

(2003) 09 AHC CK 0091

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 54263 of 2000

Modh. Umar

APPELLANT

Vs

Executive Officer, Nagar Palika Parishad and Another

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2004) 1 UPLBEC 174

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : O.P. Singh, for the Appellant; Madhur Prakash and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties and perused the record.

2. By means of this writ petition the petitioner is challenging the validity and correctness of the impugned notice dated 1.12.2000 passed by the Executive Officer, Nagar Palika Parishad, Suar, District Rampur by which the services of the petitioner have been dispensed with as no longer required.

3. It is alleged that the name of the petitioner was registered in the Employment Exchange of Rampur. His date of birth according to the certificate issued by the Principal, Government Inter College, Rampur is 2.3.1964 and he belongs to backward class. It is further alleged that he had appeared in High School Examination but failed.

4. It is submitted that on account of retirement of some regular employee a post of peon fell vacant in the office of the respondent No. 2. And the petitioner requested to respondent No. 2 that he may be permitted to work on the post of Peon in his office vide letter dated 21.1.2000. It appears that respondent No. 2 issued a forwarding note for placing the same before the appointing committee recommending petitioner for appointment. The matter was placed before the

appointing committee. The petitioner was permitted to work in the office of respondent No. 2.

5. The contention of the petitioner is that he has been working in the office of respondent No. 1 vide letter dated 11.3.2000 and appointed the petitioner for maintaining the electricity work for the area of Nagar Palika Parishad, Suar and he was also attached with the office of respondent No. 2 for doing miscellaneous type of work of peon. The services of the petitioner were extended after a fresh Election of Chairman, Nagar Palika Parishad on 23.11.2000 in which one Sri Maqsood had been elected as Chairman of the Nagar Palika Parishad, Rampur. The services of the petitioner have not been extended and no work has been taken from him after February, 2000. The petitioner has come up in the writ petition on the ground that other similar circumstances persons, who are working in same condition but respondent No. 2 has stopped taking work from the petitioner only.

6. And in pursuance of the non-approval of respondent No. 2 the Executive Engineer respondent No. 1 has issued notices that the services of the petitioner are no longer required without giving any opportunity of hearing to the petitioner.

7. From the facts stated above and from the record of the writ petition it appears that the petitioner was engaged on daily wage on contract basis. He was not appointed under the Nagar Palika, Parishad after following the prescribed recruitment rules.

8. Copy of the letter dated 28.1.2000 of the Senior Vice-President of the appointing committee is as under :

^^[sok esa]

Jheku vf/k"kkLh vf/kdkjh]

uxj ikfydk ifj"kn] Lokj ?jkeiqj?A

egksn;]

fuosnu bl izdkj gS fd Jh eksgeen mej iq= Jh vCnqy glu] fuoklh pd Lokj dk LFkbbZ fuoklh gS a i<+k fy[kk csjkskxkj uo;wod gS A bldks nQrjh pijklh ds in ij nSfud osru ij j[kus dh ?ik djsa A

blls ge fu;qfDr lfevr uxj ikfydk ifj"kn] Lokj lger gS A ;g bekunkj o esgurh vkneh gS A

fnukad 28-1-2000 fu;qfDr lfevr]

uxj ikfydk ifj"kn] Lokj] jkeiqj A

g- vLi"V

gchc vgen valkjh]

ofj"B mik/;{k] u-i-i-

Lokj] jkeiqj A**

9. Consequent to the aforesaid letter by letter dated 1.1.2000 Executive Engineer had issued letter dated 1.2.2000 engaging the petitioner on contract basis for changing the Bulbs, Tubes etc. Copy of the letter dated 1.2.2000 Annexure 6 is as under :

^^v/;{k@vf/k"kklh vf/kdkjh egksn;]

uxj ikfydk ifj"kn] Lokj ds {ks= esa fo|qr O;oLFkk lqpk: :il ls O;ofLFkr djus gsrq fo|qr iksyksa ij ?izfr ,d ikSy ij? cYc] jkM vkfn yxkus ds fy, ,d O;f? dh vko";drk gS A ? i;k cYc vkfn yxokus ds fy, lafonk ds vk/kkj ij ,d O;f? dks j[kus ds y, ,d ekg Qjokjh] 2000 rd dh Loh?fr iznku djus dh d"V djsa A

g- vLi"V] g- vLi"V]

1-2-2000 vf/k"kklh vf/kdkjh]

vf/k"Bku fyfid] uxj ikfydk

ifj"kn Lokj]

u-ik-i-] Lokj

g- vLi"V]

v/;{k]

uxj ikfydk ifj"kn] Lokj]

jkeiqj A**

10. His extension of service was also for specified period as is apparent from Annexure 9. Letter dated 30.9.2000 is as under :

^^v/;{k@vf/k"kklh vf/kdkjh egksn;]

uxj ikfydk ifj"kn] Lokj dh izdk"k O;oLFkk gsrq ,d nSfud etnwj dh vko";drk gS A ? i;k lafnrk ds v/kkj ij ,d nSfud etnwj dh ekg vDVwcj ,oa ekg uoEcj dh 2000 ?nks ekg? ds fy;s lafonk ds vk/kkj ij j[kus dh Loh?fr iznku djus dh d"V djsa A vk[;k lsok esa izsf"kr gS A

g- vLi"V]

30-9-2000

vf/k"Bku fyfid]

u-ik-i- Lokj] jkeiqj

eks- mej iq= vCnqy

eks- mej iq= vCnqy glu]

fu- pd Lokj] nSfud etnwj

Loh?fr A**

11. From the aforesaid records it is apparent that the petitioner was appointed from time to time on contract basis for specified period. He has no legal right to be continue in service and if he is aggrieved by violation of contract, he may file a suit.

12. Counsel for the petitioner then contends that the petitioner was an ad hoc employee and has completed 240 days of service and cannot be retrenched without compliance of provision of Section 6-N of the U.P. Industrial Dispute Act, 1947. The contention of the petitioner also has no force and it is settled law that ad hoc employees had no right to continue on the post and as such in this case the petitioner was not appointed against any post but was only a daily wager on contract basis.

13. In Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others, , it has been held by the Apex Court that "Every department of the Government cannot be treated to be industry. When the appointments are regulated by the statutory rules, the concept of industry to that extent stands excluded. The petitioners were not appointed to the posts in accordance with the rules but were engaged on the basis of need of the work. They are temporary employees working on daily wages. Their disengagement from service cannot be construed to be a retrenchment under the Industrial Disputes Act. The concept of j retrenchment, therefore, cannot be stretched to such an extent as to cover these employees. Since the petitioners arc only daily wage employees and have no right to their posts, their disengagement is not arbitrary".

14. Counsel for the petitioner has failed to point out any illegality or infirmity in the order. No other point has been argued in the notice dated 1.12.2000 as such prayer No. 1 of the petitioner for issuance of the direction in the nature of certiorari quashing the impugned notice dated 1.12.2000. Relief in prayer Nos. 2 and 3 for commanding the respondents not to interfere in the peaceful functioning of the petitioner on the post of peon in the office of the Nagar Palika Parishad. Suar. District Rampur and for payment of the salary month to month also cannot be granted for the aforesaid reasons that the petitioner has failed to established the case. And further that he was engaged on daily wage on contract basis, hence is not entitled to any salary from the Nagar Palika Parishad month to month.

15. For the reasons stated above the writ petition fails and is dismissed. No order as to cost.