
(1997) 10 AHC CK 0018
In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 33211 of 1990 and 1819 of 1992

Lalji Kushwaha

APPELLANT

Vs

Superintending Engineer and Others

RESPONDENT

Date of Decision : 28-10-1997

Acts Referred:

Citation : (1998) 1 UPLBEC 216

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Tribhuwan Upadhaya and Bhagwati Prasad, for the Appellant; S.C. and K.B. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—These are two writ petitions in which common questions of law and facts have been raised. They are, therefore, proposed to be decided by this common judgment. Counter and rejoinder affidavits have been exchanged. Heard Sri Tribhuvan Upadhyaya, learned Counsel for the petitioner and Sri K.B. Mathur as well as learned Standing Counsel for the respondents.

2. The petitioner-Lalji Kushwaha was appointed as Pump Operator on daily wage basis on 1.2.1977 in the office of the respondent No. 1-Superintending Engineer, Mechanical Division II, U.P. Jal Nigam, Allahabad. His status was upgraded as work charge Employee w.e.f. 1.6.1978 and by order dated 22.2.1985, the services of the petitioner were regularised w.e.f. 1.4.1984, on the post of Pump Operator in the pay scale of Rs. 320-460. The petitioner was placed at serial number 10 of the list of the employees who were regularised. The petitioner was transferred from Allahabad to Kausambi in Dharmpur Pey Jal Yojna. It is alleged that the petitioner fell ill on way to Kausambi and, therefore, he applied for medical leave for the period 23.4.1990 to 30.4.1990 (eight days). He joined his duties on 1.5.1990. The petitioner was called upon to explain the circumstances in which he was absent in an unauthorised manner from 23.4.1990. Though the petitioner states that he had submitted his replies to the various notices/letters

issued by the respondents, the case of the respondents in short is that the petitioner did not reply to any one of the notice which were served upon him to show cause as to why he had absented himself in an unauthorised manner without applying for leave w.e.f. 23.4.1990, except the application dated 4.6.1990, which is contained in Annexure C.A. 1 to the counter affidavit, in which the petitioner has mentioned about the medical leave and has prayed for his transfer to Allahabad. In writ petition No. 33211 of 1990, the petitioner claimed the reliefs in the form of directions to the respondents to pay the salary and arrears with all benefits right from 23.4.1990 onwards besides the arrears of revised pay scale and that the respondents should not interfere with the performance of his duties as Pump Operator.

3. Subsequently, by an order dated 15.10.1991, the services of the petitioner were terminated by the Executive Engineer, respondent No. 2. This termination order has been challenged in the order writ petition No. 1819 of 1992 on the ground that the services of the petitioner have been Illegally terminated without initiating any disciplinary enquiry or to show cause. In this petition, the petitioner has prayed that the termination order dated 15.10.1991 be quashed and the petitioner be treated as being in service throughout. The main thrust of the learned Counsel for the petitioner is that since the services of the petitioner as work charged employee had been regularised and he was allowed to draw salary in the pay scale of Rs. 320-460, his services could not be terminated by an order dated 15.10.1991 without holding a proper disciplinary enquiry and since the petitioner was not given an opportunity of hearing, the order of termination is in clear and flagrant violation of the principles of natural justice. Sri K.B. Mathur, learned Counsel for the respondents vehemently argued that the petitioner is a work charged employee and, therefore, he has no right to remain on the post of pump operator as he deliberately absented himself from duty right from 23.4.1990 onwards and in spite of number of letters sent to him, he did not join.

4. At the outset, it may mentioned that the petitioner was work charged employee, meaning thereby, he was to be given an assignment/engagement as and when the work justified. Initially the petitioner was appointed on daily wage basis. He was later on put in the list of the work charged employees. He became regular work-charged employee with the result the only difference which" came in his status was that instead of consolidated amount of salary, he was allowed to draw pay in the pay scale of Rs. 320-460. The services of the petitioner as work charged employee were terminable at any time without notice.

5. The controversy, which has been raised in the present case is whether the petitioner absented himself without any lawful justification w.e.f. 23.4.1990 onwards or whether he had applied for medical leave for the period 23.4.1990 to 30.4.1990 and joined his duties on 1.5.1990 and is continuously/working thereafter. According to the petitioner he had fallen ill while on way to Kausambi and consequently, he had to apply for medical leave on 30.4.1990 for the period from 23.4.1990 to 30.4.1990. He has also taken the stand that he had submitted

the replies to the various letters sent by the respondents. The petitioner has also levelled allegations against the Junior Engineer who was his immediate superior officer relating to the demand of illegal gratification as well as against one Harish Chandra Kushwaha, a Head Clerk of the Department who is said to be having a pique against the petitioner.

6. I have given thoughtful consideration to the matter. It may be mentioned that the respondents required explanation of the petitioner time and again about his unauthorised absence from 23.4.1990. The first letter was written on 1.6.1990 followed by letters dated 4.8.1990, 17.8.1990 and 26.10.1990. In all these letters, the petitioner was required to explain the circumstances in which he absented himself in an unauthorised manner from duty w.e.f. 23.4.1990. A copy of the letter dated 26.10.1990 has been filed by the petitioner himself as R.A. 2 to the rejoinder affidavit in Writ Petition No. 33211 of 1990. In this letter, the Executive Engineer of the Department himself had written to the petitioner that he is absent from duty from 23.4.90 and that he should join his duties by 5.11.1990 failing which his services shall be terminated. There is nothing on record to show that the petitioner has applied for leave supported with medical certificate. He, however, moved an application dated 4.8.1990 before the Executive Engineer in which he had made a prayer for his transfer from Kaushambi to Allahabad and also made a reference about his absence. Even this application was not supported with medical certificate. Learned Counsel for the respondents pointed out that this application was moved by the petitioner with a view to cover up his unauthorised absence for the period mentioned above. This submission is not without force. The fact, therefore, remains that in spite of the oral warnings and letters sent to the petitioner, he failed to submit his explanation for his absence. If the petitioner, in fact, was working at the place of his posting at the Tubewell, the various letters written by the higher authorities, such as Assistant Engineer, Executive Engineer would not have come into existence. These senior officers had no animosity against the petitioner and, therefore, they could not have shown the petitioner as absent if the petitioner was actually working on the spot from 1.5.1990 onwards. The engagement of the petitioner as a work charged employee was rightly terminated on account of his continued unauthorised absence w.e.f. 23.4.1990. Though, in the case of work charged employee on opportunity of hearing is required to be given, the fact remains that the petitioner was required to submit his explanation by letters dated 1.6.1990, 4.8.1990, 17.8.1990 and 26.10.1990. By the last letter, the petitioner was administered a stern warning that in case he does not join by 5.11.1990, his services shall be terminated. This warning also fell on the deaf ears of the petitioner as it could not evoke any response in him. The petitioner himself failed in putting forth his point of view before the Department.

7. The learned Counsel for the petitioner challenged the order of termination on two other grounds; firstly, that it was not passed by the competent authority and secondly, that the punishment of termination awarded to the petitioner is disproportionate to the gravity of the charge/allegation against him. According to

the learned Counsel, the Superintending Engineer had appointed the petitioner and, therefore, no officer inferior in rank to the Superintending Engineer could have terminated the services of the petitioner. In support of his contention, the learned Counsel placed reliance on 1985 U.P.L.B.E.C. 399, Shiv Ram Singh v. U.P. State and Anr. 1996 (2) ESC 11 (All), and Ram Nihor Karwaria v. Member, Secretary, District Administrative Committee/District Registrar, Co-operative Societies U.P. There can be no quarrel about the proposition of law laid down in the said rulings. In the case in hand, the Chairman, Jal Nigam has passed an order in the form of circular dated 2.5.1990, Annexure 5 to the counter affidavit, in Civil Misc. Writ No. 1819 of 1992. Through the aforesaid order, the Executive Engineer (Adhishashi Abhiyanta) has been held to be the appointing/disciplinary authority of the work charged employees. The termination order dated 15.10.1991 was passed by the Executive Engineer. It cannot, therefore, be asserted that the services of the petitioner were dispensed with by a person who was not competent to appoint him.

8. The other ground taken is that the punishment of termination of the services of petitioner is too harsh and is clearly disproportionate to the charge alleged to have been established against him. On this point, the learned Counsel for the petitioner placed reliance on 1993 (1) U.P.L.B.E.C. 488 , Samsher Bhadur Singh v. State of U.P. Learned Counsel urged that the petitioner has remained absent only for 8 days and that too on account of sudden ailment and, therefore, the services of the petitioner could not justifiably be brought to an end for a mere absence of 8 days. It is the assertion of the petitioner that he remained absent for 8 days while according to the case of the Department, he remained absent throughout from 23.4.1990 till the order of termination was passed on 15.10.1991, i.e., for a period of about 18 months. Since the petitioner was a work charged employee, the respondents had no option but to dispense with his services on account of his continued absence for 18 months and particularly when the petitioner did not turn up after service of the letter dated 26.10.1990 upon him. The order of termination has not been passed by way of punishment but it was brought into existence in view of the unauthorised absence of the petitioner who failed to report for duty in spite of the repeated communications by the employer. A faint suggestion was also made that the petitioner has become over aged and, therefore, a lenient and sympathetic view of the matter may be taken. To fortify his submission, the learned Counsel made a reference of certain observations made by Supreme Court in the case of Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, . In that case the petitioner had worked for a long period and reached the age in life where he was not entitled to any other Government job. The Supreme Court issued the direction to the respondents to offer him suitable employment. The facts of the aforesaid case are not applicable to the present case on all fours.

9. In the result, both the writ petitions turn out to be devoid of any merit and substance. They are hereby dismissed.

10. The dismissal of the writ petitions of the petitioner shall not be construed to mean that the petitioner has been debarred from being considered for engagement on daily wages/work charged basis. If, according to the requirement of the Department, services of the petitioner are needed, his case shall be considered for fresh engagement unmindful of the fact that he has become over-aged.