

(2014) 11 AHC CK 0035
In the Allahabad High Court
Case No : Special Appeal (D) No. 921 of 2014

Hari Babu and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 109 ALR 290

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Pradeep Kumar Singh Baghel, J

Bench : Division Bench

Advocate : Akhilesh Chandra Shukla and Rajiv Tiwari, Advocates for the Appellant

Judgement

Dr. Dhananjaya Yashwant Chandrachud, C.J. and Pradeep Kumar Singh Baghel, J.
—The special appeal has been filed after a delay of 129 days as reported by the reporting section. We deem it appropriate in the interest of justice to condone the delay. The delay is, accordingly, condoned.

2. The special appeal arises from a decision of the learned Single Judge dated 26 May, 2014. In the writ petition, which was dismissed by the impugned order of the learned Single Judge, the appellants sought the following reliefs:

"(a) a writ, order or direction in the nature of certiorari quashing the Government Order dated 23.7.2012 issued by the State Government (Annexure No. 10);

(b) a writ, order or direction of a suitable nature commanding the respondents not to interfere in the working of the petitioners as Pump Attendant/Computer Operator/Chowkidar/Clerk-cum-Computer Operator under respective respondent-Nagar Panchayat, as detailed in the writ petition and to pay the petitioners their regular monthly emoluments on their respective posts regularly every month."

3. Admittedly, even according to the appellants, they were appointed on a contractual basis. Appellants 1 and 3 are stated to have been appointed on 22

April, 2006, appellant No. 2 was appointed on 20 September, 2007, while appellant No. 4 was appointed on 16 September, 2007. The first appellant is stated to have been appointed as a Tubewell Operator, the second appellant as a Computer Operator, the third appellant as a Chowkidar and the fourth appellant as a Clerk-cum-Computer Operator. Admittedly, all these appointments were purely contractual and were not referable to substantive vacancies or posts.

4. The grievance of the appellants emanated from a communication dated 23 July, 2012 of the Principal Secretary of the State Government to the Collectors, Municipal Commissioners and Municipal Bodies. From a perusal of the communication dated 23 July, 2012, it appears that a large number of appointments have been made unlawfully and without following the rules and for extraneous reasons. The State Government directed that such appointments should be brought to an end and called for information in regard to the appointments, which have been so made without following the due process of law. The appellants sought to challenge the communication dated 23 July, 2012 and prayed for an injunction against the respondents from interfering with their working in the respective contractual positions. The learned Single Judge has dismissed the writ petition by his judgment dated 26 May, 2014.

5. According to the learned Counsel for the appellants, relying on the communication dated 23 July, 2012, the appellants were orally informed that their services were likely to be dispensed with. However, it has also been submitted that the appellants' services have not been dispensed with and, as a matter of fact, they are continuing. This is indicating of the fact that there was really no cause of action or reason to invoke the writ jurisdiction. That apart, we find that there are several reasons why the learned Single Judge was justified in declining to exercise the writ jurisdiction under Article 226 of the Constitution. Firstly, each case would have to be evaluated in terms of the factual basis which is set up before the Court in support of the entitlement that is claimed. Admittedly, even according to the appellants, their appointments were purely of a contractual nature. Hence, they cannot claim a vested right to continue indefinitely. Secondly, the communication dated 23 July, 2012 reflects a policy decision of the State Government in regard to appointments, which were made unlawfully and without following the rules. It would be far-fetched to contend or claim that though an appointment has been made through the back door without following the rules and prescribed procedure, nonetheless the State Government is disabled from taking or directing necessary action in accordance with law. In either view of the matter, we see no reason to interfere with the considered view of the learned Single Judge. The special appeal shall, accordingly, stand dismissed. There shall be no order as to costs.