
(2009) 10 AHC CK 0118
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18612 of 1992

Dinesh Kumar Paney

APPELLANT

Vs

District Judge, Ballia

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Citation : (2009) 10 AHC CK 0118

Hon'ble Judges : Sudhir Agarwal, J

Judgement

Sudhir Agarwal, J.—Heard Sri Ram Gupta Tripathi, learned counsel for the petitioner. Despite of the case having been taken in the revised list, none appeared on behalf of the respondent.

2. The order dated 11.5.1992, passed by the District Judge, Ballia (Annexure4 to the writ petition) has given rise to the present writ petition filed under Article 226 of the Constitution. The petitioner has sought a writ of certiorari for quashing the order dated 11.5.1992. He petitioner has also sought a writ of mandamus commanding the respondents to allow the petitioner to work with Sri Moti Lal, IV Addl. Munsif Magistrate, Ballia where the petitioner was working or to any other person as District Judge considers proper and not to cease the petitioner to work on the basis of the impugned order.

3. The petitioner claims to have been selected in a written test and interview conducted by a selection committee constituted by the respondent District Judge, Ballia in 1990 and regularized with effect from 3.12.1990. Prior to the above selection the Government Order dated 4.8.1990 created 85 temporary posts of Stenographers in the pay scale of Rs. 12002040 for Munsif Magistrates. It appears that the High Court by letter dated 6.9.1990 requested the Government to create more number of posts since number of Munsif Magistrates, Judicial Magistrates, Railway Magistrates and Metropolitan Magistrates was 228 besides Addl. Chief Judicial Magistrates and Addl Chief Metropolitan Magistrates, whose list was provided to the Government. The then District Judge on his own taking note of the said Government Order dated 4.8.1990 proceeded to engage

Stenographers, appointed the petitioner initially on ad hoc basis and attached him with Sri Moti Lal, IV Addl. Munsif Magistrate, Ballia. Thereafter he held a selection as said above and made the petitioner regular with effect from 3.12.1990. Vide impugned order dated 11.5.1992, the District Judge has directed the petitioner to cease to work on the ground that there is no order of High Court for providing facility of stenographer to Sri Moti Lal and a few other Munsif Magistrates working in the Ballia Judgeship. It is this order whereby the petitioner has ceased to work which is under challenge.

4. The petitioner has filed two supplementary affidavits bringing on record some further facts. Supplementary affidavit dated 26.7.2006 contain two documents, one is the order dated 3.12.1990 of the District Judge approving list of certain candidates found successful for appointment to the post of Hindi Stenographer in Ballia Judgeship, which included the name of the petitioner at Sl. No. 6. Second is the order dated 22.1.1992 allowing increments to the petitioner considering his service in continuity from the date of ad hoc appointment, i.e. 16.7.1990.

5. Another supplementary affidavit III is dated 8.9.2009 which has been filed in order to satisfy the query made by this Court as to how and in what manner the process of selection commenced, whether the vacancies were advertised and other relevant facts. The petitioner has categorically stated in paragraph 6 of the supplementary affidavit III that he came to know that a post of Stenographer is vacant in the Judgeship, hence, moved an application on 13.7.1990. Thereupon, pursuant to the Government Order dated 4.8.1990 (though the said Government Order was not in existence in July 1990, the then District Judge appointed him for two months on ad hoc basis as Hindi Stenographer. The said ad hoc appointment was extended from time to time. On 16.7.1990, the District Judge sent a letter to the District Employment Officer, Ballia requisitioning names of ten qualified persons to be appointed on the post of Hindi Stenographers and in pursuance to the said letter, District Employment Officer, Ballia sent names of ten persons. A written test was held on 16.9.1990 wherein 23 candidates appeared including the petitioner. The said 23 candidates included certain persons who were already working on ad hoc basis which included the petitioner, as well as, ten candidates whose names were recommended by the District Employment Officer and some others. Pursuant to the written test, candidates who were found successful were sought to be interviewed on 1.12.1990 and, thereafter the candidates who were recommended by the selection committee were approved by the District Judge by his order dated 3.12.1990. Pursuant to the said order, the services of the petitioner stood regularized with effect from 16.7.1990, i.e. the date of his initial appointment. He has also placed on record a copy of the order dated 3.12.1990 passed by the District Judge, Ballia whereby, pursuant to his selection, he ceased to be an ad hoc employee and was appointed temporarily to work as Hindi Stenographer in the pay scale of 12002040 on a vacant post on probation for three months along with other newly selected candidates. By another order dated 4.2.1990 passed by District Judge, Ballia, the service books of the newly selected Stenographers were directed to be prepared.

A copy of the Government order dated 17.4.1995 has been filed which converts 204 temporary post of Stenographer for Munsif Magistrate in the State of U.P., permanent.

6. Learned counsel for the petitioner submits that he was appointed on regular basis and having been selected and appointed in accordance with rules, he could not have been terminated by a simple order of termination passed by the District Judge Ballia impugned in this writ petition and the said order is patently illegal. He further submitted that at present there are 33 sanctioned post of Stenographer in Ballia Judgeship whereagainst only 28 persons are working and 5 posts are still vacant, therefore, there is no justification in terminating the petitioner particularly when pursuant to the interim order dated 29.5.1992 passed by this Court, he is still continuing.

7. I have heard learned counsel for the petitioner at length and perused the record.

8. It is really unfortunate that here is a case where an Officer holding a responsible post of District Judge has acted in such a disarrayed and whimsical manner and even without caring as to whether any sanctioned post was available or not and whether the selection is being made in accordance with rules or not. In his own pick and choose manner, firstly he made ad hoc appointments, continued them and, thereafter, in a so called selection, made appointments on probation claiming that appointments are being made against vacant posts, though sanctioned posts were not available. This illegality continued till this matter was checked and noticed by his successor in office in 1992, and noticing the discrepancies, he issued the order of termination.

9. The record apparently shows shocking state of affairs on the part of the then District Judge which has to be condemned outright.

10. Annexure 2 to the supplementary affidavit III is a copy of the Government Order dated 17.4.1995 which shows that Government Order dated 8.12.1989 created 65 temporary posts of Hindi Stenographer, Government Order dated 4.8.1990 created 85 such posts and Government Order dated 18.2.1991 created 54 posts on temporary basis and that is how the total number of posts of Stenographers came to 204. All such posts were made permanent with effect from 1.3.1995 by the Government Order dated 17.4.1995.

11. The petitioner claims his appointment against a vacant sanctioned post pursuant to the Government Order dated 4.8.1990. A copy of the aforesaid Government Order is Annexure 2 to the writ petition. A perusal thereof shows that it was issued by the Joint Secretary, U.P. Government and addressed to Registrar, High Court, Allahabad. While communicating the decision of the Government for creation of 85 temporary posts of Stenographer in the pay scale of 12002040, it further provided that these posts shall be allotted to only those Courts where the Presiding Officers have been posted and on such allotment, special pay of Rs. 25/ admissible to Munsarin Reader pursuant to the

Government Order dated 25.8.1976 shall stand abolished. The Government Order did not result in suo motu creation of posts of Stenographers in all the existing Courts of Munsif Magistrates etc. in various Judgeships but as a consequence of the said Government Order, first the High Court was to allot sanctioned posts of Stenographer to the concerned Courts of Munsif Magistrate etc. in various District Judgeships and only thereafter, the process of appointment could have been initiated by the concerned District Judges. The Government Order dated 4.8.1992 resulted in creation of posts of Stenographers in lump sum but since the number of Munsif Magistrates etc. was much larger in the State of U.P., the Courts wherein those posts would stand allocated was an exercise to be undertaken by the High Court. In absence of such exercise by the High Court, no District Judge at all, of his own, could have taken some posts out of the Government Order in his District and posted. That would be wholly without jurisdiction since no District Judge had such power. This is evident from Annexure 3 to the writ petition which is a letter dated 6.9.1990 sent by the High Court to all the District Judges. A perusal thereof shows that a list of 85 Addl. Chief Judicial Magistrates/ Munsif Magistrates/ Judicial Magistrates was circulated on 6.2.1990 but since most of the officers mentioned in the said list were promoted as Civil Judge or working as Civil Judge or Chief Judicial Magistrate, the High Court informed that there is a necessity of preparing a fresh list of 85 officers in order of seniority since only 85 posts of Stenographers were created by the Government so that the aforesaid facility may be provided to the concerned officers in order of seniority. The above letter also shows that the revised list sent by the High Court contains the names of 442 Magistrates, Judicial Magistrates, Railway Magistrates, Metropolitan Magistrates and Addl. Chief Metropolitan Magistrates.

12. The then District Judge, Ballia without looking to this, on his own proceeded to make first ad hoc appointment on just getting an application received from the individual candidate like the petitioner and, thereafter, adopted a very strange method of selection in order to camouflage the ad hoc appointees as well as some more as regularly selected candidates.

13. Admittedly, recruitment to the ministerial posts in District Judgeship is governed by Civil Courts Ministerial Establishment Rules, 1947 (hereinafter referred to as "1947 Rules") read with U.P. Rules for Recruitment of Ministerial Staff of the Subordinate Offices in Uttar Pradesh, 1950 (hereinafter referred to as "1950 Rules"). Rule 9 of 1947 Rules obliges a District Judge to first determine the vacancies likely to occur in the course of year and Rule 10 provides that application for recruitment shall be invited by the District Judge by advertising the vacancies in the news papers circulated in the locality concerned. Rule 6 of 1950 Rules provides for written test and oral test as well as typing test. From the facts placed on record by the petitioner, it is evident that neither any vacancy was advertised in the news paper as contemplated under Rule 10 nor there is anything to show that the District Judge determined the vacancies existing in the Judgeship whereagainst the selection was to be made. Appointment letter dated

3.12.1990 shows that all 8 candidates said to have been selected in the above selection were appointed as Stenographer. It means that at least 8 vacancies of stenographer on that day were available. Besides, the so called written test did not include written test in various subjects as provided in Rule 6 of 1950 Rules but it was only a short hand and typing test as is evident from Page 35 (N) of the supplementary affidavitIII. Learned counsel for the petitioner admitted that no written test in the subjects like simple drafting in Hindi, essay and precis writing in Hindi and simple drafting and precis writing in English besides oral test in general knowledge, personality etc. was held but only a short hand and typing test was held on 16.10.1990. Evidently, the alleged written test was also not held as per the statutory rules.

14. There is another interesting aspect of the matter. On the one hand, the then District Judge issued appointment orders of eight stenographers selected by him and appointed them on probation, but, later on, his successor District Judge, on 28.6.1991 passed an order observing therein that the eight candidates including the petitioner, who were appointed as per the select list dated 5.12.1990 and placed on probation for a period of three months, have satisfactorily worked, therefore, are retained in service and be given appointment in future according to their seniority against the post of Stenographer as and when fall vacant. This order of the then District Judge is on page 35(Q) of the supplementary affidavitIII filed by the petitioner. This evidently shows that no sanctioned and vacant post of Stenographer was available even on 28.6.1991, yet ignoring all canons of service jurisprudence, the then District Judge treated as if a person can be appointed on probation though vacancy or post is not available and can complete probation without there being a post at all. His strange order is like this:

"They are, therefore, ordered to be retained in service and given appointment in future according to their seniority on the post of as and when they fall vacant."

15. It is really pitiable that highest Judicial Officer in Subordinate Court i.e. the District Judges passed such type of order ignoring all known principles of service law. He actually acted in a wholly illegal manner. The officer had caused certain advantages conferred upto the persons who have come by simple pick and choose and not after a valid selection wherein the public at large had an opportunity of consideration for selection and appointment as guaranteed under Article 16 of the Constitution. The earlier illegality is bolted down by successor in office, who passed the impugned order when found that pursuant to the Government Order dated 4.8.1990, High Court had not allocated the post of Hindi Stenographers to three Munsif Magistrates including Sri Moti Lal, in whose Court the petitioner claims to have been attached to work.

16. It is also evident that an attempt has been made in this case to give colour of a valid selection and appointment so as to confer better rights upon the petitioner and probably for this reason when the writ petition was entertained by this Court, an ex parte interim order was passed. Now on deeper consideration of the matter and after looking to all the orders which the petitioner has placed on

record, it is evident that there was no selection at all in the eyes of law i.e. in accordance with the rules and whatever was done was only a colourable exercise so as to confer undue benefit upon certain chosen candidates and that is how the petitioner is also a beneficiary of such illegal acts.

17. These things have happened almost 18 to 19 years back and today, this Court can only express its anguish and displeasure knowing it well that on administrative side, the officers responsible for such illegal acts are immune from any action. It is really unfortunate what this Court has witnessed in this case. The highest judicial officers in the subordinate judiciary have proceeded in such a whimsical and arbitrary manner and their illegal action would have justified a stern disciplinary action against them but due to passage of long time, now it is not possible.

18. The learned counsel for the petitioner submitted that since he has continued for almost 17 years pursuant to the interim order passed by this Court, therefore, it would be extremely harsh at this fag end to tell him that his continuance in service is bad and hence this Court should permit him to continue. I am afraid that such relief is also impermissible in this case. This Court would be failing in its constitutional obligation of ensuring that the fundamental rights are not infringed at all when it comes before the Court that the fundamental rights have been infringed by the State authorities with impunity. This Court is under the oath to act and implement rule of law. It cannot permit continuance of its breach any more. This Court must straightway come forward for observance of the constitutional provisions and in particular fundamental rights instead of acting in a manner which would encourage such infringement further.

19. So far as the continuance of the petitioner under the interim order is concerned, it is well settled that no benefit can be claimed by a person based on an interim order. This aspect has been considered by a Division Bench of this Court in Smt. Vijay Rani Vs. Regional Inspectress of Girls Schools, RegionI, Meerut & others 2007 (2) ESC 987, wherein this Court having considered several authorities of the Apex Court and this Court, has observed as under :

"If a person has enjoyed certain benefits under the interim order, he/she would not be allowed to claim any further benefit due to change in law pursuant to enjoyment of certain benefit under an interim order of the Court. A benefit under the interim order is tentative and subject to final decision in the matter and cannot go beyond the final decision."

20. In view of the above discussion and considering the exposition of law as well as the statutory provisions applicable to this case, I do not find any illegality in the order impugned in this writ petition. The writ petition is devoid of merit. Dismissed.

21. Interim order, if any, stands vacated.

22. No costs.