

(2010) 05 AHC CK 0389
In the Allahabad High Court
Case No : S.A. No. 343 of 2010

Jitendra Prakash Pandey

APPELLANT

Vs

Board of Revenue, Lucknow and Others

RESPONDENT

Date of Decision : 27-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 2 LLJ 701

Hon'ble Judges : Ritu Raj Awasthi, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ritu Raj Awasthi, J.—Heard Dr. L.P. Misra, learned Counsel for the Appellant as well as Ms. Sangeeta Chandra, appearing for the State and perused the record.

With the consent of parties" counsel, the present special appeal has been finally heard.

2. This special appeal has been filed challenging the judgment and order dated February 17, 2010, passed by the learned single Judge, dismissing the Writ Petition No. 3 (S/S)/1996 and connected Writ Petition No. 3519 (S/S)/2008, Jitendra Prakash Pandey v. State of U.P. and Ors. The facts of the case, in brief, are that the Appellant was engaged on daily wage basis as Class-IV employee w.e.f. September 1, 1994 in the establishment of the opposite parties i.e. Board of Revenue, Lucknow. He was not allowed to perform his work w.e.f. November 17, 1995. Feeling aggrieved he filed Writ Petition No. 3 (S/S)/1996, in which this Court had passed an interim order dated January 3, 1996. On the basis of the said interim order, the Appellant-Petitioner continued to work. However, suddenly the service of the Appellant-Petitioner was terminated by order dated April 21, 2008, against which he filed Writ Petition No. 3519 (S/S)/2008. By the impugned judgment and order, both the aforesaid writ petitions were heard together and dismissed on February 17, 2010.

3. Dr. L.P. Misra, learned Counsel for the, Appellant has vehemently submitted that a number of persons having been engaged as Class-IV employees on daily wage basis subsequent to the engagement of the Appellant, have been retained and regularized in the, service in the establishment of the Respondents," but the Appellant has been subjected to the hostile discrimination and thereby the Appellant's right of equality guaranteed to him under Articles 14 and 16 of the Constitution of India, has been violated and this crucial aspect of the matter has been ignored by the learned single Judge while passing the judgment and order.

4. It has been submitted that since the impugned judgment has been passed in the absence of the counsel conducting the writ petition, therefore, the grounds taken in the writ petition could not be raised effectively before the learned single Judge and the impugned judgment has been passed only on the basis of the submissions made by the learned Standing counsel.

5. It is urged that under the U.P., Regularization of Adhoc Appointments (On posts outside the purview of the Public Service Commission) Rules, 1979, as amended by U.P. Regularization of Ad hoc Appointments (on posts outside the purview of the Public Service. Commission (3rd Amendment) Rules, 2001, seven persons have been regularized by the Respondents, out of which three persons were appointed subsequent to the appointment of the Appellant as daily wage as Class-IV employee and this crucial aspect of the matter could not be considered by the learned single Judge while passing the impugned judgment and order.

6. He further submitted that in identical circumstances, 12 persons had filed Writ Petition No. 2638 (S/S)/2000, Harsh Pal Bisht and Ors. v. State of U.P. and Ors. in which this Court was pleased to pass an interim order dated May 25, 2001 and on the basis of the said interim order the said persons are working till date and out of the said 12 persons, the persons mentioned at Sl. Nos. 9 to 12, are juniors to the Appellant as they were appointed on Class-IV posts on daily wage basis subsequent to the appointment of the Appellant.

Dr. L.P. Misra, has further submitted that Writ Petition No. 3 (S/S)/1996 and Writ Petition No. 3519 (S/S)/2008, were filed on altogether different grounds with different prayers. The Writ Petition 3(S/S)/1996, was against the oral termination in which this Court had granted interim order dated January 3, 1996, in favour of the Appellant while the Writ Petition No. 3519 (S/S)/2008, was against the illegal termination of the Appellant-Petitioner from service which, apart from being stigmatic and punitive in nature, was passed without holding any oral inquiry and even without issuing any charge sheet. The allegations contained in the impugned termination order were not relatable to the Appellant's discharge of duties.

7. It is contended that the appointment of the Appellant-Petitioner on daily wage basis as a Class-IV employee was legal and valid after having been conducted under the due process of selection, therefore, the Appellant-Petitioner would not have been ousted from the service in such a fashion as has been done in the

case of the Appellant. Moreover, the persons employed as Class-IV employees on daily wage basis by adopting similar procedure as was done in the case of the Appellant-Petitioner, have been allowed to continue in the service.

8. Ms. Sangeeta Chandra, learned Addl. Chief Standing counsel, submitted that the Appellant-Petitioner was engaged on daily wage basis against certain work and as such he has No. right to claim continuance and regularization in the service. The Appellant-Petitioner was allowed to work in compliance of the interim order dated January 3, 1996. However, the work and conduct of the Appellant-Petitioner was not proper and as such he was found guilty of certain serious misconducts due to which the opposite party No. 2, the Commissioner and Secretary, Board of Revenue had come to the conclusion that it is not in the Government interest to allow such daily wage employee to continue in the service, therefore, the service of the Appellant-Petitioner was terminated by order dated April 21, 2008.

9. Ms. Sangeeta Chandra has vehemently submitted that in view of the law laid down by the Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and Official Liquidator Vs. Dayanand and Others, which also have been relied by the learned single Judge in the impugned judgment, the special appeal is liable to be dismissed.

10. We have considered various submissions made by the counsel for the parties. The appointment of the Appellant on daily wage basis as a Class-IV employee was made w.e.f. September 1, 1994. The Appellant had" continuously worked till November 17, 1995 when by oral order his service was terminated. He had filed Writ Petition No. 3 (S/S)/1996, challenging the said oral termination in which this Court by order dated January 3, 1996, had provided that the Appellant-Petitioner shall be permitted to continue on the same post on which he was working or any other equivalent post and shall be paid his wages as was being paid earlier. Pursuant to the order dated January 3, 1996, the Appellant-Petitioner was allowed to work on daily wage basis and he was deputed in the FAX office dealing with the work of receiving and sending FAX messages under the FAX Assistants.

11. Admittedly, the engagement of the Appellant-Petitioner on daily wage basis was after the cut off date June 29, 1991, as provided under the U.P. Regularization of Ad hoc Appointments (on posts outside the purview of the Public Service Commission (3rd Amendment) Rules, 2001, and as such he was not entitled to get the benefit of the regularization under the aforesaid Rules, 2001.

12. However, from the material on record, it is evident that a number of persons who were engaged as Class-IV employees on daily wage basis subsequent to the engagement of the Appellant-Petitioner, were allowed to continue on daily wage basis, whereas the Appellant was not being allowed to work.

It was pleaded by the Appellant that his service was terminated due to prejudice, animosity and mala fide intention of certain officers/officials in the Board of

Revenue. The said pleadings were not disputed in the counter affidavit. It is the specific case of the Appellant that a number of persons having been engaged as Class-IV employees on daily wage basis subsequent to the engagement of the Appellant, have been retained and regularized in the service in the establishment of the Respondents.

13. It is specifically pleaded that the appointment of the Appellant was legal and valid after having been conducted under the due process of selection.

We find force in the arguments of the learned Counsel for the Appellant that this crucial aspect of the matter has not been dealt with by the learned single Judge in the impugned judgment and order.

14. There is No. denying fact that the Writ Petition No. 3519 (S/S)/2008, was filed by the Appellant-Petitioner, challenging the termination order dated April 21, 2008. A perusal of the same clearly goes to show that the service of the Appellant-Petitioner has been terminated due to certain alleged misconduct which are stigmatic in nature. The said impugned order was passed without giving any show cause notice and without affording any opportunity of hearing to the Appellant-Petitioner. The learned single Judge observed that since the Writ Petition No. 3 (S/S)/1996, has been dismissed on merits and as such the Writ Petition No. 3519 (S/S)/2008, whereby the Appellant-Petitioner has challenged the order of removal has lost its efficacy and was accordingly dismissed.

15. We are of the considered opinion that certain material facts, as observed above, have escaped the attention of the learned single Judge and, therefore, it would be expedient in the interest of justice that the matter may be remanded back to the learned single Judge for reconsideration and decision afresh on merit.

16. In view of the above, the special appeal is allowed. The impugned judgment and order dated February 17, 2010, is hereby set aside. The Writ Petition No. 3 (S/S)/1996 and Writ Petition No. 3519 (S/S)/2008, are remanded back to the learned single Judge, with a request to decide the same on merits expeditiously.

17. It is made clear that we have not addressed ourselves on merit of the case and observations made in this regard would not influence the decision in the writ petitions.