

(1999) 09 AHC CK 0226
In the Allahabad High Court
Case No : C.M.W.P No. 15664 of 1993

Mohd. Izarayal

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 01-09-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (1999) 4 AWC 3413 : (1999) AWC 3413 : (1999) 3 UPLBEC 2397

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : R.P. Goyal, Sant Saran Sharma and Sadhna Upadhya, for the Appellant; V.J. Sahai, S.C., for the Respondent

Final Decision : Dismissed

Judgement

V. M. Sahai, J.—The petitioner was appointed as collection Amin in agriculture department on 24.12.69. He was retrenched on 1.9.75. On 3.1.77 he was appointed as collection amin in the revenue department. He was confirmed on 1.1.89. He claims that juniors to him mentioned in paragraph 4 of the writ petition have been promoted as naib tehsildar. Therefore, he is entitled to be promoted as naib tehsildar. After counter-affidavit was filed by the respondents annexing the Government Order dated 7.7.80. petitioner filed amendment application challenging Government Order dated 7.7.80 to be violative of Articles 14, 16 and 21 of the Constitution. The amendment application has been allowed. The petitioner claims that he is entitled for promotion on the post of naib tehsildar and Government Order dated 7.7.80 is liable to be struck down.

2. I have heard Shri Sant Sharan Sharma learned counsel for the petitioner and Shri V. J. Sahai learned standing counsel appearing for the respondents.

3. Learned counsel for the petitioner urged that the petitioner was appointed as collection amin in the agriculture department, thereafter, he was appointed as collection amin in the revenue department. He was having Hen on the post of

collection amin while he was working in the agriculture department. And his service for the period during which he worked in the agriculture department was liable to be counted while fixing his seniority in the revenue department where subsequently he was appointed as collection amin. Learned counsel for the petitioner further urged that if his seniority is fixed by counting his past service it will be established that the Juniors to the petitioner have been promoted as naib tehsildar and he would be entitled for promotion as naib tehsildar.

4. On the other hand, Shri V. J. Sahal. learned standing counsel urged that the petitioner has got an alternative remedy before the U. P. Service Tribunal as he is Government servant and he placed reliance on a full bench judgment of this Court in *Km. Mamta John v. State of U.P. and others*. 3999 1 UPLBEC 54. He further urged that even on merits, Government Order dated 7.7.80 is clear that the petitioner who was working as collection amin was retrenched on 1.9.75 as the post of collection amin was abolished in the agriculture department. In pursuance of Government Orders issued by the State Government with regard to retrenched employees, the petitioner was given a fresh appointment as collection amin in the revenue department. Since the petitioner was given a fresh appointment, therefore, the period during which he worked in agriculture department could not be counted for fixing his seniority and the Government Order dated 7.7.80 filed as Annexure-1 to the counter-affidavit is not violative of any constitutional provision.

5. The argument of the learned counsel for the petitioner that this petition has been pending before this Court for the last six years and only legal question is involved and there is no factual dispute, therefore, the petitioner should not be relegated to pursue alternative remedy before the Tribunal has got force. Therefore, the learned counsel for the parties have been heard on merits.

6. The controversy Involved in the writ petition is as to whether the past service of an employee who has been retrenched can be counted for purposes of seniority after he has been given fresh appointment in another department.

7. It is not disputed that the petitioner worked as collection amin in the agriculture department from 24.12.69. It is clear from the Government Order dated 7.7.80 that Krishi Purthl Sangathan under the agriculture department was abolished on 1.9.75 and all collection amins and collection peons were retrenched. Accordingly, the petitioner who was working in the agriculture department as collection amin was also retrenched from service w.e.f. 1.9.75. The petitioner who was a retrenched collection amin was appointed on 3.1.77 in revenue department. On 30.4.77 the Government Issued an order that retrenched collection amins should be given preference in appointments in other departments. Some of the Collectors of different districts raised an issue about the seniority of such collection amins who were earlier in the revenue department but they had gone to the agriculture department and had been absorbed after retrenchment In the revenue department. Even though the case of such collection amins was better than the petitioner, yet the Government

clarified in the order dated 7.7.80 that such thinking about seniority was neither proper nor just. It was observed that an employee has a Hen on his post in the earlier department only if he is permanent. Those employees who were temporary or were engaged for a short time cannot be given seniority after they have come to the department again. Retrenched employees are given appointments in various departments as they should not be thrown out of employment and they should be rehabilitated if possible in other departments or under some new policy. It was with this objective that the State Government issued Government Order on 30.4.77. The mere fact that the petitioner was appointed on 3.1.77 did not give him any better or higher rights to claim seniority.

8. Learned counsel for the petitioner has placed reliance on the decision of Apex Court in K. Madhavan and Another Vs. Union of India (UOI) and Others, and Union of India and others Vs. C.N. Ponnappan, , and has vehemently urged that service rendered by him from 24.12.69 to 1.9.1975 in the agriculture department was liable to be counted in his service after he was appointed in the revenue department. I have examined both the decisions cited by learned counsel for the petitioner. These decisions are not applicable to the facts of the instant case as in the present case, the petitioner has been retrenched and he was given a fresh appointment in another department. Therefore, his service and seniority could be counted w.e.f. 3.1.77 only. He was not entitled for any benefit of his past service prior to his retrenchment for fixing his seniority in the new department. I do not find any Illegality In the seniority list, which has been approved by Board of Revenue U.P. Therefore, the claim of the petitioner that juniors to him have been promoted, as naib tehsildar, as stated in paragraph 4 of the writ petition cannot be accepted as all the juniors mentioned in paragraph 4 of the petition had been appointed prior to 3.1.77.

9. The other submission of learned counsel for the petitioner is that the Government Order dated 7.7.80 is violative of Articles 14, 16 and 21 of the Constitution. The learned counsel, however, failed to substantiate his arguments. The Government Order only clarified the well established principle of service law that a temporary employee or an employee appointed for a short term does not carry any lien.

10. For the reasons given above the writ petitioner fails and is accordingly dismissed.

There shall be no order as to costs.