

(2000) 05 AHC CK 0145
In the Allahabad High Court
Case No : C.W.M.P. No. 28112 of 1999

Om Prakash

APPELLANT

Vs

Superintending Engineer, Nalkoop Division, Varanasi and
others

RESPONDENT

Date of Decision : 05-05-2000

Acts Referred:

Citation : (2000) 3 AWC 1992 : (2000) AWC 1992 : (2000) 2 UPLBEC 1449

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

Bench : Single Bench

Advocate : Sunil Kumar Srivastava, for the Appellant; R.P. Dubey, Addl. C.S.C. and A.K, Shukla, for the Respondent

Final Decision : Allowed

Judgement

V. M. Sahai, J.—The petitioner was appointed on 31.3.1991 as chaukidar under the Dying-in-Harness Rules by the Executive Engineer, Laghu Dal Nahar Division, Varanasi. On 18.4.1998 when the petitioner was going to office, he met with an accident near Bus Stand, Varanasi in which he was seriously injured. He was hospitalised. He informed the Executive Engineer/ respondent No. 3 on 18.5.1998 by letter sent under-postal-certificate that he was seriously injured, his spinal cord was affected, and he suffered Injury in his leg, therefore, medical leave be granted to him. He was under medical treatment in Government Ayurvedic Hospital from 18.4.1998 to 8.6.1998. On 16.6.1998, he sent a letter to respondent No. 3 informing respondent No. 3 that he could not get any relief from ayurvedic medicines and he has been referred by Ayurvedic Hospital to Allopathic Hospital for treatment. Therefore, he requested that his absence be condoned. He remained under treatment in Allopathic Hospital from 9.6.1998 to 15.1.1999. He was again referred to Kamlapathi Tripathi Hospital where he was under treatment from 16.1.1999 to 25.1.1999. He on 20.2.1999 made an application to respondent No. 3 that his absence be adjusted in his leave. Thereafter, he was again referred for treatment to State Allopathic Hospital,

Varanasi and was under treatment from 20.5.1999 to 30.5.1999. He was declared fit on 30.5.1999 by Medical Officer-in-charge of State Allopathic Hospital and fitness certificate was issued to him. The petitioner has filed medical certificates along with this petition in support of his injury and treatments taken in various hospitals at Varanasi. He has filed a copy of the fitness certificate, filed as Annexure-7 to the writ petition. On 3.6.1999, the petitioner went to join his duty. He was served with a termination order dated 3.2.1999 by the respondents. It is this order of termination dated 3.2.1999. which has been challenged by the petitioner in the instant writ petition.

2. I have heard Shri Sunil Kumar Srivastava learned counsel for the petitioner and Shri R. P. Dubey, Additional Chief Standing Counsel appearing for the respondents.

3. Learned counsel for the petitioner has urged that the petitioner was appointed under Dying-in-Harness Rules. He was a permanent employee and his service could not be terminated by the respondents without affording any opportunity of hearing to the petitioner. He urged that the petitioner met with an accident and he informed the Executive Engineer about his medical treatment and sent applications and medical certificates for grant of leave as he had suffered serious injury in his spinal cord, therefore, the respondents ought to have sanctioned leave to the petitioner. The absence of petitioner, due to his accident and medical treatment, could not furnish a ground for termination of petitioner's service. Letters served by respondents was not served on the petitioner nor he came to know about the notice published in newspapers as he was under medical treatment. On the other hand, learned Additional Chief Standing Counsel has urged that the petitioner was a temporary employee as per the terms of his appointment letter. He further urged that the respondents were not informed of the petitioner's accident or his medical treatment. The respondents have not received letters for grant of leave sent by the petitioner. Since in spite of notice published in newspapers, the petitioner did not join, the respondents treated the petitioner to be absent from duty without leave and terminated his service.

4. It is admitted that the petitioner was appointed as a class IV employee under the Dying-in-Harness Rules. Appointments under the Dying-in-Harness Rules are permanent appointments. In *Ravi Karan Singh Vs. State of U.P. and others*, a Division Bench of this Court has held that appointment under the Dying-in-Harness Rules cannot be treated to be a temporary appointment. Since the petitioner was appointed under the Dying-in-Harness Rules, his appointment could only be permanent and not temporary. In the appointment letter dated 31.3.1991 issued by respondent No. 3, the condition that the appointment of the petitioner was purely temporary and could be terminated without any notice, therefore, was of no consequence. Since petitioner was a permanent employee of the respondents, his service could be terminated only after giving him a proper opportunity of hearing. In accordance with principles of natural justice, and the impugned order terminating his service treating him to be a temporary employee

cannot be upheld.

5. The argument of learned counsel for the respondent that the petitioner was absent from duty without any leave from 18.4.1998 till his service was terminated cannot be accepted. The respondents in paragraphs 7 and 8 of the counter-affidavit have stated that they had no information about the accident of the petitioner or his treatment. The applications for leave and medical certificates were sent by the petitioner to the respondents under postal certificate. The petitioner has also filed the applications sent by him, medical certificates issued by Doctors of Government Hospital and receipts showing that these applications were sent under postal certificate. The letters sent under postal certificate carry a presumption that it has been received by the addressee unless contrary is proved. The respondents in their counter-affidavit have not disputed correctness of the medical certificates issued by Doctors of Government Hospital showing that the petitioner was under their treatment as he has suffered injury in his spinal cord and leg. Therefore, in absence of any denial by the respondents of the medical certificates, it has to be accepted that the petitioner met with an accident on 18.4.1998 in which he was seriously injured and suffered injuries in his spinal cord and leg and he was under medical treatment from 18.4.1998 to 30.5.1999. The argument of the learned counsel for respondents that in spite of letters being sent to the petitioner on 24.4.1998, 24.6.1998 and 16.7.1998 by registered post and publication in two newspapers Dainik Samachar Jyoti and Bharat Doot dated 26.6.1998, the petitioner did not report for duty till 31.1.1999, therefore, his services were terminated by order dated 3.2.1999 w.e.f. 18.4.1998 cannot be accepted. The petitioner in paragraphs 13 and 14 of the writ petition has stated that letters dated 24.4.1998, 24.6.1998 and 16.7.1998 mentioned in the termination order were never served on him. In paragraph 9 of the counter-affidavit, it is vaguely denied. In fact the statement of petitioner is substantiated by the allegation in paragraph 9 of the counter-affidavit that termination order dated 3.2.1999 was sent by special messenger to the petitioner but the special messenger was informed by local resident of the village that the petitioner was not residing in the village. The reason for petitioner's not residing in the village is obvious. He was seriously injured in an accident and had suffered injuries in his spinal cords and leg. He was under medical treatment in different Government Hospitals at Varanasi. His family members must be with him at Varanasi, therefore, it appears that no one was available at his village. The respondents have not filed receipts of the letters were sent by registered post nor they have filed any acknowledgment of the registered letters. Since no one was residing at the village, it can safely be assumed that the registered letters were not received by the petitioner. In the impugned order, it has been stated that notice was published in two newspapers-- Dainik Samachar Jyoti and Bharat Doot on 22.9.1998 informing the petitioner that he should join his duty by 15.12.1998 otherwise it will be deemed that petitioner's service has come to an end. In paragraph 14 of the writ petition, the petitioner has challenged that the two newspapers in which notice was published

on 22.9.1998 do not have wide circulation in State of U. P. or in district Varanasi. In reply in paragraph 10 of the counter-affidavit, the respondents again have failed to give specific reply and have relied on fact that proceedings for publication in newspapers were undertaken through Director of Information, Directorate U. P., Lucknow. The publication in newspapers are only a mode of service. It can always be rebutted. Therefore, even it is assumed that notice was published in newspapers having wide circulation, it would not result in service on petitioner as he was confined to the hospital on the date of publication and in absence of any material to show that the petitioner who was only a class IV employee had access to these newspapers in the hospital. It would be reasonable to assume that the notice was not served on the petitioner. The order of termination, therefore, being in violation of principles of natural justice cannot be maintained.

6. In the result this writ petition succeeds and is allowed. The termination order dated 3.2.1999 passed by respondent No. 3 Annexure-9 to the writ petition is quashed with all consequential benefits of service to the petitioner. This order shall be complied by the respondents within a period of two months from the date a certified copy of this order is produced before respondent No. 3.

7. Parties shall bear their own costs.