
(1999) 05 AHC CK 0045

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18553 of 1996

Narendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-05-1999

Acts Referred:

Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975
— Rule 3(1)(2)

Citation : (1999) 2 UPLBEC 1386

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : H.N. Shukla, for the Appellant; I.S. Singh, SC, for the Respondent

Final Decision : Allowed

Judgement

A.K.Yog, J.—This writ petition has been filed by Narendra Singh Son of Baba Singh (petitioner) claiming a writ of mandamus commanding the respondents to permit him to work in view of order dated 5-9-1995 (Annexure 6 to the petition), by means of which he was reinstated, to treat the petitioner in service by not giving effect to the order of termination dated 28-4-1995, to regularise the services of the petitioner from the date of his initial appointment on Class IV post in the department of the Government of U.P., to pay him arrears of difference of pay from the date of initial appointment on Class IV post in the department, to issue a writ as this Court may deem fit, in the circumstances of the case and award cost of the petition.

2. Petitioner contended that he was appointed, through selection, on the post of Tube-well Assistant against a clear vacancy on the basis of an appointment letter dated 21-8-89 (Annexure 1 to the petition). It is contended that his duties and responsibilities were similar to that of regularly appointed Class IV employee in the department and there was no difference either in the nature of duties or in the quantum of work and hence he was entitled to salary as is being admissible to regular employee on the principle of equal pay for equal work.

3. According to the petitioner he was suspended vide order dated 25-10-94 (Annexure 2) followed by a charge sheet dated 23-1-95 (Annexure 3 to the petition). Petitioner appears to have submitted some explanation as is evident from Annexure C.A. III to the Counter Affidavit filed by the respondents. The respondents, in defence, contend that the services of the petitioner were sought to be terminated on the ground of malice on the part of Pradhan of the Village and also on statements of the villagers recorded by the Enquiry Officer. The Enquiry Officer (Assistant Engineer III) submitted its report/recommendation to the Executive Engineer (Annexure 4). In the said report Enquiry Officer mentioned that the petitioner, Assistant Tube-Well Operator, was called by him for giving his explanation and recommended that said Assistant Tube-Well Operator be removed from Government service. After enquiry report, petitioner submitted his explanation dated 2-2-95 (Annexure C.A. III). As stated above, his defence was two fold. Firstly, he was victimised out of malice and secondly, the villagers statement, relied against him, were not of "genuine residents" of the village, where his Tube-well was situated.

4. Petitioner's services were terminated vide order dated 28th April, 1995 (Annexure 5 to the petition) passed by Executive Engineer, Bhodhi. A bare perusal of the termination order shows that it does not refer to the explanation of the petitioner dated 2-2-95, copy of which has been annexed as Annexure C.A.III to the Counter Affidavit. By means of the said termination order, services of the petitioner were determined with immediate effect without giving one month notice as contemplated in the appointment letter Annexure 1 to the petition. Thus, the concerned authority passed order of termination, apart from being in violation of terms and conditions of the appointment letter, also in breach of Rule 3 (1) (2), UP. Temporary Government Services Rules, 1975.

5. It appears that an order of re-instatement dated 5-9-1995 (Annexure 5 to the petition) on the representation of the petitioner, was, in fact passed but it is disputed as to whether said order as ever issued and communicated to the petitioner. In the rejoinder affidavit it is contended that the said order was issued and it was not cancelled. Respondents in their counter affidavit have mentioned that the sad order was never communicated. Without entering into correctness of the stand taken by the petitioner or the Respondents (as to whether the order was communicated or not) perusal of the counter affidavit shows that, according to the respondents, order of reinstatement dated 5-9-99 was revoked by subsequent order dated 7-10-1995 (see para 24 of the counter affidavit). The respondents, however, have not cared to mention in their counter affidavit as to whether the order of revocation dated 7-10-1994 was issued and communicated to the concerned.

6. Heard Sri H.N. Shukla, learned Counsel for the petitioner and Sri IS. Singh, learned Standing Counsel appearing on behalf of the respondents.

7. Perusal of the explanation submitted by the petitioner dated 2-2-95 (Annexure C.A.III), order of Executive Engineer dated 8-9-95 (Annexure C.A. IV), order

dated 28th September, 1995 passed by the Assistant Engineer III (Annexure C.A. V) and order dated 7-10-95 passed by Executive Engineer (revoking order of suspension), Annexure C.A. VI would show that respondents acted in a queer manner. Order dated 5-9-95 (Annexure 6) revoking termination, according to the respondents was not issued. Respondents also do not state that order of revocation dated 7-10-95 was issued and if such an order was passed whether an opportunity of hearing was given to the petitioner.

8. In the present case petitioner has submitted his explanation dated 2-2-95 (Annexure C.A. III and in the said explanation he submitted that none of the cultivators (who were present at the time of inspection of his Tube-Well and had made complaint against him, belonged to the command area of the Tube-Well in question). They were henchmen of Pradhan against whom he had an old rivalry/enmity, copy of which was also annexed. The Executive Engineer vide his order dated 8-9-95 (Annexure C.A.IV to the counter affidavit), in fact, directed the Assistant Engineer III to make enquiry from the cultivators and submit his report. Assistant Engineer III submitted his report dated 28th September, 1995, annexed as Annexure C.A. V to the counter affidavit . In the said report Assistant Engineer-III did not care to mention the name of the cultivators from whom enquiry was made, neither he referred to the specific complaint showing grudge of the cultivators against the petitioner as Tube-Well Operator. On the recommendation of Assistant Engineer, Executive Engineer, however, claims to have passed an order dated 7-10-95 (Annexure C.A. VI) and revoked its order of reinstatement dated 5-9-95 (Annexure 6 to writ petition). Apart from the fact, that the order dated 7-10-95 is not claimed, by the respondents to have been served upon the petitioner, still the question, which remains wide open is as to whether such an order could be passed without affording an opportunity of hearing to the petitioner.

9. Moreover, even if the development, after passing of the termination order dated 28th April, 1995, is ignored, the question would still remain whether such an order of termination can be sustained in the eyes of law. As already pointed out above the said order of termination was passed without giving one month notice in breach of condition under appointment letter as well as Rule 3 (1) (2) of the U.P. Temporary Government Service (Termination of Service) Rules, 1975. Moreover termination order dated 28th April, 1995 stands vitiated by the fact that Executive Engineer does not appear to have given notice to petitioner for submitting his explanation as such. Lastly, the explanation submitted by the petitioner dated 2-2-95 (Annexure C.A. III) contains specific case of the petitioner that he was victimised out of enmity with Pradhan and none of the persons, who had made allegation against him are the residents of the area within the command of Tube- well question.

10. In view of what has been stated above, the order of termination dated 28th April, 1995 is set aside. Question regarding payment of salary, for the period on and after 28th April, 1996, shall be determined by the Executive Engineer after

considering relevant facts and circumstances, namely whether the petitioner has been gainfully employed elsewhere or not during the said period. Petitioner may approach the Executive Engineer and claim salary giving relevant details and materials to enable the Executive Engineer to decide to question of payment of arrears. Petitioner shall be reinstated for with and paid in future his salary in accordance with law month by month.

11. The writ petition is allowed. No order as to costs.