

(2001) 03 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 51320 of 2000

Mohammad Jamil

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Citation : (2001) 3 UPLBEC 2075

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Lihazur Rahman Khan, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh, J.—Heard Sri L.R. Khan, appearing for the petitioner and the Standing Counsel representing the respondents.

2. By order impugned herein, the petitioner's appointment has been cancelled on the premises that the appointment was irregular. The petitioner has been accordingly given notice of termination by the self-same order in exercise of power under the U.P. Temporary Government Servants (Termination of Service) Rules, 1975.

3. The petitioner, it appears, was appointed as a Class 3 employee in the Collectorate Mahoba. At the time of his appointment on regular basis, he was above the prescribed maximum age of 32 years. The petitioner was given regular appointment on 25/26.6.96. It would transpire from the record that a show-cause notice dated May i, 2000 was served to the petitioner calling upon him to explain the circumstances under which he was inducted in the service albeit he had already crossed the rubican of upper age limit of 32 years. The petitioner demanded certain papers for enabling him to file his reply but those papers were not supplied as a consequence of which he preferred a writ petition being Civil Misc. Writ Petition No. 22574 of 2000. This Court by interim order dated 16.5.2000 provided that the petitioner may file his reply to the show-cause

notice but the decision that may be taken by the competent authority would be subject to the final result of the writ petition. The petitioner was, however, accorded opportunity to apply before the concerned authority for supply of necessary papers and copy of the enquiry report. The Court in its order dated 16.5.200 had made it explicit that it entertained no doubt that "if such an application is moved, the respondents shall furnish all those papers to the petitioner. Notwithstanding specific directions, papers demanded by the petitioner were not furnished and instead he was ingeniously offered to inspect the record. Thus, in my opinion, the order of the Court was not observed in compliance and the respondents ultimately proceeded to terminate the services of the petitioner by the impugned order dated November 4, 2000 in exercise of power under the U.P. Temporary Government Servant (Termination of Service) Rules, 1975.

4. It has been canvassed by the learned Counsel that the petitioner was earlier employed in the office of the Election Officer Hamirpur but his services stood retrenched and thus, he became a retrenched employee as would be evident from the certificate (Annexure-2 to the petition). It is also canvassed by the learned Counsel that the petitioner being a retrenched employee was given age relaxation in view of the Government Order dated 27th August, 1984 (Annexure-16-B) to the petition which was taken into reckoning by the Selection Committee at the time of his selection for regular appointment in the Collectorate. In my opinion, although the services of the petitioner, to all appearances, have been terminated in exercise of power under the U.P. Temporary Government Servant (Termination of Service) Rules, 1975, but in effect and reality, it is a case of termination on the ground that he had become averaged at the time of appointment. The fact that he was a retrenched employee and on that basis he was appointed in relaxation of upper age limit, has not been considered. In the above conspectus, I veer round to the considered view that in view of the Government Order dated August 27, 1984 (Annexure-16-B), the petitioner was appointed in relaxation of upper age limit as he was a retrenched employee and his services were not liable to be terminated in cancellation of his appointment on the ground that he had surpassed the maximum prescribed age of 32 years. The impugned order, therefore, cannot be sustained.

5. As a result of forgoing discussion, the petition succeeds and is allowed. The impugned order is quashed. As a necessary corollary, the petitioner would be entitled to all consequential benefits flowing from quashment of the impugned order.