
(1993) 11 AHC CK 0064

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1450 of 1992

Birjesh Kumar

APPELLANT

Vs

District Cane Officer and Another

RESPONDENT

Date of Decision : 05-11-1993

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 16

Citation : (1994) 1 AWC 341

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : G.R. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

R.B. Mehrotra, J.—The Petitioner was appointed by the Asstt. Registrar and District Cane Officer, Bijnor on 30-9-1986 (Annexure ?1? to the writ petition). The appointment order states that since the progress of Cooperative Cane Development Union Ltd., Nagina (hereinafter referred to as the Cane Development Union) regarding preparation of the records is slow, and the office has not completed the details of the ledger and has not prepared the working statements and other records and a delay is being caused in the preparation of the records, therefore, for completing the aforesaid records, the Petitioner is appointed in the pay scale of a seasonal clerk in the Cane Development Union under Rule 365 of the U.P. Cooperative Societies Rules,? 1968 (hereinafter referred to as the Rules). The Secretary of the Cane Development Union will take work from him according to the requirement and will report the progress to this effect.

2. The Petitioner has stated in his petition that the Petitioner continued to work as a seasonal clerk and by order, dated 20-6-1988, the Secretary of the Cane Development Union terminated the petitioner's services along with other seasonal clerks by giving one month's notice. The termination order has been

passed in respect of 27 persons which also contains the name of the Petitioner. The termination order says that since the season of the year 1987-88 has come to an end, therefore, the services of the persons mentioned in the order are no more required.

3. After a lapse of more than 3 1/2 years, the Petitioner challenged his order of termination. The Petitioner has stated in his writ petition that since in similar circumstances, the services of a seasonal clerk was terminated by the Secretary, Sahkari Cane Development Union Ltd Najibabad, district Bijnor and the said order was challenged in this Court in Civil Misc. Writ Petition No. 19665 of 1989 Rohitashwa Singh v. The District Cane Officer, Bijnor and another this Court, vide its judgment, dated 25 9-1991 has allowed the writ petition and has quashed the termination order and has also directed that the Petitioner shall be entitled for his past emoluments, the Petitioner along with many other seasonal clerks, whose services were terminated sent "representations to the then Chief Minister, U.P. that their cases may be "reconsidered and they may be reappointed, and the Addl. Commissioner, vide his circular, dated 22-4-1991 has directed the Dy. Cane Commissioner of Moradabad Mandai for re-employment of the seasonal clerks and other employees whose services have been terminated. The Petitioner has contended that thereafter the Petitioner had been running from pillar to post but no orders were passed for his re-employment. Aggrieved thereby, the Petitioner has filed the present writ petition challenging his order of termination.

4. A counter affidavit has been filed mainly contending that the Petitioner was never appointed on any post, on the other hand, the Petitioner was deputed under rule 365 of the Rules for completing the incomplete records of the Cane Development Union. After completion of the records, the petitioner's services automatically ceased, the Petitioner had no right to continue on the post. The Petitioner was not appointed as a seasonal clerk under the U.P. Case Cooperative Service Regulations, 1975 (hereinafter referred to as the Regulations). The "Appointing authority" of the seasonal dorks under the Regulations is the District Cane Service Authority, as such the Petitioner was never appointed to Cane Cooperative service and was never a member of the Service. The Petitioner cannot claim that the termination order is in violation, of the provisions of the Regulations.

5. I have heard learned counsel for the Petitioner Sri G. R. Jain and Sri Shashi Nandan on behalf of the Respondents.

6. Sri Jain has mainly contended that the Petitioner was appointed as a seasonal clerk and continued to work as a seasonal clerk and his services could have been terminated under regulation 34 of the Regulations by the recruiting or the appointing authority and since the petitioner's appointment was made by the Asstt. Registrar, the Secretary, Caa? Development Union had no authority to terminate the services of the Petitioner in view of regulation 34 of the Regulations. The petitioner's counsel has also placed reliance on section 16 of the General Clauses Act under which, only the appointing authority has power to

terminate the services of the employee. Under the Regulations, the petitioner's appointing authority is the District Cane Service Authority, as such the petitioner's services could not have been terminated by the Secretary of the Cane Development Union. Lastly, the counsel has submitted that in any case even if it was discovered that the authority appointing the Petitioner was not competent to appoint the Petitioner, the services of the Petitioner could not have been terminated without affording him an opportunity of hearing, or to show cause, to demonstrate that the petitioner's appointment was valid in law. The order of termination passed against the Petitioner without affording him an opportunity to show cause, was in violation of the principles of natural justice.

7. In support of his contentions, learned counsel for the Petitioner has relied upon a decision of this Court in Civil Misc. Writ Petition No. 19663 of 1989 -- Rajendra Singh v. The District Cane Officer, tiijnor, and another decided on 25-9-1991, wherein a learned single Judge of this Court has taken the view that a seasonal clerk having been appointed by the District Cane Officer/Asstt. Registrar, Cooperative Societies under rule 365, the services of such a clerk could have been terminated only by the District Cane Officer/Asstt. Registrar, Cooperative Societies and the Secretary of the Cane Development Union had no power to terminate the services of the Petitioner. On aforesaid basis, the order of termination of service, passed by the Secretary, Cane Development Union terminating the services of the seasonal clerk appointed by the District Cane Officer/Asstt. Registrar, Cooperative Societies, was quashed by this Court in the aforesaid decision.

8. Learned counsel for the Petitioner has also relied upon the decision of the Hon'ble Supreme Court in Shrawan Kumar Jha and others Vs. State of Bihar and others, . In this case, 175 Asstt. teachers were appointed by the District Superintendent of Education, Dhanbad, by order, dated May 28, 1988. There was a controversy as to whether the Asstt. teachers so appointed joined their duties or not as counter versions were stated by the Petitioners and the Respondents. By order, dated 2-11-1988, the Deputy Development Commissioner cancelled the appointments of all those 175 teachers." The matter came up before the Supreme Court. The Supreme Court, in the facts and circumstances of the said case, held that the Asstt. teachers whose appointments were cancelled should have been given the opportunity before cancelling their appointments and directed that Secretary Education, Government of Bihar or a person nominated by him will find out whether the Asstt. teachers were validly appointed after giving opportunity to them. Relying on the aforesaid decision, the learned counsel, for the Petitioner has contended that even assuming that the petitioner's appointment was made by an authority which is alleged to be incompetent for making such appointments, the Petitioners services could not have been terminated without opportunity to him. Moreover, the order terminating the petitioner's services does not say that the petitioner's services are being terminated on the ground that the person who appointed the Petitioner as a seasonal clerk was competent to appoint the Petitioner.

9. Learned counsel for the Respondents Sri Shashi Nandan has contended that the Petitioner was not appointed on the post of the seasonal clerk nor any appointment is contemplated under rule 365 of the Rules. Rule 365 contemplates only a contingency where the records of the Cooperative Union is not complete, the Registrar may depute somebody to complete, the records. Sri Shashi Nandan further contended that rule 366 further clarifies as to what will be the nature of work allotted to a particular person under rule 365 and the person so deputed will be entitled only to get the cost from the Cooperative Society for doing the work for which he has been deputed. Sri Shashi Nandan has contended that the Petitioner was never appointed on the post of a seasonal clerk," as such the Petitioner cannot claim any benefit of the Regulations. The work for which the Petitioner was appointed is over and the Petitioner has no right to continue thereafter on his post. No interference is called for in the matter in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India.

10. Sri Shashi Nandan has also relied on a decision of this Court in Civil Misc. Writ Petition No. 233303 of 1988 Gajendra Singh and another v. District Cane Officer. Bijnor and others", decided on 3-1-1989 wherein the Division Bench while interpreting rule 365 held that rule 365 does not contemplate any appointment being made by the Registrar. The Division Bench further held that the appointment of the seasonal clerk can only be made by the District Cane Service Authority and since the appointment was not made by the District Cane Service Authority, the Division Bench refused to interfere in the order terminating the petitioner's services by the Secretary, Cane Development Union. The argument in that case that a seasonal clerk having been appointed under rule 365 by the Registrar of the Cooperative Societies, his services cannot be terminated by the Secretary of the Cane Development Union was repelled by the Division Bench and the Division Bench refused to interfere in the matter on the ground that the appointment having been made by the Asstt. Registrar was wholly invalid and since the appointment itself was wholly invalid, the Petitioner has no right to continue on the post in question. The relevant portion of the Division Bench judgment is being reproduced below :

In the instant case, the petitioners' appointment was not made by the District Cane Service Authority. It is wholly an invalid appointment made by the Assistant Registrar. Since the appointment itself was wholly invalid, the Petitioners have no right to continue on the post in question. In the circumstances, they are not entitled to get any relief under Article 226 of the Constitution of India.

11. Before, examining the rival contentions it is necessary to examine as to what is the nature of appointment on which the Petitioner is claiming his right to continue on the post on the ground that petitioner's services have been terminated by the authority not competent to terminate the petitioner's services.

12. Before advertng to the appointment letter of the Petitioner, rules 365 and 366 of the Rules require a look:

365. The Registrar may, by an order in writing, direct a Co-operative society to get any or all of the account books and registers written up to such date, in such form and within such time as may be specified in the order. In case of inability or failure on the part of the society to do so, the Registrar may depute any person to assist the Secretary of the society to have the account books and registers written up.

366. In case where the account books have been written up with the assistance of the person deputed by the Registrar under Rule 365, the Registrar shall be competent to determine, with reference to the time and labour involved in the work, the expenses which the society concerned shall pay. In case of default in payment of the amount of expenses, the same shall be recoverable as arrears of land revenue, the society having in its. turn a right to claim the amount from the person or persons whose duty it was to maintain such accounts.

13. A reading of the aforesaid Rules makes it clear that under the aforesaid Rules, no appointment on a post is contemplated. Rule 365 only gives power to the Registrar to depute any person to assist the Secretary of the Society to have the account books and registers written up and Rule 366 provides that the Registrar will determine the expenses incurred for preparation of the" account books with reference to the time and labour involved in the work and the society will pay such expenses. The Secretary of the Society has to determine as to when the work for which such person is deputed to over and on such determination, the person so deputed can be informed that the work for which he was deputed is over. No formal order?" of termination is required to be passed under the aforesaid. Rules, neither any right has been conferred on the person so deputed to continue for the work he has been deputed.

14. In this background, if the appointment letter of the Petitioner is examined, the appointment letter clearly says that for completing the account books, the Petitioner was posted in Cane Development Union under Rule 365 in the pay scale of the seasonal clerk. The appointment letter does riot say that the Petitioner was appointed as a seasonal clerk. Neither such an appointment could have been made under Rule 365 of the Rules nor in fact the Petitioner was appointed as a seasonal clerk by the said letter. The whole-premise of the writ petition is misconceived claiming that the Petitioner was appointed as a seasonal clerk and his services have been wrongly terminated by the Secretary. The Petitioner was deputed to do a particular job and that too of assisting the Secretary to complete the records of the society. As soon as the records were completed, the Secretary could have. intimated the Petitioner that the work for which the Petitioner was deputed is over. The Petitioner cannot challenge the said order on the ground that the Secretary had no authority to terminate the petitioner"s services. Since the Petitioner was never appointed as a seasonal clerk, there was no occasion for terminating the petitioner"s services. The entire argument of the petitioner"s counsel is based on wrong edifice that the Petitioner was appointed as a seasonal clerk.

15. Regulation 2 (1) of the U.P. Cane Cooperative Service Regulations, 1975 defines "Member of Service" as to mean and include an employee of a Cane Union or the Federation, as the case may be. "Seasonal Clerk" has been classified in the Service under category "Seasonal Staff". Under Regulation 35 (2), District Cane Service Authority is the appointing authority of the seasonal clerks. Under Regulation 36 (2), the constitution of District Cane Service Authority is provided. The District Cane Officer is only an Ex officio Chairman of the District Cane Service Authority. Four other members from different sources are to be nominated by the Cane Commissioner for constituting the District Cane Service Authority. The Chairman has only a power to give casting vote. Otherwise all the decisions within the jurisdiction of the District Cane Service Authority are to be taken by the authority itself.

16. Regulation 40 of the Regulations provides that all appointments or promotions shall be made strictly in accordance with the list and in the order prepared by the Recruiting and Appointing Authority concerned at the time of selection either by direct recruitment or by preferment from the lower rank as the case may be.

17. A bare perusal of these provisions of the Regulations make it clear that even for the post of a seasonal clerk, the process of selection has to be held and only thereafter the direct appointment, can be made. No such selection was made, neither the appointing authority at any stage appointed the Petitioner as a seasonal clerk. In this background, the Petitioner cannot claim himself to be a member of the Service, as such is not entitled to urge that while terminating his services, certain provisions of the Regulations have been violated. The Petitioner is not entitled to claim any benefit of the Regulations as he was never appointed by the competent authority as a seasonal clerk and was not a member of the Service within the meaning "the Member of Service" as defined in the Regulations. The petitioner's submission in this regard is wholly misconceived and is hereby rejected.

18. The Petitioner's contention that under the General Clauses Act, only the Appointing Authority could have terminated the petitioner's services is misconceived for the reason that the Petitioner was never appointed as a seasonal clerk, as such there was no question of terminating his services. The Petitioner was only deputed to complete the account books of the Cane Development Union and was entitled for the emoluments which a seasonal clerk was getting. The Secretary of the Cane Development Union was competent to inform the Petitioner that his job is over. There is no illegality in the order passed by the Secretary informing the Petitioner that petitioner's job is over.

19. The next submission of the Petitioner that the order terminating the petitioner's services should have been passed after affording an opportunity to the Petitioner is also misconceived. Since the Petitioner was never appointed on any post, there is no question of affording any opportunity to the Petitioner before informing him that his job is over. The decision of the Hon'ble Supreme

Court in the case of Shrawan Kumar Jha (supra) relied upon by the Petitioner is not relevant for the present case. Even otherwise, the said decision does not lay down any law. In the circumstances of that particular case, the Supreme Court had interfered with on the ground that the order cancelling the appointment of the Petitioners should have been passed after affording them an opportunity.

20. Lastly, the petitioner's counsel has submitted that the petitioner's representation for re-appointment may be considered. Since the Petitioner was never appointed in Service, there is no occasion for giving a direction to consider re-appointment of the Petitioner. However, in the circumstances of the present case, if the Petitioner seeks appointment afresh, the same may be considered by the Respondents taking into consideration that the Petitioner has worked in the Cane Development Union for three seasons. This observation, however, does not confer any right on the Petitioner to get the appointment.

21. The writ petition is dismissed. In the circumstances of the case, the parties will bear their own costs.