
(1998) 10 AHC CK 0066
In the Allahabad High Court
Case No : C.M.W.P. No. 18927 of 1986

Mathuresh Chand

APPELLANT

Vs

U.P. Public Service Tribunal-III, Lucknow and others

RESPONDENT

Date of Decision : 24-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Zila Parishad Service Rules, 1970 — Rule 50, 70

Citation : (1998) 4 AWC 310 : (1998) AWC 310 : (1999) 81 FLR 322 : (1999) 2 UPLBEC 46

Hon'ble Judges : D.S. Sinha, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Birendra Dikshit and A.C. Tiwari, for the Appellant; S.N. Upadhyaya, S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri A. C. Tewari, learned counsel appearing for the petitioner and Sri S. N. Upadhyaya. learned counsel representing the respondent Nos. 2, 5 and 6 and Sri S. G. Husnain. learned Addl. Chief Standing Counsel representing the respondent Nos. 1, 3 and 4. at length and in detail.

2. Order and judgment dated 11th September, 1986 passed by the U. P. Public Services Tribunal No. III, Lucknow. the respondent No. 1, is under challenge in this petition under Article 226 of the Constitution of India.

3. By the impugned order and Judgment dated 29th February, 1980 terminating the services of the petitioner from the post of Pound-Keeper has been upheld.

4. The order dated 29th February, 1980 indicates that the petitioner was a temporary employee and his services were no longer required and as such his services were terminated with effect from 31st April, 1980 on one month's notice.

5. The contention of the petitioner before the Tribunal was and before this Court

is that he was not a temporary employee, and that he was subjected to vice of discrimination in as much as Sri Dambar Singh. the respondent No. 6, who was similarly situated, was allowed to continue in the employment.

6. The Tribunal has recorded a finding of fact that the appointment of the petitioner was purely temporary and he was never appointed on probation in a substantive vacancy. He was neither confirmed automatically nor was there any specific order confirming the petitioner. There is no material before this Court to Impeach the credibility of this finding. It will be pertinent to notice that the best document to throw light on the nature of the appointment of the petitioner, namely, the appointment letter, has not been filed by the petitioner. It appears to have been withheld by the petitioner. Thus, it would not be inappropriate to draw an inference that the appointment letter bears testimony of the fact that the petitioner was indeed a temporary employee.

7. Rule 50 of the Zila Parishads Service Rules. 1970. which is. Indisputably, applicable to the petitioner, empowers termination of services of a temporary employee on one month's notice. Thus, it cannot be said that any illegality was committed in terminating the services of the petitioner by the order dated 29th February. 1980 which has been upheld by the Tribunal.

8. Even if it is accepted for argument's sake that the services of the petitioner were permanent in nature. It does not advance cause of the petitioner in any manner. It has been pointed out by the Tribunal that the necessity for termination of the services of the petitioner arose on account of the abolition of the post of Pound-Keeper held by the petitioner. It is established that the abolition of post is a valid ground for termination of the services of a permanent employee without following the procedure prescribed for terminating the services of a permanent incumbent. See State of Uttar Pradesh and Another Vs. Dr. Prem Behari Lal Saxena,

9. Coming to the second ground regarding discrimination, suffice it to say that the petitioner and Dambar Singh, the respondent No. 6. were not similarly situated. The Tribunal has clearly found that while the petitioner was temporary employee, Dambar Singh, the respondent No. 6, was a permanent employee. The petitioner and Dambar Singh. the respondent No, 6. being not similarly situated, the question of any vice of discrimination does not arise. Otherwise also, it transpires that Dambar Singh. the respondent No. 6, was re-employed on the post of Tax Collector. This per se does not amount to discrimination and cannot furnish cause of action to the petitioner for challenging the order terminating his services on the ground of discrimination.

10. On facts and for the reasons stated hereinbefore, the submissions of the petitioner to assail the order of termination and the order of the Tribunal fail. The impugned order of Tribunal is perfect and does not suffer from any such legal infirmity which may justify intervention of this Court.

11. In the result, the petition fails and is hereby dismissed. There will be no

order as to costs.