

(2004) 05 AHC CK 0141
In the Allahabad High Court
Case No : C.M.W.P. No. 32381 of 1995

Mahesh Singh and Others

APPELLANT

Vs

District Magistrate Maharajganj and Others

RESPONDENT

Date of Decision : 26-05-2004

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975
— Rule 5

Citation : (2004) 3 AWC 2336 : (2004) 102 FLR 866 : (2004) 2 UPLBEC 1941

Hon'ble Judges : S. Rafat Alam, J

Bench : Single Bench

Advocate : J.N. Tiwari, M.B. Saxena and Ashok Kumar Srivastava, for the Appellant; M.S. Pipersenia, R.D. Gupta, R.K. Saxena and S.C., for the Respondent

Final Decision : Allowed

Judgement

S. Rafat Alam, J.—In the instant writ petition the petitioners have prayed for quashing of the office order dated 6.11.1995 issued by the Sub-Divisional Magistrate/Sub-Divisional Officer, Tehsil Farenda, District Maharajganj whereby their services have been terminated under the provisions of the U. P. Temporary Government Servant (Termination of Service) Rules, 1975 (hereinafter referred to as "the Rules").

2. Heard Shri Mool Bihari Saxena, learned counsel for the petitioner and Shri M. S. Pipersenia, learned standing counsel for the respondents.

3. The petitioners claim to have been appointed substantively as Seasonal Amins w.e.f. 1.1.1976 in the district of Gorakhpur as per procedure prescribed under the law. It has further been stated in the writ petition that the department prepared and submitted the names of Seasonal Amins, according to their seniority, for appointment on regular basis. Since the petitioners were senior most Seasonal Amins, their names were included, as per their seniority, for appointment on regular basis. It further appears that, as per seniority in the

selection list, the petitioners were given ad hoc appointment against eight vacant posts of Collection Amins on the recommendation of Tehsildars dated 9.2.1990 by the Sub-Divisional Magistrate/appointing authority vide order dated 9.2.1990, copy whereof is enclosed as Annexure-2 to the writ petition. However, their services were terminated vide order dated 31.3.1990 by the District Magistrate, Maharajganj. Aggrieved the petitioners challenged the aforesaid order before this Court by means of Civil Misc. Writ Petition No. 10010 of 1990 wherein by an interim order, the order of termination was stayed by the Division Bench of this Court. It has been stated in the writ petition that the above order of stay is still in operation and has not been vacated, nor the respondents have filed any counter-affidavit. Since the petitioners were continuously working against the permanent posts their services were made confirmed by the Sub-Divisional Magistrate/appointing authority vide order dated 13.3.1991, copy whereof is enclosed as Annexure-3 to the writ petition. It further appears that a consolidated list of permanent/regular Collection Amins was published on 15.6.1993 inviting objections from the Collection Amins pursuant to which several Collection Amins filed their objections challenging their placement in the seniority list. A committee under the Presidentship of the District Magistrate was, therefore, constituted for the disposal of objections. The committee thereafter finalised the seniority list of Collection Amins working in the district and the same was published in the month of December, 1993, copy whereof is enclosed as Annexure-4 to the writ petition, wherein petitioner No. 1 is shown at serial No. 110, petitioner No. 2 is shown at serial No. 113, petitioner No. 3 is shown at serial No. 112, petitioner No. 4 is shown at serial No. 107, petitioner No. 5 is shown at serial No. 109, petitioner No. 6 is shown at serial No. 111 and petitioner No. 7 is shown at serial No. 108. However, by the impugned order the respondents by invoking the provisions of the Rules terminated their services by giving one month's notice.

4. Shri Mool Bihari Saxena, learned counsel for the petitioners, vehemently argued that the petitioners having been regularised against the substantive vacancies, their services cannot be terminated by invoking the provisions of the Rules and, therefore, the order is arbitrary apart from being illegal. It is also submitted that the controversy involved in this case is squarely covered by the judgment of the learned single Judge of this Court dated 15.5.2001 rendered in the case of Shri Gulam Hussain v. State of U. P. and Ors.. Civil Misc. Writ Petition No. 6537 of 1995, wherein learned single Judge has quashed the order of termination. It has further been pointed out that in the final seniority list of Collection Amins published in the month of December, 1993 (Annexure-4), Shri Gulam Hussain, petitioner of Civil Misc. Writ Petition No. 6537 of 1995 is shown at serial No. 124, much below the petitioners and, therefore, this writ petition also deserves to be allowed on the similar terms.

5. On the other hand, Shri M. S. Pipersenia, learned standing counsel vehemently opposed the writ petition and submitted that the initial appointment of the petitioners as Collection Amins was illegal as they were appointed without

following the procedure prescribed for such appointment and as such the initial entry being illegal, the subsequent order of confirmation is also illegal and hence, the order of termination is fully justified.

6. I have considered the rival submissions made by the learned counsel for the parties. The short question, which arises for consideration in this petition, is as to whether a permanent State Government employee can be terminated by invoking the provisions of the Rules. Temporary service is defined in Rule 2, which reads as under :

"Definition.--In these rules "temporary service" means officiating or substantive service on a temporary post, or officiating service on a permanent post under the Uttar Pradesh Government."

7. In the case in hand, it has been asserted in the writ petition that the Sub-Divisional Magistrate confirmed the petitioners w.e.f. 13.3.1991. It has further been asserted that a seniority list of Collection Amins after considering the objections were finalised by the Committee headed by the District Magistrate and was published in the month of December, 1993. These two facts have not been disputed in the counter-affidavit and it has been stated that although the petitioners were regular employees but their selection was not made by following the prescribed procedure and several persons senior to them have not been considered. Therefore, the fact that the petitioners were regular employees at the time of passing of the impugned order of termination has been admitted, if the appointment of the petitioners were not in accordance with law it was open for the respondents to take steps for the cancellation of such illegal appointments given against the regular vacancies. It is strange that the respondents instead of taking such steps without giving notice to the petitioners have invoked the provisions of the Rules, which does not apply in the case of regular employee. From the pleadings of the parties it is evident that by the order dated 9.2.1990 (Annexure-2), firstly, the petitioners were given ad hoc appointment on temporary basis against the substantive vacancies and thereafter vide order dated 13.3.1991 (Annexure-3) they were made permanent. Thus, their status could not be treated as temporary employee till the order dated 13.3.1991 giving them permanent status in service was continuing. In the counter-affidavit the stand of the department, briefly stated, is that the petitioners' continuation in service as well as confirmation were in violation of Articles 14 and 15 of the Constitution as well as the Rules and as such they do not have any right to the posts, hence their services, being illegal, has rightly been terminated. However, they do not dispute that the petitioners' appointment were subsequently regularised against the substantive vacancies and, therefore, I am of the view that the order of termination could not have been passed by invoking the provisions of the Rules.

8. It is well-settled legal position that even in the matter of appointment de hors the Rules a finding has to be recorded that the appointment is contrary to the provisions of the Act and unless such finding is recorded the termination cannot

be made and to arrive at such conclusion, necessarily an inquiry will have to be made as to whether such appointment was contrary to the provision of the Act, in which such an employee has to be given notice. Reference may be made to the judgment of the Hon''ble Supreme, Court in the case of Basudeo Tiwari v. Sido Kanhu University and Ors., AIR 1998 SC 3261, wherein the order of termination was passed without notice to the employee on the ground that the same is irregular or unauthorised. The Hon''ble Supreme Court while setting aside the order of termination held that if an employee concerned, whose right is affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such conclusion would not be just, fair or reasonable. Thus, in view of the above legal position, if the appointment of the petitioners were contrary to the provisions of the Act or the Rules, the authorities ought to have held an inquiry and only after giving notices to the petitioners, their appointment could have been terminated. Besides that, in similar circumstances, the order of termination of Shri Gulam Hussain has been quashed by the learned single Judge of this Court in Civil Misc. Writ Petition No. 6537 of 1995, vide order dated 15.5.2001 and the facts of that case is identical to the facts of the case in hand inasmuch as in the list of permanent Collection Amins (Annexure-4) the said Gulam Hussain has been shown at serial No. 124 whereas the petitioners are at serial Nos. 107 to 113. I also agree with the view taken by the learned single Judge in the aforesaid case.

9. Having considered the facts of the case and also having appreciated the submissions made on both sides, this petition deserves to be allowed.

10. In the result, the writ petition succeeds and is hereby allowed. The impugned order dated 6.11.1995 terminating the services of the petitioners is quashed. It would, however, be open to the respondents to pass appropriate order in accordance with law. There shall be no order as to costs.