

(2003) 11 AHC CK 0201
In the Allahabad High Court
Case No : C.M.W.P. 28864 of 1999

Khurshid Ahmad

APPELLANT

Vs

Director General, P.R.D. and Others

RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2003) 11 AHC CK 0201

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare, V.K. Singh and S.K. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The petitioner served as a Swayam Sevak in the Zila Yuva Kalyan Avam Pradeshik Vikas Dal. He was paid daily amount for his substance and daily needs. He was given Clerical work w.e.f. 2.8.1986 under the Zila Yuva Kalyan Pradeshik Dal Adhikari. The appointment letter of the petitioner dated 2.8.1986 is appended as Annexure-1 to the writ petition, which is as under :

vkns" k

Jh Lo;a lsod [kq"khZn vgen vkRet Jh rkfgj vgen fuoklh xzke y{ehiqj [kqnZ fn [k.M fuoyksy dks ikfjJfed nj ij fu;qDr fd;k tkrk gS A

ftyk ;qok dY;k.k ,oa izknsf"kd fodkl ny vf/kdkjh] xksj[kiqj A

3. His engagement was purely contractual and was dispensed with on 20.11.1998. The petitioner has challenged the order dated 10.11.1998 and 30.3.1999 issued by the Director General to respondent No. 1 in the present writ petition and consequential order dated 20.11.1998 issued by Zila Yuva Kalyan Avam Pradeshik Vikas Dal Adhikari.

4. By letter dated 10.11.1998 the Director General directed the Chief Development Officer, Gorakhpur not to keep the petitioner or any other person on the post of Clerk as there was only one post of clerk on which Sunil Kumar Mishra was already working. It was further directed that strict compliance of direction given in letter dated 6.9.1997 be made in this regard and to inform, who is the person responsible for acting against the Government orders engaging daily wagers.

5. The petitioner has also filed a writ petition earlier. Challenging the orders dated 11.10.1998 and 20.11.1998, which was disposed of vide judgment dated 7.1.1999 with direction to the Director General to consider the representation and decide the same by a speaking order if possible within three months. The Director General passed fresh orders dated 30.3.1999 rejecting the representation of the petitioner in pursuance of the order and judgment dated 31.1.1999.

6. The relevant portion of the order dated 30.3.1997 impugned in the writ petition is as under :

;kphx.k Jh [kq"khZn vgen ,oa fou; dqekj "kqDyk tuin xksj[kiqj esa izknsf"kd fodkl ny d voSrfud Lo;a lsod gaSa A pw?fd ;kphx.k voSrfud Lo;a lsod gaSa vr% mUgsa "kklukns"kuqlkj Lo;a lsodksa gsrq vuqeU; M;wVh vof/k dk M;wVh HkRrk gh Hkqxrku fd;k x;k gS ;kph Jh [kq"khZn vgen voSrfud Lo;a lsod dh gSfl;r ls dk;Z fnukad 4-8-86 ls 30-11-98 rd rFkk fou; dqekj "kqDyk us voSrfud Lo;a lsod dh gSfl;r ls fnukad 30-4-92 ls 30-11-98 rd dk;Z fd;k gS A nSfud ikfjJfed dfe;ksa ds laca/k esa funs"kky; ds i= la[;k&5845@,d&16@izkf@1986] fnukad 6-11-95 }kjk ;g funsZ"k tkjh fd;s x;s Fks dh funs"kd tks fd fu;qfDr izkf/kdkjh gS dh Loh?fr ds fcuk fdlh Hkh deZpkjh ;k Lo;a lsod dks dk;kZy; dk;Z ds fy;s nSfud osru ij u j[kk tk; A tuin xksj[kiqj esa fy;s dfu"V fyfid dk ,d ek= in l`ftr gS ftl ij fu;fer :i ls fu;qDr deZpkjh rSukr@dk;Zjr gS A

;kphx.k izknsf"kd fodkl ny ds voSrfud Lo;a lsod gSaa A voSrfud Lo;a lsodksa dh ljdkjh foHkkx ds fdlh oSrfud in ij fu;qfDr djus] in dk osrueku fn;s tkus ,oa fu;ferhdj.k fd;s tkus dk dksbZ Hkh izkfo/kku ih- vkj- Mh- ,DV ,oa bl foHkkx dks "kkflr djus okys "kklukns"kksa eas ugha gS A

tuin xksj[kiqj esa dfu"B fyfid dk ,d in l`ftr gS A ftl ij fu;fer :i ls fu;qDr deZpkjh rSukr@dk;Zjr gS vkSj dksbZ fjdDr ugha gS vr% ;kphx.k dks nSfud ikfjJfed ij j[kk tkus dk dksbZ vkSfpR; ,oa vk/kkj ugha gS A

vr% mi;qZDr lqLi"V i`"BHkwfe esa ;kphx.k ds izR;kosnu fnukad 22-1-99 ,oa 24-1-99 IE;d fopkjsijkUr vLohdkj fd;s tkrs gSaaa A

g-@viBuh;

ts- ,u- pSEcj

egkfunskd A

7. As a consequence of aforesaid order dated 10.11.1998 and 30.3.1999 the

services of the petitioner were terminated by the Zila Yuva Kalyan Avam Pradeshik Vikas Dal Adhikari, Gorakhpur, vide order dated 20.11.1998, It is stated by counsel for the petitioner that power to appoint Clerk in the Pradeshik Dal was delegated to the District Magistrate. It also appears from the perusal of record that in the seniority list of employees of the Dal dated 29.10.1994, the name of the petitioner is not on the strength of the establishment. It is apparent from the record that the petitioner was Swayam Sewak and he was not an employee of the Government and was only paid duty allowance equivalent to the rate of daily wager employee.

8. In para 11 of the counter-affidavit it has been stated that earlier by Government order dated 1.7.1977 the power to appoint Storekeeper, Clerk and other Class-IV employees was with the District Magistrate but later on the power was delegated to Director General vide Government order dated 22.3.1988, who now is the appointing authority of the Clerks and Class IV employees and not the District Magistrate. Consent of the District Magistrate to allow to work as Swayam Sevak cannot be equated with engagement/appointment by the competent authority according to rules of recruitment for the post of Clerk. The petitioner was not appointed against any substantive post of Clerk. There is only one post of Junior Clerk sanctioned at Gorakhpur on which a regular/ permanent Government employee is working. The petitioner was not a Government servant and was never paid salary. On the contrary, it is apparent from the letter of appointment that the petitioner was Swayam Sewak and was not employed against any post. There is no illegality or infirmity in the impugned order dated 10.11.1998, 20.11.1998 and 30.3.1999 rejecting the representation of the petitioner. The Court cannot direct any person to be regularised in Government Department on the ground that he is working as Swayam Sevak for some years. Such direction will tantamount to appointment of the petitioner by backdoor/de hors the recruitment Rules. His appointment was as honorary worker and he was not to be paid wages. The daily allowance given to the petitioner for his honorary service is not salary and cannot create any relationship of Master and servant. It will not vest the petitioner with any right to regular appointment. No writ for enforcement of contract of personal service can be issued. The writ petition is not maintainable and is to be dismissed.

9. For the reasons stated above the writ petition fails and is dismissed. No order as to cost. Interim order, if any, is vacated.