf of the contesting respondents, written statement was filed before the Services Tribunal pleading that the petitioner was appointed on purely temporary basis and his services were terminated in the terms and conditions of the appointment letter on reversion of Sri Babu Lal to the said post. Therefore, there was no illegality in the order of termination and the claim petition was liable to be dismissed.

4. The parties produced evidence in support of their cases and the Tribunal after perusing the evidence on record dismissed the claim petition by judgment and order dated 6.6.1988, hence the present petition has been filed.

5. The learned counsel for petitioner vehemently urged that the order of termination passed by respondent No. 3 was wholly illegal and without jurisdiction inasmuch as there were several persons who were junior to the petitioner but were retained in service and the services of the petitioner who was senior to those persons were terminated. The order of termination was thus hit by Article 16 of the Constitution of India. It has also been urged that the Tribunal has noticed the wrong facts in the order and also came to wrong conclusion. It was pointed out that the date of alleged order of reversion is 28.9.1984 while the Tribunal with a view to justify its order has noticed the said date as 22.9.1984, therefore, it was urged that the impugned orders are liable to be quashed.

6. On the other hand, the learned standing counsel supported the validity of the impugned orders. It was submitted that the petitioner was appointed on purely temporary and ad hoc basis, his services were liable to be terminated in the terms and conditions of the appointment order and the same were therefore, rightly terminated. The Tribunals also not committed any error of law in dismissing the claim petition filed by the petitioner.

7. We have considered the rival submissions made by the learned counsel for the parties and also carefully gone through the record of the case.

8. From the material on the record, it is apparent that it was on 4.9.1984 that Babu Lal who was working on the post of consolidation lekhpal with several others was promoted to the post of consolidator and after he was promoted to a higher post, there was absolutely no question of reverting him to the post of consolidation lekhpal. The District Magistrate with a view to punish the petitioner without following the procedure prescribed for the same passed order on 28.9.1984 reverting Babu Lal to the post of consolidation lekhpal, a copy of the said order has been filed as Annexure-2 to the counter-affidavit. The services of the petitioner, therefore, could not be terminated on 24.9.1984 as till that date Babu Lal was not reverted. The Tribunal with a view to justify its order of dismissal of the claim petition, has noticed wrong date of order of the District Magistrate as 22.9.1984 in its Impugned order. It is well settled in law that in

cases of termination, the rule of first in last out and last in first out, has to be followed. Therefore, if the services of any person were required to be terminated, the services of Junior-most person should have been terminated. There was no justification for terminating the services of the petitioner. The impugned order of termination is hit by Article 16 of the Constitution of India. The impugned order of termination of services of the petitioner and the order passed by the Tribunal dismissing the claim petition filed by the petitioner are thus illegal and are liable to be quashed. In view of the above discussion, the writ petition deserves to be allowed.

9. The writ petition succeeds and is allowed. The order dated 24.9.1984 and 6.6.1988 are hereby quashed. The respondents are directed to reinstate the petitioner on the post of consolidation lekhpal with all consequential benefits.