

(2012) 01 AHC CK 0538

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61193 of 2007

Javed Akhtar

APPELLANT

Vs

State Public Service Tribunal and Others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Companies Act, 1956 — Section 617

Uttar Pradesh Retrenched Employees Rules, 1967 — Rule 2

Citation : (2012) 1 ADJ 726

Hon'ble Judges : Sheo Kumar Singh, J; Pankaj Naqvi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon'ble Pankaj Naqvi, J.—Heard Shri Anil Srivastava, learned counsel for the petitioner and the learned standing counsel appearing for the State respondents.

2. Challenge in this writ petition is essentially to an order dated 21.9.2007 (Annexure 20 to the writ petition) passed by the State Public Services Tribunal, Lucknow rejecting the claim petition filed by the petitioner for issuing appropriate orders/directions to the respondents for considering his claim for regular appointment/absorption as clerk in Collectorate, Agra against the vacant post of clerk and also a writ of mandamus commanding the State Government to grant suitable employment to the petitioner under the State Government.

3. The facts, in brief, are that the petitioner was employed from 1.8.1991 to 31.12.1992 and second term from 6.7.2000, which ended on 31.5.2001 by the census department under the Central Government. Once the census operation had come to an end the services of the petitioner were dispensed with and pursuant to the direction of this Court in Civil Misc. Writ Petition No. 21598 of 2001 the representation preferred by him was rejected on 27.6.2001 by the District Magistrate, Agra, which compelled the petitioner for filing Claim Petition No. 938 of 2001, which was finally decided on 20.6.2002 by the Tribunal and accordingly, the Tribunal quashed the order of the District Magistrate, Agra dated

27.6.2001 and directed the respondents to consider the representation for absorption of the services of the petitioner afresh and in the light of law of absorption made in paragraph 7 of the judgment dated 20.6.2002 within a period of two months. Once again, the District Magistrate, Agra rejected the representation of the petitioner on 2.9.2002 holding that the petitioner cannot claim any right of absorption in view of the fact that they were engaged on contract basis for a specific period on a fixed remuneration of Rs. 900/- per month and upon completion of the census operation his services have rightly been dispensed with, as he was appointed for a specific purposes and, therefore, he does not fall within the definition of "retrenched employee" so as to absorb his services either under the provisions of the U.P. Retrenched Employees Recruitment Rules, 1967 (for short 1967 Rules) or U.P. Absorption of Retrenched Employees of Government or Public Corporation in Government Service Rules, 1991 (hereinafter referred to as 1991 Rules). The petitioner, being aggrieved with the aforesaid order of the District Magistrate, Agra, filed Claim Petition No. 466 of 2003 before the State Public Services Tribunal, Lucknow, which has been dismissed, hence the present writ petition.

4. The contention of the learned counsel for the petitioner is that the view taken by the District Magistrate, Agra and the Tribunal is perverse and illegal in law as the petitioner was entitled for absorption under the aforesaid rules, as against the vacant post of clerk in Collectorate, Agra.

5. Per contra, the submission of the learned standing counsel is that considering the nature of engagement and transient nature of services rendered by the petitioner for specific period for specific purpose and that too under a contract on a fixed remuneration of Rs. 900/- per month cannot confer upon the petitioner any right to claim for absorption either under the 1967 Rules or for that matter under 1991 Rules and, therefore, the impugned orders do not suffer from any legal infirmity.

6. The Tribunal has examined the claim of the petitioner threadbare and has recorded a finding that the petitioner cannot be a "retrenched employee" within the meaning of Rule 2 (b) of 1967 Rules, which is quoted hereunder:

"retrenched employee" with the grammatical variation and cognate expression, means a person, who was employed in any service or on any post under the rule making control of the Governor, whether in a substantive, officiating or temporary capacity and had served continuously for a period of not less than one year, and those services are whether before or after the commencement of those rules, terminated, or are certified as liable to termination but does not include a person who was appointed on ad hoc basis.

Explanation.--(1) For the purpose of these rules, a person not appointed in accordance with the procedure prescribed in the recruitment rules or orders applicable to the service or post concerned shall be deemed to have been appointed on ad hoc basis.

7. The Tribunal has rightly observed that before a person is held to be a "retrenched employee" within the meaning of Rule 2 (b) of 1967 Rules, it will have to be established that such a person was employed in any service or on any post under the rule making control of the Governor., whether in a substantive, officiating or temporary capacity and that he had served continuously for a period not less than one year and those services are whether before or after the commencement of these rules terminated or are certified as liable for termination, but does not include a person, who was appointed on ad hoc basis. The condition precedent for making a person a "retrenched employee" within the meaning of the aforesaid definition is that his earlier appointment has to be under the rule making control of the Governor. Even otherwise, there is no material on record to indicate that the engagement of the petitioner was either in a substantive or officiating or temporary capacity. Period of service, which is mentioned in the rule is dependant upon the earlier two conditions, namely, an appointment, being under the rule making power of the Governor and also such an appointment has to be either substantive or officiating or in a temporary capacity and, therefore, the period of service alone will not be sufficient enough to confer upon a person a status of "retrenched employee" within the meaning of 1967 rules. At no point of time the petitioner was an employee of the State Government, rather his services had been rendered only for the Central Government and, therefore, the District Magistrate, Agra and the Claims Tribunal in their judgments have rightly rejected the claim of the petitioner.

8. The submission of the learned counsel for the petitioner is that 27 posts of seasonal A.W.V.N, have been illegally filled up by the respondents and, therefore, he be also extended the same benefit of absorption/appointment. The District Magistrate, Agra in his order dated 29.2002 has also discussed this aspect of the matter and has held that such persons were given appointment pursuant to the direction of the writ Court. Be that as it may, it is settled position in law that even if any illegal absorption has been made, that would not confer any right upon the petitioner to claim, that the same benefit be also extended in his case, as he cannot plead equality with illegality.

9. The issue as to whether the case of the petitioner for absorption under 1991 Rules would be applicable or not, it would be apt at this stage to quote the following provisions of The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service Rules, 1991, which were published in the Gazette on 19.8.1991. Rule 2 (b) defines "Public Corporation"; Rule 2 (c) defines "retrenched employee".

2(b) "Public Corporation" means a body corporate established or constituted by or under any Uttar Pradesh Act except a University or Local Authority constituted for the purpose of Local Self Government and includes a Government Company within the meaning of Section 617 of the Companies Act, 1956 in which the State Government has prepondering interest;

(c) "retrenched employee" means a person who was appointed on a post under

the Government or a public corporation on or before October 1, 1986 in accordance with the procedure laid down for recruitment to the post and was continuously working in any post under the Government or such corporation upto the date of his retrenchment due to reduction in, or winding up of, any establishment of the Government or the public corporation, as the case may be and in respect of whom a certificate of being a retrenched employee has been issued by his appointing authority

10. Thus, a perusal of the aforesaid definitional clause would reveal that before a person can claim himself to be a "retrenched employee", he will have to establish that he was appointed on a post under Government or Public Corporation on or before October 1, 1986 in accordance with the procedure laid down for recruitment to the post and was" continuously working on any post under the Government or such Corporation up to the date of his retrenchment.

11. Admittedly, employment of the petitioner is prior to the aforesaid cut off date i.e. 1.10.1986 neither he was working against a post under the Government or Public Corporation nor was he appointed in accordance with the procedure laid down for recruitment to the post and this being so, the petitioner cannot stake any claim for absorption as "retrenched employee" under the aforesaid 1991 Rules. Even otherwise, the Census department where the petitioner have worked, is not a "public corporation" within the meaning of Rule 2 (b) of 1991 Rules.

12. We find that this issue had also cropped up before the learned Single Judge of this Court in Civil Misc. Writ Petition No. 23649 of 2008, Ajit Raizada and Others Vs. State of U.P. and Others, wherein this Court having considered the entire legislative history of 1967 Rules and 1991 Rules and the Government Orders connected therewith had rightly held that such persons cannot claim any right of absorption in the teeth of the constitutional scheme. We are in full agreement with the view taken by the learned Single Judge in the aforesaid writ petition.

13. The writ petition lacks merit and is hereby dismissed. No order as to costs.