

(2011) 01 AHC CK 0265
In the Allahabad High Court
Case No : Writ A. No. 59231 of 2008

Mohd. Zakir Husain Ansari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Citation : (2011) 6 ADJ 397 : (2011) 4 AWC 3837 : (2011) 2 UPLBEC 1274

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Sudhir Agarwal, J.—The writ petition is directed against the order dated 23.10.2008 passed by respondent no. 2, Superintending Engineer, Minor Irrigation, Bareilly Circle, rejecting representation of petitioner for giving appointment on the post of Urdu Translator.

2. With consent of learned counsel for parties, this Court proceed to decide this matter finally on the basis of the record of writ petition itself.

3. The facts giving rise to present dispute are that Petitioner passed Adeeb-e-Mahir certificate from Jamia Urdu, Aligarh in 1993 along with Hindi as one of the subjects. State Government had recognized aforesaid certificate by its order dated 13.12.1994 equivalent to Intermediate with Urdu subject. On 9.9.1994, U.P. Urdu Translator-cum-Junior Clerk Service Rules, 1994 (hereinafter referred to as "1994 Rules") were published wherein Appendix-3 provides that for the purpose of appointment as Urdu Translator-cum-Junior Clerk, the qualification of Adeeb-e-Mahir shall be equivalent to Intermediate whereas qualification of Adeeb-e-Kamil shall be equivalent to B.A. District Magistrate, Bareilly advertised certain vacancies of Urdu Translator-cum-Junior Clerk in grade of Rs. 950-1500 for direct recruitment in accordance with 1994 Rules in which Petitioner applied. Selection was made by holding written test. The Petitioner was selected whereafter District Magistrate by letter dated 21.2.1995 allotted the Petitioner to

the department of Minor Irrigation and directed the Superintending Engineer, Minor Irrigation, Bareilly to appoint the Petitioner after verification of his testimonials. An appointment letter dated 8.3.1995 was issued to Petitioner by Superintending Engineer. The aforesaid appointment was temporary since the posts were created upto 28.2.1996. The aforesaid appointments were challenged before Lucknow Bench in Writ Petition No. 272 of 1995 wherein an interim order was passed on 26.5.1995 giving following directions:

(1) No person shall be appointed on the posts in question until he has passed intermediate examination of the Board with Urdu as one of the subjects;

(2) If a person has passed Board's Intermediate examination without Urdu as one of the subjects but has also passed the examination of Adeeb-e-Mahir of Jamia Urdu, Aligarh he too for the time being, will be qualified for appointment on the post;

(3) Appointments of persons who have not passed Board's Intermediate Examination but are possessed only of the certificate of Adeeb-e-Mahir of Jamia Urdu, Aligarh already made by the State Government shall cease with immediate effect and no salary shall be paid to them henceforth.

4. State Government, consequently, issued a telex on 29.5.1995 directing to terminate services of all Urdu Translators who possess only Adeeb-e-Mahir certificate. Consequently, Respondent No. 2 terminated Petitioner by order dated 24.6.1995. Special Appeal No. 120 of 1995 was filed against interim order dated 26.5.1995. Vide judgment dated 12.7.1995, the Division Bench partly allowed the appeal and direction No. 3 contained in interim order dated 26.5.1995 was set aside. Consequently, State Government issued letter dated 3.11.1995 (Annexure 9 to the writ petition) modifying it telex dated 29.5.1995. The writ petition No. 272 of 1995 was ultimately dismissed for want of prosecution and the order attained finality as no application for restoration was filed. In the above circumstances, the Petitioner challenged termination order dated 24.6.1995 when he was not reinstated despite modification in the telex pursuant where to he was terminated. He filed writ petition No. 2170 of 1997. The aforesaid writ petition was dismissed on the ground of alternative remedy for approaching U.P. Public Services Tribunal. The Petitioner preferred intra Court Appeal, i.e., Special Appeal No. 506 of 1998, which was finally disposed of by this Court on 5.8.1998 as under:

Heard Sri V.K. Goyal for the Appellant and Sri Babha Jeet Yadav, learned standing counsel for the Respondents.

In this appeal filed by the Petitioner of civil Misc. Writ Petition No. 2170 of 1997, the order of the Learned Single Judge dated 14-7-1998 dismissing the writ petition on the ground of alternative remedy is under challenge. The order reads,

The Petitioner has an alternative remedy before the U.P. Public Service Tribunal. The petition is dismissed on the ground of alternative remedy. However, if a claim

petition is filed before the U.P. Public Service Tribunal, the same shall be decided preferably within six months in accordance with law after hearing the parties concerned interim order, if any, is vacated.

The thrust of the submissions of Sri Goel is that the order termination of Petitioner's service in pursuance of interim order passed by the Lucknow Bench of the court in that Misc. Writ Petition No. 272 of 1995 and the Special Appeal No-120 of 1995. In appeal the portion of the said interim order which is relevant in the present case was interfered with. Therefore, there is no difficulty for the department authority to reinstate the Petitioner in service. We make no observation on the correctness of the aforementioned submissions of Sri Goel as noted above.

We dispose of the appeal with the order that the impugned order passed by the learned single judge will not prevent the authority against the order of termination of service and if so representation is made, it will be disposed of in accordance with the rules and law within two months of its receipt.

5. Pursuant to the said judgment, Petitioner moved a representation before State Government as well as Respondent No. 2, but no decision was communicated despite of several reminders. On 29.6.2006, State Government issued an order stating that those candidates who passed Adeeb-e-Mahir examination and whose services were kept in abeyance vide Government Order dated 3.11.1995, if have passed, with passage of time, Intermediate examination, may be restored and be paid their salary. Petitioner, though did not receive any order on his representation but Respondent No. 2's letter dated 1.9.2006 was received by him whereby he was informed that his representation was rejected and this was sent to him by registered post dated 23.4.1999. In fact, no such letter was ever received by Petitioner.

6. Since the Petitioner, in the meantime, also passed Intermediate examination in Urdu in 1996, he made a representation dated 14.8.2006 requesting Respondent No. 2 for reinstating him in view of Government Order dated 29.6.2006. State Government reiterated its decision for restoration of service of those candidates who had passed Intermediate examination in the meantime by its order dated 19.12.2006. Petitioner again represented before Chief Engineer, Minor Irrigation by letter dated 10.9.2007 and, thereafter approached this Court in writ petition No. 4165 of 2008 which was disposed of vide judgment dated 2.9.2008 with the following order:

In view of the aforesaid circumstances, the OP No. 2 should first determine the entitlement of the Petitioner regarding his initial appointment and thereafter, the application of the government order dated 29.06.2006 in his case and then whether the Petitioner is entitled to be restored back to service in pursuance thereof. It is made clear that this Court has not issued any mandamus to Respondent No. 2 to restore the Petitioner back to service and it is also made clear that this Court has not expressed its opinion on the merits of his claim. The

OP No. 2 should take a decision preferably within four months from the date a certified copy of this order is produced before him.

The writ petition is accordingly disposed of. No order is passed as to costs.

7. Pursuant to this judgment, the impugned order has been passed by Superintending Engineer, which is assailed in this writ petition.

8. The only question is whether Petitioner is entitled for restoration in service or not. His appointment was cancelled by office order dated 24.6.1995 issued by Superintending Engineer, Minor Irrigation, Bareilly in pursuance to the Government's telex dated 29.5.1995 on the ground that Petitioner has not passed Intermediate examination and was appointed only on the basis of qualification of Adeeb-e-Mahir, hence, in view of High Court's order, his appointment is to be cancelled. As already stated above, the condition No. 3 contained in interim order dated 26.5.1995 was set aside in appeal by Division Bench, meaning thereby the direction for termination became non est and the telex message issued by State Government having been modified by State Government, accordingly, the result would be as if the said direction was never issued. Consequently, the very foundation on the basis whereof the order of cancellation of appointment was issued by Respondent No. 2 vanished, Petitioner having already been appointed, therefore, was entitled to continue in service since the directions No. 1 and 2 could not have been applied to those candidates, who were already appointed.

9. Moreover, the result of dismissal of the writ petition would be as if no interim order was ever passed and the interim order disappear from its very inception. This issue has been considered by a Division Bench of this Court (in which I was also a member) in Smt. Vijay Rani v. Regional Inspectress of Girls Schools, Region-1, Meerut and Ors. 2007(2) ESC 987 and the Court held as under:

An interim order passed by the Court merges with the final order and, therefore, the result brought by dismissal of the writ petition is that the interim order becomes non est. A Division Bench of this Court in Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others, while considering the effect of dismissal of writ petition on interim order passed by the court has laid down as under:

It is well settled that an interim order merges in the final order and does not exist by itself. So the result brought about by an interim order would be non est in the eye of law if the final order grants no relief. The grant of interim relief when the petition was ultimately dismissed could not have the effect to postponing implementation of the order of compulsory retirement. It must in the circumstances take effect as if there was no interim order.

The same principal has been reiterated in the following cases:

(A) Sri Ram Charan Das Vs. Pyare Lal,

In Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others, a Bench of this

Court has held that orders of stay of injunction are interim orders that merge in final orders passed in the proceedings. The result brought about by the interim order becomes non est in the eye of law in final order grants no relief. In this view of the matter it seems to us that the interim stay became non est and lost all the efficacy, the commissioner having upheld the permission which became effective from the date it was passed.

(B) 1986 (4) LCD 196 Shyam Manohar Shukla v. State of U.P.

It is settled law that an interim order passed in a case which is ultimately dismissed is to be treated as not having been passed at all (see Shyam Lal Vs. State of Uttar Pradesh, Lucknow and Others, and Sri Ram Charan Das Vs. Pyare Lal,

(C) M/s. Kanoria Chemicals and Industries Ltd. Vs. U.P. State Electricity Board and other,

After the dismissal of the writ petitions wherein notification dated 21.4.1990 was stayed, the result brought about by the interim orders staying the notification, became non est in the eye of law and lost all its efficacy and the notification became effective from the beginning.

10. That being so, Petitioner was entitled to be treated as continuing in service and this also would have vitiated order dated 24.6.1995 since the foundation on which it was issued had disappeared.

11. Be that as it may, once State Government later on took a policy decision and applied to those candidates who have passed Intermediate examination shall be restored in service and that decision was taken in 2006, the Respondent No. 2 ought not to have denied service to the Petitioner on mere technical grounds. As a matter of fact, the very order dated 24.6.1995 cancelling appointment of Petitioner itself was liable to be set aside. Learned Standing Counsel could not put any substantial reason justifying denial of restoration of services to Petitioner. In my view, therefore, this writ petition deserves to be allowed.

12. However, since admittedly the Petitioner has not actually worked throughout since the date of cancellation of his appointment till date, in my view, considering overall facts and circumstances of the case, the principle of "no work no pay" can be applied in this case and for this period, the Petitioner may not be given any arrears of salary, but this period shall count for the purpose of increment, seniority, retiral benefits etc., as if he was continuously in service since the date of his initial appointment. Learned Counsel for Petitioner also agreed and stated that Petitioner shall not claim salary for the period, he has not discharged any duty.

13. In view of above, writ petition is partly allowed. The orders dated 24.6.1995 (Annexure 8 to writ petition) and 23.10.2008 (Annexure 19 to writ petition) are hereby quashed. Petitioner shall be treated to be in continuous service with all consequential benefits except arrears of salary for the period he remained out of

job till date.

14. There shall be no order as to costs.