
(2014) 08 AHC CK 0247

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 41463 of 2014

Madhukar Maurya

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Citation : (2014) 7 ADJ 279 : (2015) 2 AWC 1535 : (2014) 125 RD 9 : (2014) 4 UPLBEC 2771

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : H.K. Singh and Sunil Kumar Singh, Advocate for the Appellant;
Sudist Kumar, K.R. Singh and Prashant Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri H.K. Singh, learned counsel for the petitioner, Sri K.R. Singh alongwith Sri Sudist Kumar for the respondent No. 21, learned Standing Counsel for the respondent Nos. 1 and 2 and Sri Prashant Kumar for the respondent No. 3. The petitioner in a meeting held on 28.6.2012 was allegedly removed from his office as Adhyaksha Zila Panchayat, Varanasi.

2. This removal was challenged by the petitioner on several grounds in Writ Petition No. 32808 of 2012. The said writ petition was ultimately allowed vide judgment dated 13.3.2014. It is undisputed between the parties that the said judgment has not been put to any further challenge before the higher Court and is final. Consequently, the petitioner resumed office on 22.3.2014 and is continuing as the Adhyaksha of the Zila Panchayat.

3. Sri H.K. Singh, learned counsel for the petitioner, contends that now a fresh notice has been served for another no confidence motion which is dated 31.7.2014. The argument is that after the resumption of office of the petitioner, this meeting could not have been convened on the initiation of such a notice keeping in view the provision of sub-section (13) of Section 28 of the Uttar

Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961, which is extracted hereinafter:

"(13) No notice of a motion under this section shall be received within one year of the assumption of office by an Adhyaksha, [or the [x x x]], as the case may be]."

4. The contention, therefore, appears to be that if the petitioner was allowed to take charge of the office after the writ petition was allowed then this period of one year as contained in sub-section (13) should be counted from the date of such resumption.

5. Replying to the aforesaid submissions, Sri K.R. Singh and the learned standing counsel have urged that the argument is misconceived, inasmuch as, as per the judgment of the High Court, the motion will be deemed to have not been carried out in view of the findings recorded therein. In such a situation it is sub-section (12) of Section 28 of the 1961 Adhiniyam which will be applicable in the present controversy, which is extracted hereinafter:

"(12) If the motion is not carried as aforesaid or if the meeting could not be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the Adhyaksha [or the [x x x]], as the case may be], shall be received until after the expiration of [one year] from the date of such meeting."

6. Sri K.R. Singh submits that the said sub-section clearly requires that a fresh motion or initiation for no confidence motion in the shape of a notice shall not be received unless one year has expired "from the date of such meeting". He, therefore, submits that since the last meeting was held on 28.6.2012, the period of one year has already lapsed, and as such the argument of the petitioner cannot be accepted.

7. Having considered the aforesaid submissions, so far as the argument of applicability of sub-section (13) is concerned, the word "assumption of office" as phrased therein would mean assumption of office after being elected. The petitioner had been admittedly elected on 14.1.2011. Thus, the assumption of office has to be counted from the said date inasmuch as in view of the judgment of the High Court the petitioner will be presumed to have been continuing in office as the no confidence motion had failed. Merely because the petitioner had to remain out of office on account of the pendency of the writ petition, as there was no stay order therein, would not in any way by an interpretation of the word "assumption" mean, that the petitioner will be presumed to have assumed office only after resumption under the judgment of the High Court. The argument is, therefore, rejected.

8. So far as the issue relating to the period of one year under sub-section (13) is concerned, the argument of Sri K.R. Singh is absolutely correct that the period of one year has to be counted from the date of last meeting which was held on 28.6.2012. Consequently, the arguments advanced do not merit any

consideration. The writ petition lacks merit and is accordingly dismissed.