
(1999) 08 AHC CK 0010
In the Allahabad High Court
Case No : Writ Petition No. 8336 of 1986

Mahendra Pratap Dwivedi and others	APPELLANT
Vs	
Commissioner and Administrator, Sharda Sahayak Project, Lucknow and others	RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 AWC 1434

Hon'ble Judges : S.H.A. Raza, J; Nassemuddin, J

Bench : Division Bench

Advocate : R.C. Bajpai, R.P. Singh, S.P. Shukla and R.P. Shukla, for the Appellant;

Judgement

Naseemuddin, J.—This writ petition has been filed under Article 226 of the Constitution of India for issue of a writ in the nature of certiorari for quashing the orders dated 6.12.1985 and 3.9.1986. passed by U. P. Public Services Tribunal No. 3, Lucknow, Opposite Party No. 3 and for a direction to opposite party Nos. 1 and 2 to treat the petitioners continuing in service.

2. The facts of the case are that the petitioners moved Claim Petition Nos. 381 (F)/III/81 and 153 (F)/III/82, challenging their orders of termination from the services of Class III and Class IV post on 8.7.1981. This claim petition was dismissed by opposite party No. 3. Its review was also moved which was also rejected. The case of the petitioners was that petitioner Nos. 1 and 2 were appointed by opposite party No. 2, Bhoomi Sanrakshan Adhikari, Sharda Sahayak Kshetriya Vikash Pariyojna. Kadipur, Sultanpur on 20.5.1980 and 3.6.1980 as Junior Clerk and Tracer. Other petitioners are similarly appointed at class IV post on different dates as detailed in the writ petition. That on enquiry conducted by Deputy Director (Agriculture) Soil Conservation. Jaunpur, it was found that the services of the petitioners were to be terminated as irregularities had been committed in the appointment. The services of the petitioners were

thereafter terminated. This termination was challenged on the ground that no opportunity was given before termination and the termination orders were passed on the direction of the superior officers and that there was nothing against the petitioners as far as their work was concerned. That Bhumi Sanrakshan Adhikari (B.S.A.) was the appointing authority. The case of the opposite parties was that the person who had conducted the examination was not authorised to hold the examination or make appointment and there were also Irregularities in the appointment. It was pleaded that the order of termination was Innocuous and was not punitive in nature. The learned member of the Tribunal found that the person who had Issued the appointment letters held the test was not competent and had no jurisdiction and also pointed out certain irregularities on the basis of which the claim petition was dismissed, feeling aggrieved, this writ petition has been filed.

3. From the record and from the order of the Tribunal, it is clear that the petitioners were appointed by Bhoomi Sanrakshan Adhikari, Sharda Sahayak Kshetriya Vikash Pariyojna. Sultanpur, vide order dated 15.6.1989. The services of the petitioners were terminated vide order dated 8.7.1981. The main reason was that the appointing authority Sri R. N. Tiwari had no Jurisdiction to make appointments for another officer's jurisdiction. The posts were filled up by Sri Raj Narayan Tiwari, B.S.A. II, Sultanpur, for the office of B.S.A. Kadipur. For this, Sri Raj Narayan Tiwari had no jurisdiction as he was the B.S.A. for Sharda Sahayak Kshetriya Vikash Pariyojna. Sultanpur. He had absolutely no control and no jurisdiction and no power to make appointment in relation to the other office of the Bhoomi Sanrakshan Adhikari Sharda Sahayak Kshetriya Vikash Pariyojna, Kadipur, Sultanpur. It was found as a fact by the Tribunal that the vacancies under challenge were not at all notified nor the name were called for the test from the Employment Exchange. No posts were kept reserved for the Scheduled Castes, etc. The appointment being without jurisdiction and suffering from Irregularities was a nullity in the eye of law. Such an appointment could not have been recognised. Complaints were received and the facts were found true and services of the petitioners were terminated by an Innocuous order. The order was not passed as a punishment.

4. It was submitted on behalf of the petitioners that the order of the termination is bad in view because the petitioners were not given opportunity to contest the enquiry. The argument has got no force. The appointment letter issued by a person who had no jurisdiction to make recruitment and to Issue the appointment letter was no appointment in the eye of law. Moreover, the appointment letter shows that the services of the appointees could be terminated any time because the appointment was mentioned to be purely temporary. Under these circumstances, there was no necessity of conducting any enquiry. There was no misconduct on the part of the petitioners/employees for which the enquiry could have been necessary with the involvement of the petitioners. The petitioners being temporary employees could be terminated from service any time. The order does not cast any stigma against them. The order of termination

is Innocuous. It is also not punitive In nature. The order is also not mala fide. The services have not been terminated by way of punishment as no misconduct of the employees was Involved. The Court can go behind the order of termination of services and can find out if it was punitive in nature or it was mala fide. In the instant case, the order was neither punitive nor mala fide. The petitioners were temporary and their services could be terminated any time. The so-called appointing authority, having no jurisdiction also Mentioned in the appointment letters that the services of the petitioners were purely temporary and could be terminated any time as detailed in the order itself. The appointment order was a nullity. The learned member of the Tribunal considered the cases of respective sides and rightly found that the appointment order was without jurisdiction and suffered from grave irregularities and petitioners were purely temporary and their services could be terminated any time and that the order was Innocuous without stigma and was not punitive In nature and was not mala fide.

5. Learned counsel for the petitioners submitted the case of Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, and argued that the principles of natural justice were not complied with, and the same should have been complied with by giving opportunity to the petitioners to have joined the enquiry. This law is not applicable in the present case. It was not a case of ex parte enquiry against the petitioners. The Instant case was not at all a disciplinary enquiry. It was purely an administrative matter and the State was duty bound to see that the action of the State was performed in accordance with law. This case of Radhey Shyam Gupta (supra) does not apply to the present case as there was no enquiry against the petitioners in the present case.

6. The order of learned member of the Tribunal, opposite party No. 3 passed in the claim petition and review petition dated 6.12.1985 and 3.9.1986 under challenge do not suffer from any defect and are perfectly in accordance with law and there is no basis for exercising the writ Jurisdiction under Article 226 of the Constitution of India. Writ petition has got no force and has to be dismissed. Writ petition is dismissed accordingly.