
(2009) 07 AHC CK 0207
In the Allahabad High Court
Case No : Writ Petition No. 409 (SB) of 2008

Kapil Kumar

APPELLANT

Vs

State of U.P.and others.

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0207

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

Final Decision : Dismissed

Judgement

R.R. Awasthi, J.—Sri Rohit Nandan, Principal Secretary, Rural Development Department, U.P. is present in person and he has filed a supplementary affidavit. He tenders apology for the typographical error, which has occurred in the order of suspension.

2. We accept his apology.

3. Heard the learned counsel for the petitioner Sri P.S. Pandey and Sri D.K. Upadhyaya, learned Chief Standing Counsel for the State.

4. The petitioner, who is working as Block Development Officer, presently posted at Shahjahanpur, has filed this petition seeking a writ in the nature of mandamus for directing the respondents to grant Rojgar Avakash (Employment Leave) for three years w.e.f. 15.3.08. He had applied for this leave on 24.12.07.

5. Since the leave was not granted and the matter was kept pending, the petitioner filed the present petition for the aforesaid relief.

6. A Division Bench of this Court taking cognizance of the aforesaid Employment Leave, which was supposed to be granted as per the Rules known as "U.P. Government Servants (Employment Leave) Rules, 2003", felt, prima facie, satisfied that the provisions of Subclause (5), (6) and (7) of the U.P. Government Servants (Employment Leave) Rules, 2003 were contrary to various rules of the State Government including Rule 11 of Financial Hand Book Vol. II (parts II to

IV) dealing with service conditions of Government Servants.

7. The Court also found that the aforesaid Rule 5 was contrary to various provisions of the U.P. Cooperative Societies Employees Service Regulations, 1975; the Cooperative Banks Centralized Service Regulations, 1976; the Cooperative Banks Centralized Service Regulations, 1976; the U.P. Primary Agricultural Cooperative Credit Societies Centralized Service Rules, 1976; the U.P. Financial Cooperation (Staff) Regulations, 1961; the U.P. Government Servants Conduct Rules, 1956; the U.P. Scheduled Caste Finance and Development Corporation Limited Employees Service Rules; the U.P. Municipal Board Education Establishment Service Rules, 1954; the U.P. Nagar Mahapalika Shiksha Seva Niyamivali, 1971; the U.P. Nagar Mahapalika Seva Niyamavali, 1962; Municipal Servant Conduct Regulations; the U.P. Cane Cooperative Service Regulations, 1975 and the U.P. Zila Parishads Service Rules, 1970, and observed that the Rules aforesaid, prima facie, ultra vires and were invalid.

8. Notice was issued to the learned Advocate General and a copy was sent to the Chief Secretary.

9. The Rule aforesaid, namely, U.P. Government Servants (Employment Leave) Rules, 2003, came into force on 4.1.03, and were to remain in force only upto 31.3.08.

10. Learned counsel for the State has informed that the aforesaid Rules are no longer in existence, the validity of which had come to an end on 31.3.08 and, therefore, after 31.3.08, these Rules would not be available to any employee nor any Employment Leave can be granted or will be granted.

11. Learned counsel for the petitioner, in support of his claim, submitted that the petitioner had applied for the aforesaid leave on 24.12.07 i.e. much before the expiry of the aforesaid Rules i.e. 31.3.08 and, therefore, even if the aforesaid Rules are no more in force, still the petitioner can be granted Employment Leave and this has been the practice of the State Government also. He brings to the notice of the Court that two persons have been granted Employment Leave even after 31.3.08 i.e. on 1.4.08.

12. Sri D.K. Upadhyaya, learned Chief Standing Counsel, submitted that in fact, even for these two persons, the leave was sanctioned before 31.3.08 as per record, but the communication was made on 1.4.08. Further submission is that the appointing authority of different departments had been granting this Employment Leave and, therefore, it was not possible to indicate by the Chief Secretary on the earlier date that whether the leave was granted after 31.3.08 or not.

13. Sri P.S. Pandey, appearing for the petitioner, however, disputes the aforesaid position and says that actually the leave has been granted to these two persons after 31.3.08.

14. There is nothing on record for us to infer that the statement which has been

given by the learned Chief Standing Counsel and the learned Additional Advocate General is not correct. Apart from this, even if the petitioner assumes that the leave has been sanctioned and granted to some persons after 31.3.08, that will again not give him a cause of action or a right for issuance of writ in the nature of mandamus for having the same benefit, as apparently and obviously Employment Leave could not be granted after 31.3.08. If an incorrect decision has been taken or any benefit has been extended to any public servant or government servant by the concerned appointing authority, that will again not make a cause for applying Article 14 of the Constitution nor this Court would issue any direction which may perpetuate the illegality.

15. So far the validity of the aforesaid Rules is concerned, we do not find any occasion to deal with them in detail, as the term of the Rules has already come to an end and they are no more in force.

16. However, before parting, we would like to observe that under normal service conditions and looking to the Rules of various departments including the other sectors of the government and nongovernmental organization, the concept of Employment Leave appears to be a novel phenomena, where the government servant was allowed to go on leave for some other employment or business and during that period, he was not only allowed to maintain his lien in the government department, but was also to be paid some salary and other allowances, irrespective of the fact that wherever he was employed during Employment Leave, he would have been paid his salary in that department/organization also. This provision obviously, does not get any support from any legal resource but as the said rule is no more in existence, no further discussion is needed.

17. With the aforesaid observations, the writ petition is dismissed.