

(2016) 07 AHC CK 0162

In the Allahabad High Court

Case No : Special Appeal Defective No. 452 of 2016

Director, U.P. Hindi Sansthan

APPELLANT

Vs

Jai Kishan Srivastava

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Citation : (2016) 9 ADJ 276

Hon'ble Judges : Arun Tandon and Sunita Agarwal, JJ.

Bench : Division Bench

Advocate : Navaneet Chandra Tripathi, Advocate, for the Appellant; C.S.C, Prabhakar Sinha, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

1. This intra court appeal has been filed against the judgment and order of the learned Single Judge dated 21.04.2016 passed in Writ Petition No. 41581 of 1996, whereby the writ petition filed by the petitioner challenging the order of termination dated 05.12.1996 passed by the Director, Niyukti, U.P. Hindi Sansthan, Lucknow has been allowed.

2. The learned Single Judge, after going through the records of the writ petition, the counter affidavit as also the supplementary counter affidavit filed by the department, arrived at a conclusion that the services of the petitioner had not been terminated by a simpliciter order of termination but is punitive in nature.

3. Disciplinary proceedings were initiated against the petitioner. The charge sheet and show cause notice were served. After the inquiry report was submitted before the disciplinary authority, a show cause notice was issued to the petitioner to which no reply was given by the petitioner. The disciplinary authority simply terminated the services of the petitioner on the ground that the petitioner's services are no more required in the institution. It is also recorded in the termination order that the petitioner would not get anything over and above the subsistence allowance received during the period of suspension. In lieu of notice,

one month salary was accorded.

4. The learned Single Judge, after recording that the termination order dated 05.12.1996 does not contain any reason nor refers to the disciplinary inquiry nor there is a finding of guilt, came to a conclusion that the order of termination cannot be legally sustained. The writ petition was, accordingly, allowed setting aside the order dated 05.12.1996 terminating the services of the petitioner. Further the petitioner was held entitled to reinstatement as also the service benefits admissible to him in accordance with law. It was kept open for the respondents to proceed fresh in accordance with law.

5. The counsel for the appellant assailing the order of the learned Single Judge submitted that the petitioner was given due opportunity during the course of disciplinary proceedings and he did not reply despite service of show cause notice. After the inquiry report the disciplinary authority has rightly terminated the services of the petitioner by noting in the order that his services are no more required for the reason that he was a temporary employee.

6. It is the submission of the learned counsel for the petitioner that since the petitioner has already retired on 30th June, 2016 and as such no inquiry can be initiated against him. The services of the petitioner are governed by U.P. Hindi Sansthan Karmachari Seva Niyamawali, 1983 framed in exercise of power under Rule 13 Sub-rule (5) of U.P. Hindi Sansthan (Amended up-to-date) Rules. It is submitted by the learned counsel for the petitioner-employee that these rules are framed governing services of the employees of U.P. Hindi Sansthan.

7. So far as payment of monetary benefits to the petitioner are concerned, learned counsel for the appellant submits that the petitioner employee was only a temporary employee and argued that he has never worked during the period of suspension. Therefore, on the principle of "No Work No Pay", the salary for the period of absence may not be accorded.

8. Having heard learned counsel for the parties and examined the records, we are of the considered opinion that the learned Single Judge has rightly held that the termination order dated 05.12.1996 cannot be legally sustained for the reason that it does not reflect the mind of the disciplinary authority.

9. We are not required to enter into the issue as to whether the petitioner was still the temporary employee or his services stood regularized, as was claimed by him, inasmuch as the Apex Court has held that even in respect of temporary employees, protection of Article 311(2) of the Constitution of India is available. Meaning thereby that if services are terminated on the ground of misconduct then holding of departmental enquiry would be necessary and that the order of termination must disclose reasons regarding the finding of guilt of the employee, in absence thereof the termination order can not be legally sustained.

10. We, therefore, see no reason to interfere in the order of the learned Single Judge.

11. Even if the argument of the learned counsel for the appellant is accepted that the services of the petitioner has only been regularised on 30.04.2016, the contention of the appellant that the services of the petitioner was temporary cannot be accepted.

12. Learned counsel for the petitioner employee states that the petitioner approached the employers for joining but he was not permitted to join after his writ petition was allowed on 21.04.2016. For a period of two months he kept on approaching the authorities but they did not relent. As the appellant employer did not comply with the order of Writ Court, the petitioner employee is entitled for reinstatement.

13. So far as the consequence of setting aside of the order of termination dated 05.12.1996 is concerned, we are of the opinion that in view of the fact that the petitioner has retired on 30th June, 2016 the relief of reinstatement has become redundant.

14. So far as the financial benefits are concerned, the petitioner employee is legally entitled for full salary with allowances as drawn on 21.04.2016 i.e. from the date of order passed by this Court till the date of superannuation dated 30th June, 2016. However, regarding entitlement from 05.12.1996 till 21.04.2014 i.e. for the period of suspension, we find that there are no rival allegations of gainful employment of the petitioner employee during the said period. We, therefore, hold that for the aforesaid period 50% of the admissible salary shall be paid to the petitioner employee.

15. So far as the direction given by the learned Single Judge giving liberty to the appellants employer to proceed fresh against the petitioner employee is concerned, we are of the considered opinion that the services of the petitioner employee are governed by the Rules 1983, which does not contain provision to proceed against the retired employee, like in the case of Government servants.

16. The judgment and order of the learned Single Judge is modified to the extent indicated above.

17. The appeal is disposed of.