
(1983) 05 AHC CK 0032
In the Allahabad High Court
Case No : Writ Petition No. 349 of 1978

Jagdish Kant Dubey

APPELLANT

Vs

U.P.State Public Services Tribunal and others

RESPONDENT

Date of Decision : 20-05-1983

Acts Referred:

Constitution of India, 1950 — Article 311(1)

Citation : (1983) 05 AHC CK 0032

Hon'ble Judges : T.S.Misra, J

Final Decision : Allowed

Judgement

T.S. Misra, J.—This is a petition under Article 226 of the Constitution.

2. The facts giving rise to this petition are these.

3. The petitioner was declared successful at the Agricultural Extension Diploma Examination, 1968 and was approved for temporary appointment as a member of S. A. S. group III in the scale of pay Rs. 1206150EB6180EB220 plus usual allowances by the Joint Director, Agricultural (Administration) vide his order No. AC/38034002/1111 (Apptt) dated 2271968. He was allotted to work under Deputy Director, Agriculture, Faizabad. A copy of the said order is annexure no. 1 to the writ petition. The Deputy Director, Agriculture, Faizabad, in consequence, passed an order No. 4386/EI1159 dated 1381968, a copy of which is Annexure no. 2 to the writ petition whereby he ordered that the petitioner was posted to work under the District Agriculture Officer, Sultanpur. It was further made clear in the said order Annexure no. 2 that the formal appointment orders will be issued by the District Agriculture Officers concerned in accordance with the Planning (A) Department's G. O. No. 3084/XXXVANES/58, dated 15661 on the usual terms and conditions. The District Agriculture Officer, in his turn, passed the order dated 1981968 a copy of which is Annexure no. 3 to the writ petition, which reads as under :

?Sri Jagdish Kant Dubey, M.S.A.S Gr. Ill appointed for this district by the Deputy

Director of Agriculture Faizabad Region, Faizabad in the scale of Rs.120 61808220 per month plus dearness allowance as admissible under rules is hereby appointed and posted at Akhand Nagar Block.?

4. The petitioner served under the District Agriculture Officer, Sultanpur, and thereafter he was placed under the District plant protection Officer, Sultanpur, in the year 1975. He served there till his services were terminated on 14/4/1977. The petitioner impugned the said order of termination of his employment, before the U.P. Public Services Tribunal but without success. He filed a review petition which was also rejected. He has now moved this petition under Article 226 of the Constitution seeking the quashing of the order dated 14/4/1977 as also the orders of the Public Services Tribunal, Annexures 7, 8 and 10 respectively:

5. The petition has been opposed and two counter affidavits have been filed, one by Nand Lal Soni, Junior Clerk, Plant Protection Office, Agriculture Department, Sultanpur, and the other by Divakar Upadhyaya, Plant Protection Officer, Agriculture Department, Sultanpur.

6. In para II of the petition, it has been averred that the petitioner was confirmed by the Director of Agriculture by his order dated 6/5/1976 with effect from 1/11/1974. Hence his services could not be terminated in the manner the same has been done. Further it has been averred that the "order terminating the employment of the petitioner was passed" by the Plant Protection Officer, who was not the appointing authority and was, in fact, subordinate in rank to the appointing authority. It would be seen that the Tribunal has not accepted both the said contentions. I would deal with these two points in serial.

7. The first point urged on behalf of the petitioner is that he was confirmed on the post by an order of the Director of Agriculture, vide the averments made in para 11 of the petition. This fact has been denied by Divakar Upadhyaya in para 13 of his counter affidavit which is in reply to para 11 of the writ petition. It has been said that the work and conduct of the petitioner was not satisfactory and he was not found fit and suitable for being confirmed and made permanent. It has been categorically stated in that paragraph of the counter affidavit, as a fact, that the petitioner was not confirmed. No rejoinder affidavit has been filed to controvert this allegation. In the absence of any document, I am not prepared to accept that the petitioner was confirmed on the post in question.

8. The second contention of the petitioner was that the order of termination was passed by an authority who was not competent to pass the same and that he was subordinate in rank to the authority who had appointed him. For appreciating this contention it would be appropriate to refer to Annexures No. 1, 2 and 3 to the writ petition. A perusal of Annexure no. 1 would show that it is an order passed by the Joint Director of Agriculture (Administration). He had said in his order that after being declared successful at the Agricultural and Extension Diploma Examination, 1968, the candidates mentioned in the order, were approved for temporary appointments in the scale of pay of Rs. 120 6

150EB6180EB8220 plus usual dearness allowances, as admissible under the rules and orders of Government issued from time to time, against the existing vacancies under the Regional Deputy Directors, of Agriculture. In para 2 of the order, it has been said that the above officers will please allot these candidates to the District Agriculture Officers of their regions according to the number of existing vacancies in their districts for issuing their appointment and posting orders in accordance with the Planning (A) Department's G.O. No. 3084/XXXVANES/58 dated 15.6.61 on the usual terms and conditions. The Deputy Director of Agriculture,, Faizabad Region, Faizabad, in Annexure no.2, clearly stated that the petitioner was posted under the District Agriculture Officer, Sultanpur. He also said that the formal appointment orders will be issued by the District Agriculture Officer concerned in accordance with the Planning (A) Department's G.O.No.3084/XXXVANES/58, dt.15.6.61, on the usual terms and conditions. The District Agriculture .Officer, Sultanpur, in his order (Annexure no. 3 to the writ petition), stated that Jagdish Kant Dubey (petitioner) M.S.A.S. Grade III, appointed for this District, by the Deputy Director of Agriculture, Faizabad Region. Faizabad, in the scale of Rs. 12061808220 per month plus dearness allowance as admissible under rules, is hereby appointed/and posted at Akhand Nagar Block. The aforesaid G.O. dated 15.6.61 has been filed as Annexure no. 1 to the counter affidavit of Shri Hand Lal Soni. The said G.O. mentioned the authorities who were the appointing authorities of the various incumbents. Clause, (i), in the heading "A APPOINTING AUTHORITY" being relevant, is, extracted hereinbelow :

?The appointing authority in respect of the Group III posts which refer to posts carrying the pay scale the minimum pay of which does not exceed Rs. 75 P.M. will be the district level departmental officers i.e., District Cooperative Societies/ District Cooperative Officer, District Agriculture Officer, as the case may be?

So, for a post carrying the pay scale the minimum of which does not exceed Rs. 75 in Group III, the District Agriculture Officer was the appointing authority, in terms of the said G. O. dated 15.6.61. In the case in hand, the minimum scale of pay of the petitioner was Rs. 120. This being the position, the District Agriculture Officer could not be the appointing authority for a member of M.S.A.S. Group III in the pay scale of Rs. 12061808220. The petitioner was appointed in the pay scale of Rs. 12061808220. The District Agriculture Officer was, therefore, not the appointing authority of the petitioner. That is why the order Annexure no. 3 passed by the District Agriculture Officer states that Jagdish Kant Dubey (petitioner) was appointed by the Deputy Director of Agriculture. This fact also further finds strength from Rule 5 of the Rules regulating appointment to and the conditions of service of the subordinate agriculture service which deals with "Recruiting Authority" which reads as under;

?Subject to the general control of the Government, recruitment to the service whether in substantive or in officiating vacancies or to temporary posts shall be made by the Director of Agriculture, Uttar Pradesh. Provided fiat he may at his

discretion delegate his powers of recruitment to the principal of the Agricultural College, the Agricultural Engineer or any other officer subordinate to him not lower in rank than a Deputy Director.?

9. The recruiting authority under Rule 5 is the Director of Agriculture and if he intended to delegate his powers he could delegate it only to the Deputy Director. Under this Rule also, the District Agriculture Officer would not be the appointing authority. The petitioner's appointing authority was, therefore, the Deputy Director of Agriculture, Faizabad Region, Faizabad. The impugned order, Annexure No. 7. has been passed by the Plant Protection Officer, Sultanpur. Shri Divakar Upadhyaya, the present Plant Protection Officer has stated in his counter affidavit that the District Plant Protection Officer is also the District Level Officer and equivalent in rank to that of District Agriculture Officer. Hence according to him, the District Plant Protection Officer could validly terminate the services of the petitioner. In this connection he has referred to G.O. No. A8378/XII(i)1973 dated August 27, 19 3 by which the authority for appointment of officials of Subordinate Agriculture Service, Group III, was delegated to the District Level Officers of different branches under the Agriculture set up. The copy of the said G.O. is Annexure no. 3 to his counter affidavit. The learned counsel for the State, relying on this G.O. submitted that since the Plant Protection Officer was delegated with the powers of the appointment and was, as such, appointing authority of the petitioner at the relevant time, he was competent to pass the order of termination, in view of the G.O. dated 5.11.1958, Annexure no. 4.

10. It is admitted that the petitioner was appointed in the year 1968. Hence it is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding a civil post. In the case of Krishna Kumar v.. Divisional Assistant Electrical Engineer and others (1979 All India Services Law Journal, Supreme Court, 532) defending the legality of the order of removal, it was urged on behalf of the Government that the power to make appointments to the post of the Train Lighting Inspector was delegated to certain other officers including Divisional Assistant Electrical Engineer, hence he would have the power to remove any person from that post. This contention was not accepted. Rejecting that contention the Supreme Court laid down as under:

?Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the person holding, for example, a civil post under the Union Government that he shall not be removed or dismissed by an authority subordinate to that which appointed him. The subsequent authorization made in favour of respondent in regard to making appointments to the post held by the appellant cannot confer upon respondent 1 the power to remove him. On the date of the appellant's appointment, as a Train Lighting Inspector, respondent 1 had no power to make that appointment. He cannot have, therefore, the power to remove him.?

11. In the instant case, on the date of the appointment of the petitioner, the District Agriculture Officer, as pointed out hereinabove, had no power to make the appointment on the post of M.S.A.S. Group III in scale of Rs. 12061808220. The subsequent authorization made in favour of the District Agriculture Officer or District Plant Protection Officer cannot confer upon them the power to remove the petitioner. The order terminating the employment of the petitioner which was passed by the Plant Protection Officer was, therefore, incompetent, without jurisdiction, illegal and invalid. The Public Services Tribunal fell in error in holding otherwise.

12. In the result, the petition is allowed with costs. The order dated 14.4. 1977 a copy of which is Annexure no. 7 to the writ petition, terminating the services of the petitioners quashed. The order of the public Services Tribunal dated 27.9.1977 passed on the reference Claim Petition, as also the order dated 28.10.1977 passed on the Review Petition, Annexures no. 8 and 10 respectively are also quashed.

(Petition allowed)