
(1997) 11 AHC CK 0099

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4062 of 1996

Muneshwar Dayal

APPELLANT

Vs

Zila Karyakram Adhikari, Bijnor and others

RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Constitution of India, 1950 — Article 309
Uttar Pradesh Bal Vikas Seva Evam Pustahar Samooh Gha Karmachari Seva
Niyamawali, 1991 — Rule 3

Citation : (1998) 1 AWC 426 : (1998) 2 UPLBEC 1023

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : M.C. Singh, for the Appellant;

Final Decision : Allowed

Judgement

O.P. Gars, J.—By means of this writ petition, the petitioner--Muneshwar Dayal has challenged the order dated 2.1.1996 passed by respondent No. 1--Zila Karyakram Adhikari, Bijnor on the basis of order dated 7.12.1995 passed by respondent No. 2--The Nideshak, Bal Vikas Seva Evam Pustahar, U. P. Lucknow and has prayed that the said order be quashed and the respondents be directed by means of a writ of mandamus not to interfere in the functioning of the petitioner on the post of peon.

2. Counter and rejoinder-affidavits have been exchanged. Heard Sri M. C. Singh, learned counsel for the petitioner as well as learned standing counsel.

3. It is an admitted fact that the petitioner was appointed on the post of peon in class IV cadre in the Office of Bal Vikas Pariyojna Adhikari, Nazimabad, district Bijnor on 25.9.1993. He joined the post of peon on 1.10.1993. A Selection Committee was constituted under the rules for regularization of the services of the petitioner. The petitioner was called for interview on 12.10.1994. The Selection Committee recommended the case of the petitioner for regularization of his services as peon and ultimately by order dated 25.10.1994, the services of

the petitioner were regularised. On 2.1.1996 the respondent No. 1--Zila Karyakram Adhikari. Bijnor terminated the services of the petitioner on the basis of a general order dated 7.12.1995 passed by the Director, Bal Vikas Seva Evam Pustahar. U. P., Lucknow--respondent No. 2. It is this order which has been challenged by the petitioner in this writ petition on the ground that the petitioner being a regular employee of the department, his services could not be terminated abruptly without affording him an opportunity of hearing or initiating departmental enquiry against him. According to the learned counsel for the petitioner, the order of termination of the services of the petitioner has been passed by way of punishment and is, therefore, liable to be quashed.

4. In the counter-affidavit, the respondents have taken the plea that power of appointment which was conferred on the Commissioner/District Magistrate by Government Order dated 25th August, 1990, was withdrawn by subsequent order passed by the Director on 7th December, 1995 on the basis of the Government Order dated 18.2.1991. In short, the case of the respondents is that the power which was earlier centralised in the Commissioner/District Magistrate stood withdrawn and it came to be centralised in the Director, Bal Vikas Seva Evam Pustahar, U. P., Lucknow, respondent No. 2 and since the petitioner was appointed in contravention of the order of the State Government dated 18.2.1991 by the District Authorities, the Director by the impugned order dated 10th August, 1995 cancelled all such appointments.

5. It is indubitable fact that the petitioner was appointed on the post of peon initially on ad hoc basis on 25.9.1993. Prior to the appointment of the petitioner, Uttar Pradesh Bal Vikas Seva Evam Pustahar Samooch Gha Karmachari Seva Niyamawali 1991 which was framed under Article 309 of the Constitution of India came into force with immediate effect on the notification of the rules on 3.7.1992. In Rule 3 (ka), the expression appointing authority has been defined to mean Deputy Director (Administration) in respect of the post in the Directorate and in respect of other posts the District Programme Officer was made the appointing authority. Rule 3 (ka), therefore, means that in respect of class IV employees to be recruited and posted in the district, the District Programme Officer is the appointing authority. In respect of all those class IV employees who are posted in the Directorate, the Deputy Director (Administration) is the appointing authority. The petitioner along with two other class IV employees was appointed by the District Karyakram Adhikari. Bijnor, respondent No. 1 who was obviously the appointing authority under the rules. Undoubtedly, the services of the petitioner were regularised after holding the interview by the Selection Committee which consisted of four members duly appointed by the District Magistrate. The services of the petitioner were recommended for regularisation by the Selection Committee. The relevant documents in this regard are Annexures 2, 3, 4 and 5 to the writ petition.

6. Now the moot point for consideration is whether the person who was duly appointed and whose services were regularised on the recommendations of the

Selection Committee even though on temporary basis could be terminated on the basis of an order passed by the Director, respondent No. 2. At the very outset, it may be mentioned that the Government Orders which have been relied by the - Director come into existence prior to the enforcement of the rules referred to above. The Government Orders dated 25th August. 1990 and 18th February, 1991, deal with the situation and with such employees in respect of whom there were no service rules. The petitioner was appointed after the framing of the rules which came into force on 13th July, 1992. In the letter dated 10th August. 1995. Annexure-10 to the writ petition, it has been mentioned that the appointment shall be made in accordance with the provisions of the rules and that all those appointments which were made prior to the issue of the said letter, were to stand cancelled. The offending part of the impugned order dated 10.8.1995, Annexure-10 to the writ petition, is that all the appointments made by the appointing authority prior to 10.8.1995 were cancelled by a stroke of pen without realising the implications that the rights of the affected parties would be seriously jeopardized. The order dated 10.8.1995 postulates that the power of appointment is centralised in the Directorate. This assumption is patently wrong and against the provisions of the rules. As said above, the service rules of class IV employees of the department authorised the District Programme Officer to make appointment to class IV cadre. This power could not be taken away by an executive order, which runs counter to the provisions of the rules. The petitioner was duly and rightly appointed by respondent No. 1 and that the services of the petitioner were duly regularised. The power of appointment which vested in respondent No. 1 could not be curtailed by an order of the Director even though he is an authority superior to respondent No. 1. Even if it be taken that the Director divested the respondent No. 1 of his power to make appointment to the post of class IV cadre, it could only be prospective in nature. The Director was not justified in cancelling the earlier appointments which were otherwise valid.

7. There is yet another aspect of the matter that the order cancelling the appointment of the petitioner was passed without affording him an opportunity of hearing. It is well settled principle of natural Justice that the affected person should not be visited with evil consequences without affording him a reasonable opportunity of hearing. In this connection, reference may be made to *Sri Dhar v. Nagar Palika, Jaunpur and others* 1990 (1) UPLBEC 1 and *Shrawan Kumar Jha and others Vs. State of Bihar and others*, . In the instant case, admittedly, no opportunity of hearing was afforded to the petitioner as his appointment came to be nullified as a result of the general and sweeping order passed by the Director, respondent No. 2.

8. The learned standing counsel urged that the petitioner cannot complain of the order of termination as his services, even though regularised, were temporary terminable at any time without notice. It is true that the services of the petitioner were treated to be temporary even after regularisation but for no ostensible reasons such as his services were not required or that the post on which he was working has ceased to exist or any other like ground, the

termination order was passed in an abrupt manner on the basis of the order dated 10th August, 1995 of the Director on the assumption that respondent No. 1 had no authority to make appointment. In this writ petition, therefore, the only ground on which the termination order of the petitioner is to be tested is whether the appointment of the petitioner was made by a person who did not have the authority to do so. No other ground can be looked into. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the Supreme Court observed that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. Reliance was placed on the following observations made in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, :

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the action and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

9. The Supreme Court made it clear that the orders are not like the old wine becoming better as they grow older.

10. In the result, I find that the petitioner has been appointed by the competent authority and his services were regularised on the recommendation of the Selection Committee. Respondent No. 1 had the authority under the relevant Rules to make appointment of class IV employees as under Rule 3 (ka) he was the appointing authority for class IV employees working under him. The general order passed by the Director, respondent No. 2 terminating the services, are illegal and arbitrary and therefore they are liable to be quashed.

11. For the reasons stated above, the writ petition succeeds and is allowed. The impugned orders dated 2.1.1996 passed by respondent No. 1, and 7.12.1995 passed by respondent No. 2, which are Annexures 7 and 8 to the writ petition are hereby quashed. The petitioner shall be entitled to his salary throughout provided he has worked.