
(2003) 01 AHC CK 0124
In the Allahabad High Court
Case No : Special Appeal No. 58 of 2003

Jitendra Singh

APPELLANT

Vs

District Judge and Another

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Citation : (2003) 2 AWC 1168(2) : (2003) 2 UPLBEC 1065

Hon'ble Judges : Ghanshyam Dass, J;A.K. Yog, J

Bench : Division Bench

Advocate : V.K. Singh and M.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Yog and Ghanshyam Dass, JJ.—We have perused the impugned Judgment and order dated 19.12.2002 passed by learned Sessions Judge in Writ Petition No. 54389 of 2002 giving rise to the present special appeal. By means of the said judgment, aforesaid writ petition has been dismissed.

2. We have perused the record of the Special Appeal, which includes copy of the writ petition as well.

3. Petitioner was appointed on the post of Stenographer in Fast Track Court in the Judgeship of Etah on 27.8.2002 ; copy of appointment letter has been filed as Annexure-1 to the affidavit filed in support of the Stay application. The appointment letter, particular page 18 to the paper book, itself mentions : "You are hereby temporarily appointed as Steno.....for a period till the Fast Track Courts run. It is made clear that as soon as Track-Courts cease to run, your services shall also cease accordingly....."

4. The appointment letter itself mentions that appointment of the petitioner was "temporary". It also indicates that the appointment of the petitioner was for fixed term i.e., coexisting with the Fast Track Court.

5. The impugned judgment dated 27.11.2002, passed by the concerned District

Judge, takes cognizance of the complaint made to the then Hon'ble Administrative Judge by one S. K. Srivastava, as a consequence of which an enquiry was conducted on 20.9.2002 and the then Special Judge (SC and ST Act) Etah, required the petitioner to undergo a test for assessing his skill as Stenographer and the said "test" revealed that he was not suitable/competent to hold the post.

6. The impugned order further takes notice of the fact that the then District Judge, Sri Brijendra Singh, ignoring the said report of the then Special Judge (Sri Abhimanyu Kumar) appointed the petitioner.

7. Another circumstances, creating serious doubt about the "fairness" in the matter is that the then District Judge Sri Bijendra Kumar made this appointment only 14 days before his retirement. The impugned order contains serious allegations against the then District Judge--Sri Bijendra Singh.

8. We have no doubt, considering the circumstance mentioned in the impugned order, that the then District Judge was guilty of meddling and tampering the record which warranted serious action against him for the charge of gross abuse of his authority/office.

9. The District Judge, Etah, while passing the order, did consider the contention of the petitioner that he was given no notice before passing the Impugned order. "Ex dolo malo non, oritur octio"--A right of action does not arise out of fraud is the answer to the aforesaid contention of the petitioner.

10. Concept of fairness in administrative action, at one stage in the past became an issue and subject matter of considerable judicial debate but there has been total unanimity on the basic element, viz., it is dependent upon facts and circumstances of each case pending scrutiny before a Court and that no straightjacket formula can be laid down with precision.

11. Menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities. In the cases of K. Karunakaran Vs. State of Kerala and Another, and United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, , the Apex Court has reaffirmed that fraud and justice never dwell together--"Fraus et jus nunquam cohabitant".

12. There is another principle, i.e., no one shall take advantage of his own wrong "nel prenora advantage defendant son tort demesen".

13. It is noted in the impugned order that the test report was taken out of record by the then District Judge. In such a situation, Court will be justified to proceed on the basis that everything should be presumed against the wrong doer : viz. the test report was taken off the record by then District Judge for extraneous considerations in order to confer certain benefit In an illegal manner, which were not otherwise available, upon the petitioner.

14. In our opinion, the District Judge committed no illegality.

15. We have no doubt that a person, who has been given an appointment in an extraordinary manner, can be dispensed with from service in similar fashion by resorting to extraordinary procedure. In view of the "test-report"--petitioner could never be appointed.

16. We take judicial notice of the fact that serious irregularities are being perpetuated in all the District Judgeships barring a few as exception in the matter of appointments of Class III and Class IV posts.

17. We observe that whenever in such matters, some enquiry is initiated it is seldom allowed to arrive at logical conclusion and never in past, such illegally appointees are removed or discharged. The general explanation offered by the concerned District Judges, without exception, is that such appointments are under pressure of such, whom they cannot afford to annoy. Be that as it may, a procedure, which is transparent and eliminates arbitrary appointments (not conforming to the rules or test of fairness) is prescribed by the concerned authority.

18. We have no doubt that if "malpractice" is to be checked and arbitrariness is to be avoided, it is high time that the persons and the authorities should come forward to show their bona fide and provide modalities/procedure wherein elements of nepotism, corruption, arbitrariness etc. are ruled out.

19. In our opinion, that we have said enough and no more is required to be commented. Record of the case shall be placed before Hon"ble the Chief Justice for such action as may be deemed appropriate.

20. Special Appeal has no merit. It is accordingly, dismissed.