
(1996) 03 AHC CK 0070
In the Allahabad High Court
Case No : C.M.W.P. No. 14647 of 1995

Lihazur Rehman Khan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-03-1996

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 4(D)
Constitution of India, 1950 — Article 224, 225, 309
Uttar Pradesh Nyayik Sewa Niyamavali, 1951 — Rule 21(2), 23, 23(3), 24, 25
Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975
— Rule 3, 4, 5

Citation : (1996) 2 UPLBEC 997

Hon'ble Judges : Kundan Singh, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Sudhir Chandra and Ravi Kant, for the Appellant;

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—Parties have exchanged affidavits and, therefore, the writ petition is being disposed of finally at the admission stage.

2. The Petitioner was appointed as a temporary Munsif by the order of the State Government dated August 9, 1985. The appointment order (Annexure 1 to the writ petition) is a long one and towards the end some conditions were mentioned. One of these was that he had been appointed as a Munsif in a temporary capacity on the condition that till he was appointed as a Munsif in substantive capacity, he would be governed by Notification No. 20/1-74-appointment-3 dated June 11, 1974 which are applicable to temporary employees. The Full Court passed a resolution on July 23, 1994 that having regard to the work and conduct of the Petitioner, his service be dispensed with in accordance with the relevant service rules and a recommendation to that effect be made to the Governor. Thereafter, the Governor of U.P., exercising powers under U.P. Temporary Government Servants (Termination of Service) Rules, 1975, passed an order on March 7, 1995 terminating the service of the Petitioner

w.e.f. the date of receipt of notice. The order further mentions that the Petitioner would be entitled to a sum equivalent to the amount of his pay and other allowances for one month in lieu of notice. This order is impugned in the present petition.

3. The principal submission of S/Sri Sudhir Chandra and Ravi Kant, learned counsel for the Petitioner, is based on Rules 23 to 25 of U.P. Nyayik Sewa Niyamawali, 1951 (hereinafter referred to as the Rules) which have been framed by the Governor in exercise of powers conferred by Article 224 and proviso to Article 309 of the Constitution and in consultation with U.P. Public Service Commission and the High Court of Judicature at Allahabad and are applicable to Munsifs and Civil Judges. Rule 23 provides that all candidates on appointment to the service shall be placed on probation for two years, provided that, on the recommendations of the court, the Governor may in special cases extend the period of probation. It further lays down that the order sanctioning any such extension of probation shall specify the exact date upto which extension is granted. Rule 24 provides that if it appears to the Governor at any time during or at the end of the period of probation or extended period of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, he may be reverted to his substantive post, if any, or if he does not hold a lien on any substantive post, his services may be dispensed with. It is urged that no order extending the period of probation was passed and, therefore, after expiry of period of two years, by operation of Rules 23 to 25 of the Rules, the Petitioner acquired the status of a confirmed employee and his service could not be terminated by taking recourse to the power under U.P. Temporary Government Servants (Termination of Service) Rules, 1975. Reliance in support of this submission is placed upon State of Punjab Vs. Dharam Singh, and Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others, .

4. The question to be considered is whether every appointment of a Munsif will be governed by Rules 23 to 25 of the Rules or it is permissible to appoint a person on a purely temporary capacity to whom the aforesaid provisions will not apply. Rule 4 of the Rules gives the definitions and Sub-rule (e) lays down that "Member of the Service" means a person appointed in a substantive capacity under the provisions of these rules, or of the rules in force previous to the introduction of these rules, to a post in the cadre of the service. Sub-rule (1) of Rule 5 provides that the strength of the service and of each kind of posts shall be determined by the Governor from time to time in consultation with the High Court and Sub-rule (2) provides that the permanent strength of service and each kind of posts therein shall be as specified in Appendix A. Sub-rule (3) of the same Rule lays down that the Governor may from time to time leave unfilled or held in abeyance, any post, or may increase the cadre by the creation of additional permanent or temporary posts, as may be found necessary. Rule 21 deals with appointment and Sub-rule (2) lays down that the Governor may make appointment in temporary or officiating vacancies prescribed under these rules.

Rule 23 deals with probation and Sub-rule (3) thereof lays down that service rendered in an officiating or temporary capacity shall be taken into account in computing the period of probation. These provisions show that the rules do contemplate making appointment in a temporary capacity and every appointment need not be made on a substantive capacity. Appendix shows that the sanctioned permanent strength of the service for the post of Munsif is only 161. The requirement of number of Munsifs in the State is many times more than the aforesaid figure. If no temporary appointments are made besides substantive appointment on permanent post, the judicial work will suffer greatly. Therefore, the Government makes appointment as temporary Munsifs which is also contemplated under the Rules. The appointment order of the Petitioner, copy of which has been filed as Annexure 1 to the writ petition, clearly shows that the same was made on a temporary post of Munsif. Towards the end of the order, it was clearly mentioned that he was being appointed on the post of Munsif in a temporary capacity with the condition that he will have to pass departmental examination in the Administrative Training College and till he was appointed on the post of Munsif in a substantive capacity, he would be governed by Notification No. 20/1-74, Appointment-3 dated June 11, 1975. By means of the aforesaid Notification, the U.P. Government Servants (Termination of Service) Rules, 1975 framed under Article 309 of the Constitution, have been promulgated. Rule 3 of these Rules provides that the services of a Government servant in temporary service shall be liable to termination at any time by notice in writing given by the appointing authority to the Government servant and the period of notice shall be one month. The proviso lays down that the services of any such Government servants may be terminated forthwith and on such termination, he shall be entitled to claim a sum equivalent to the amount of his pay and allowances for the period of notice. The appointment order of the Petitioner clearly mentions that he was being appointed in a temporary capacity and on a temporary post and further till he was confirmed, he will be governed by the 1975 Rules. The contention that he stood automatically confirmed after expiry of a period of two years has thus no substance and cannot be accepted. In view of the fact that the Petitioner was working in a temporary capacity, the 1975 Rules were applicable to him and the appointing authority had the power to terminate his services in accordance with the said Rules, once a recommendation to that effect had been made by the High Court.

5. The interpretation sought to be placed upon Rule 23 of the Rules that after expiry of period of two years, or the extended period of probation, as the case may be, the member of the service shall stand automatically confirmed, does not appear to be correct. Rule 25 specifically deals with confirmation and it lays down that if at the end of the period of probation or at the end of extended period of probation in any particular case, the court recommends that a candidate is fit for confirmation, he shall be confirmed by the Governor in his appointment and that all confirmations under this rule shall be notified in the Official Gazette. The High Court of Judicature at Allahabad in exercise of powers conferred by Article 225 of

the Constitution and all other powers enabling it in that behalf has framed the Allahabad High Court Rules, 1952 and Chapter III, Rule 4(D)(ii) provides that the matter of confirmation of officers of the Subordinate Judiciary shall be considered by the Full Court. It is noteworthy that no maximum limit of extension of period of probation has been provided in Rule 23 and thus there is no embargo on the power of the Governor to extend the period of probation to any length of time. Secondly, the rules contemplate a specific order of confirmation to be passed by the Governor and this can be done only after a recommendation to that effect has been made and in view of the provisions of the Allahabad High Court Rules such a recommendation can only be made by the Full Court. After an order of confirmation is passed, the same has to be notified in the Official Gazette. Therefore, a perusal of the rules will show that they do not contemplate an automatic confirmation of a Member of the Judicial Service merely on the ground of his having worked for a certain number of years. A member of service can be confirmed only if a recommendation to that effect is made after consideration of his case by the Full Court and the order passed by the Governor is notified in the Official Gazette. It is well-settled principle of law that if a person appointed on probation for a specific period is allowed to continue in service beyond the expiry of the period of probation, he does not acquire the status of a confirmed employee in absence of a specific order to that effect. This question has been examined in a considerable detail by a Constitution Bench in *State of Punjab Vs. Dharam Singh*, , where after noticing several earlier decisions, it was held as follows in Para 3 of the report:

This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation it is not possible to hold that he should be deemed to have been confirmed.

This has been reiterated in *State of Maharashtra v. V.R. Saboji* AIR 1980 SC 42 which also related to a case of Civil Judge (Junior Division) and in *Dhanjibhai Ramjibhai Vs. State of Gujarat*, . Therefore, the law is well-settled that there is no right in the probationer to be confirmed merely because he had completed the period of probation. The function of confirmation implies the exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service. An employee does not enjoy any greater right to confirmation if he is allowed to continue beyond the initial period of probation. The only exception to this principle is where the service rules prohibit extension of period of probation beyond a certain maximum period and the employee continues to work beyond the aforesaid maximum period. In such a

case, he may acquire the status of a confirmed employee. In *Dharam Singh and Om Prakash Maurya (supra)*, the relevant service rules prescribed a maximum period beyond which the period of probation could not be extended and the employees concerned continued to work even beyond the said period. Such is not the case here. The rules have not laid down any maximum period of extension of the period of probation.

6. Learned counsel has next submitted that the Petitioner was appointed by the order dated August 9, 1985, had worked for nearly ten years and after such a long period, termination of his service without affording him any opportunity of hearing is wholly illegal. It is averred in the counter-affidavit filed on behalf of the High Court that the Petitioner joined as Munsif on December 17, 1985 and the Full Court while passing a resolution on July 23, 1994 that his services be dispensed with further resolved that all judicial work be immediately withdrawn from him. Thus he had actually worked for about eight and half years. The U.P. Temporary Government Servants (Termination of Service) Rules, 1975 are applicable to all such Government servants who are in temporary service and "temporary service" has been defined as an "officiating or substantive service on a temporary post or officiating service on a permanent post under U.P. Government. The application of Rules is not dependent upon the period of service put in by a Government servant and, therefore, the mere fact that the Petitioner has worked as Munsif for about eight and half years cannot make the exercise of powers under the aforesaid rules invalid. In *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*, , while considering the case of an employee governed by the same Rule, it was held that the temporary Government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Government servants. This has been reiterated in *State of U.P. and another State of U.P. and another Vs. Km. Prem Lata Misra and others*, and in *Triveni Shanker Saxena v. State of U.P.* AIR 1994 SC 496 , wherein termination of service of a temporary Government servant who had put in more than eighteen years of service was upheld. Thus, the mere fact that the Petitioner had worked for more than eight years, cannot render the order invalid.

7. In the counter-affidavit filed on behalf of the High Court, details of the character roll entry and adverse remarks given by the court to the Petitioner are mentioned and some of them are as follows:

1. A: For the year 1987-88 the District Judge, Etawah gave adverse remarks against which he made a representation to the High Court on which the Administrative Judge passed the following order:

The representation is rejected. The language used in this representation against the District Judge deserves to be condemned. As such the officer be warned not to use such language again against his superior officer failing which the matter

shall be taken up very seriously.

B: The District Judge, Etawah sent a confidential D.O. letter on 10.3.1989 regarding misuse of powers by the Petitioner and the result of inquiry made by him. The power to take cognizance in criminal matters was withdrawn. The Chief Justice passed an order on 25.4.89 to transfer the Petitioner in annual chain and thereafter he was transferred to an outlying court in district Lalitpur in May/June, 1989.

C: The Petitioner made a reference for initiating contempt proceedings against the C. J. M. and District Judge, Etawah on which the Acting C. J. passed the following order on 3.1.1990.

I have considered the note prepared by the Joint Registrar and have gone through the file. I find that the reference made by Sri Lihajur Rahman Khan-II Additional Munsif, Etawah (since transferred to Lalitpur) for taking cognizance for drawing contempt proceedings against the District Judge, Etawah and the Chief Judicial Magistrate is reckless and devoid of substance. The Chief Judicial Magistrate had the power to transfer a criminal case from one court to another and if he did so, in consultation with the District Judge, there was nothing wrong in the same.

Let a notice be issued to Sri Lihajur Rahman Khan to show cause why he be not censured for his insubordinate and indiscreet allegations made against the District Judge and the Chief Judicial Magistrate, Etawah. After receipt of the explanation, the matter be placed before the Administrative Committee.

D: A notice was issued to the Petitioner on which he made a representation which was rejected by the Administrative Committee on 15.5.1990 and warning was given to him not to give an occasion for similar complaint in future.

E: For the year 1988-89 the District Judge gave the following remarks:

Integrity--X Doubtful vide Annexure-1 Overall Assessment-Poor Representation against the said entry was rejected by the Administrative Judge.

II-A : For the year 1990-91 the District Judge, Jalaun at Orai gave the following remarks:

Integrity - He should zealously improve upon his reputation about integrity prevailing unsound.

If he is fair and impartial - He should behave more fair and impartial in his dealing with public and bar.

interim Order - Interim orders passed and injunction were granted mostly on unsound reasonings.

Overall Assessment - He is poor officer.

B : The High Court gave him adverse remarks and the representation against the

same was rejected by the Administrative Committee.

III : For the year 1991-92 the District Judge, Jalaun at Orai gave the following remarks:

Integrity - Doubtful. There is a lot of complaints against him. Some of these are being enquired into by the Special Officer (Vigilance) of the High Court, C. J. M. Orai made complaint against him.

Overall Assessment - Poor.

IV: For the year 1993-94 the District Judge, Uttar Kashi gave following remarks:

Integrity - So many oral and written complaints received against his integrity. One inquiry received from the Vigilance Bureau of the High Court.

B: The Administrative Judge did not certify his integrity and wrote that he had received serious complaints against him.

The facts mentioned in the counter-affidavit show that the District Judges of three different districts, namely. Etawah, Jalaun at Orai and Uttar Kashi had given adverse reports against him. His integrity was found to be doubtful and he was rated as a poor officer. It was on overall assessment of his work and conduct, that the Full Court passed a resolution on July 23, 1994 to dispense with his services. The Petitioner made a representation to the Governor of U.P. on which the recommendation was sent back to the High Court for reconsideration. In the Full Court meeting held on December 18, 1994 after reconsideration, a resolution was passed that the recommendation already made regarding the termination of the services of the Petitioner be reiterated. Thus the case of the Petitioner was considered by the Full Court twice. It was thereafter that the impugned order terminating the services of the Petitioner was passed by the Governor.

8. Having given our thoughtful consideration to the submission made by the learned counsel for the Petitioner and to the materials on record, we are satisfied that there is no illegality in the impugned order. The writ petition accordingly fails and is hereby dismissed.