

(2009) 04 AHC CK 0811

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30518 of 2006

Dilip Kumar Rai

APPELLANT

Vs

Superintending Engineer, Drainage Mandal, Ballia and
another

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Citation : (2009) 122 FLR 392

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Advocate : Siddhartha Varma, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard learned Counsel for the petitioner as well as learned Standing Counsel and perused the record also.

2. Here is a case of a Sinchpal (Irrigation Patrol), who has filed the present petition claiming before the Court that he was appointed as Sinchpal (Irrigation Patrol) on 1.7.1988 in Sarayu Nahar Khand-II, Balrampur Gonda. It appears from the record that after joining the department, a Service Book was also prepared by the office, which was duly verified on 16.4.1988. The Service Book of a Government Servant is prepared in order to maintain entire service history of the concerned employee under the relevant Financial Rules as per the Fundamental Rules of the relevant Financial Hand Book. The Court has also perused various pages of the Service Book of the petitioner. After preparation of the Service Book of an employee, it has to be duly verified by the competent authority, which in the present case has also been done on 19.7.1993 by the Executive Engineer, Sarayu Canal Division, Varanasi-Gyanpur. The entries recorded in the Service Book of the petitioner were duly verified by the subsequent Executive Engineers. The last entry in the Service Book of the petitioner is of 19th July, 1993. It is also apparent from the Service Book that the petitioner was granted increments, crossed Efficiency Bar, which means that his

services were found satisfactory at the relevant, his services were confirmed and he also received higher pay scale admissible to him.

3. Lateron, after about ten years, a controversy was raised regarding Induction of the petitioner in the irrigation department and the very appointment order on the basis of which he was appointed as Sinchpal was doubted. Petitioner's services were terminated vide order dated 1st of May, 1998. This order of termination was assailed by the petitioner by filing a Writ Petition No. 16311 of 1998, which was dismissed on the ground of availability of an alternative remedy. However, Special Appeal No. 500 of 1998, preferred against the said order, was allowed by the Division Bench of this Court vide its judgment dated 17th December, 1998. The Division Bench relegated the matter to the concerned Superintending Engineer to look into the matter and pass appropriate orders on the representation of the petitioner. The Executive Engineer, vide order dated 2nd September, 1999, had rejected claim of the petitioner giving rise to the cause of action to the petitioner to prefer another writ petition, that is Writ Petition No. 44031 of 1999, Dilip Kumar Rai v. Superintending Engineer, Drainage Mandal, Ballia in this Court. This Court, while disposing of the said writ petition vide judgment and order dated 9th November, 2005, has recorded some findings which have been perused by the Court. The Court had found that it was difficult to believe that a candidate, who had worked for several years, discharged his duties, functions and responsibilities of the post, could be branded as a person having worked on the post without issuance of a formal appointment order. The Court has also taken note of the fact that the petitioner had not only worked in the Department, but had also enjoyed all the benefits flowing therefrom including payment of salary, leave encashment etc. However, the concerned Executive Engineer was directed to hold a full-fledged enquiry in the light of the directions contained in the judgment of the Division Bench dated 17th December, 1998 within a stipulated period.

4. In pursuance of the order of the learned Single Judge, the Executive Engineer has dealt with the matter and disposed of the representation of the petitioner on 21st April, 2006, the only ground which has been taken, while rejecting the representation of the petitioner by the Superintending Engineer this time, was that the petitioner had failed to submit a copy of his initial appointment order issued to him by the Departmental authorities.

5. The petitioner has, thus, again approached this Court by means of filing the present petition by challenging the order dated 21st April, 2006. This Court, while entertaining this writ petition, had allowed opportunity to the respondents to file a counter affidavit. Stop order was also passed by this Court on 30th March, 2009 by issuing directions that if the counter affidavit will not be filed in that event, the Superintending Engineer, Drainage Mandal Ballia, District Ballia will appear in person before the Court to answer the averments made in the writ petition. Today, neither respondent No. 1 is present nor any counter affidavit has been filed, although the learned Standing Counsel has repeatedly requested the

Court to allow him some more time to enable him to pursue the matter and to file a counter affidavit.

6. This Court has delved with the record, gone through the two judgments passed by the Division Bench of this Court as well as by the learned Single Judge and also perused the materials placed before the Court. This Court is also of the similar view as has been expressed by the learned Single Judge while rendering the judgment dated 9th November, 2005 that here is a candidate, who was appointed in the Government Service in the year 1988. His Service Book was prepared and all the service benefits were also allowed to him. He was confirmed in the service and later on was also allowed the higher pay scale. It is the duty of the establishment section of the concerned Government Department, under the relevant Service Rules, to keep record of all the events relating to service of a Government servant by maintaining a proper Service Book, Personal File and Character Roll of a Government Servant. Even if the Government Servant did not produce the order of his initial appointment, the concerned authority ought to have seen the other materials, like, Service Book, Personal File, Character Roll, Yearly Establishment List of the employees, Provident Fund Account and other relevant records to ascertain genuineness of the appointment of an employee. It is noteworthy that in all Government Departments, the Budget is allocated by the State Government for payment of salary considering the strength of the employees of the concerned Government Department working in the Department. It is the duty of the Head of the Department, in the instant case, Engineer-in-Chief of the Irrigation Department or other subordinate officer like Superintending/Executive Engineers of the concerned Circles/Divisions to maintain a record of the employees on their respective establishments. The Executive Engineers must have knowledge that how many permanent employees, temporary employees, ad-hoc employees or Daily wagers/Muster Roll workers etc. are working under their respective divisions upon where they exercise administrative control. Each Division or Circle of the Irrigation Department has to seek budgetary allocation from the State Government for payment of salary to their employees according to the strength of their employees. The State Government on receiving such requisition reports from the concerned Departments allocates the Budgets for payment of salary according to strength of the employees of the concerned Government Departments and for other expenses.

7. For instance, when Provident Fund contribution of an employee is deducted from his salary and employer's contribution is added, it is the duty of the competent authority to maintain Provident Fund Account of the concerned employee. Likewise, in the case of Insurance deductions of an employee, it is also the duty of the competent authority to maintain the Insurance Account of that employee. This statutory exercise has to be carried out by the competent authority every month and every year in respect of each employee. The same procedure has to be followed in the case of maintaining Gratuity Account. These informations have to be furnished to the Controlling Authority of the concerned

Departments. In this case, while dealing with the case of the petitioner, the Superintending Engineer has forgotten to see these relevant materials on the basis of which one could have easily ascertained, whether the petitioner was an employee of the concerned Department or not. The question is if the petitioner was allowed to discharge duties, functions and responsibilities of the post for long ten years why after such a long time and on what basis a turn around has been taken by the authorities that he was never appointed. The initial appointment order ought to have been kept in the service record of the establishment section of the Department. It is no ones case either before the Division Bench or the learned Single Judge that the Service Book of the petitioner was forged and fabricated or prepared otherwise. In the present case, a complete Service Book duly verified by the concerned authorities, Divisional Engineers from time to time has been placed on record. This cannot be ignored.

8. Since neither any counter affidavit has been filed nor the respondent No. 1 is present in person before this Court to answer the averments made in the writ petition in pursuance of the order passed by the Court on 20th March, 2009, this Court has no option, but to apply the principles laid down by the Apex Court that in the absence of counter affidavit, the Court may proceed on the basis of assertions made in the writ petition which remained uncontroverted till date in view of the decision of Hon''ble Supreme Court in Choksi Tube Company Ltd. Vs. Union of India (UOI) and Others, , and Smt. Naseem Bano Vs. State of U.P. and others, In these cases, Hon''ble Supreme Court has laid down the law that where a plea taken is not controverted in reply, it amounts to admission of the plea.

9. In the circumstances, the order dated 21st April, 2006, Annexure-25 to the writ petition, is quashed. The Superintending Engineer, Drainage Mandal Ballia, District Ballia-respondent No. 1 is directed to call for the record, go through the Service Book, Character Roll, Establishment Lists of the relevant period, Provident Fund Account, Gratuity Account, Insurance record etc. He shall also see other relevant records including Establishment Register pertaining to the years 1988 to 1998 sent to the Head Office or the Controlling Authority by which budgetary allocations are made for making payment of salary from the State Government Exchequer. He will also peruse the lists of permanent/temporary employees, work charge/casual employees and daily wagers working in the relevant years. After completing this exercise an appropriate reasoned and speaking order shall be passed by the respondent No. 1 within one month from the date of presentation of a certified copy of this order. If this Court finds that the matter has been dealt with in a casual manner without going through the service records and other relevant materials, it may take appropriate action against the concerned authority for doing so and not taking the matter seriously. In the event, after proper scrutiny, if it is found that the Service Book of the petitioner is not forged or fabricated and his name finds place in other official records as indicated above, the petitioner shall be reinstated forthwith. While making the scrutiny of the Service Book and other records, the concerned authority shall also verify the signatures of the Assistant Engineers concerned,

taking into account Measurement Books (M. Bs) & other files, who had verified the Service Book as well as the signatures and stamps of the Superintending Engineers/Executive Engineers who had countersigned the Service Book of the petitioner between the period 1988 to 1998.

10. In view of the discussions made above, the writ petition succeeds and is allowed. The consequences shall follow.