

(1998) 11 AHC CK 0015

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 35490 and 34441, 35446, 35484, 35487, 35495, 35613, 36276, 36278, 36280, 36310, 36320, 36323, 36329, 36703, 36704, 37960, 38865 and 44264 of 1997

Pancham Ram and Others

APPELLANT

Vs

Chief Engineer, U.P. Jal Nigam and Others

RESPONDENT

Date of Decision : 26-11-1998

Acts Referred:

Citation : (1999) 1 UPLBEC 537

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Bhagwati Prasad, S.M.A. Kazmi, K.C. Sinha, H.N. Singh and S.K. Singh, for the Appellant; S.J. Yadav and Poonam Srivastava, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—These nineteen writ petitions are knit together by reason of common questions of law and facts being involved therein and therefore, they were taken up together being amenable to common hearing and disposal.

2. The facts beyond the pale of controversy are that petitioners herein were appointed in a Special recruitment drive launched by the State Government to fill up the quota reserved for S.C./S.T. candidates in various circles/divisions of the U.P. Jal Nigam. The vacancies were duly advertised in Hindi Dailies of wide circulation and appointments were made on the basis of recommendations made by duly constituted Selection Committees. the selected candidates joined their duties but subsequently, the appointment came to be rescinded by order of the Chief Engineer, U.P. Jal Nigam, Lucknow.

3. I have heard Saryshri Bhagwati Prasad, K.C. Sinha and S.M.A. Kazmi in support of their respective petitions and Smt. Poonam Srivastava in opposition thereto.

4. The order cancelling the appointments are sought to be quashed inter alia on

the ground of violation of audi alternate rule of natural justice and also on the ground of arbitrariness and absence of reason. In support of the impugned orders, it was canvassed by Smt. Poonam Srivastava that in the facts-situation of the present case, no opportunity was required to be given in that the appointments were made despite stay by superior authority i.e. the Chief Engineer, U.P. Jal Nigam, Lucknow. It was also propounded by Smt. Poonam Srivastava that so far as Allahabad Circle is concerned, the Superintending Engineer was stripped of the power to make appointments and the same was given to the General Manager. This has been refuted by the petitioners.

5. Having heard the Counsel for the parties, I veer round to the view that these petitions commend themselves to be allowed on the ground of that the impugned orders of termination/cancellation of appointments having been passed sans any opportunity of hearing being accorded to the petitioners. The point receives reinforcement from the decisions of the Supreme Court in Basudev Tiwari JT 1998 (6) SC 464 ; Shridhar Vs. Nagar Palika, Jaunpur and Others, ; Shrawan Kumar Jha and others Vs. State of Bihar and others, and a decision of this Court in Rais Ahmad v. State of U.P. and Ors. (1988) 2 UPLBEC 1232.

6. In Basudev Tiwari (supra), the appointment of the appellant therein on the post of lecturer was terminated on the ground that on the relevant date "the Syndicate had no power to make appointment of the lecturer and therefore, his appointment was not lawful." No opportunity was afforded to the appellant therein before terminating his appointment. The writ petition challenging the order of termination came to be dismissed by the High Court. Reliance was placed on Section 35 (3) of the Bihar Universities Act, 1970 which enabled termination "at anytime without notice" of any appointment or promotion "made contrary to the provisions of the Act, Statutes or in any irregular or unauthorised manner." The Supreme Court after noticing its earlier decisions in Delhi Transport Corporation v. D.T.C. Mazdoor Congress JT 1990 (3) SC 725 ; Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ; and S.L. Kapoor Vs. Jagmohan and Others, , allowed the appeal and set aside the order passed by the High Court holding inter alia as under:-

"12. The said provisions provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, Statutes, rules or regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to Act, Rules, Statutes and Regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, statues, rules or regulations etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an

enquiry the person whose appointment is under enquiry will have to be issued to him. If notice is not given to him then it is like playing Hamlet without the Prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this Court in D.T.C. Mazdoor Sabha's case. In such an event, we have to hold that in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, statute, rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice.

13. Admittedly in this case notice has not been given to the appellant before holding that his appointment is irregular or unauthorised and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained."

In *Shridhar v. Nagar Palika, Jaunpur* (supra), appointment by direct recruitment to the post of Tax Inspector was cancelled by the Prescribed Authority/Commissioner on the ground that the appointment ought to have been made by promotion. Writ petition challenging the order of Commissioner was dismissed. The Supreme Court held as under :

"8. The High Court committed serious error in upholding the order of the Government dated 13-2-80 in setting aside the appellant's appointment without giving any notice or opportunity to him. It is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the Commissioner's Order had been passed without affording any opportunity of hearing to the appellant, therefore, the order was illegal and void. The High Court committed serious error in upholding the Commissioner's order setting aside the appellant's appointment. In this view, Orders of the High Court and the Commissioner are not sustainable in law."

7. In *Shravan Kumar Jha* (supra), certain Asstt Teachers were appointed by the District Supdt. of Education, Dhanbad by order dated May 28, 1988. The appointments were cancelled by the Dy. Development Commissioner vide order dated Nov. 2, 1988 on the ground that the District Supdt. of Education had no authority to make the appointment. There was a controversy as to whether the appointees had joined their duties before appointments were cancelled. The appellants therein asserted that they had joined their respective Schools but this fact was repudiated by the State. The Supreme Court held that it was not necessary to go into the disputed questions of fact for in their Lordships' opinion, the impugned order cancelling the appointment, was liable to be quashed on the ground that the appellants therein had not been given an opportunity of hearing

before cancelling their appointments. The Supreme Court observed: "It is well settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice, it set aside the impugned orders of cancellation dated Nov. 3, 1988 on this short ground." The competent authority was however granted liberty to give an opportunity of hearing to the appellants therein and thereafter give a finding as to whether the appellants were validly appointed as Asstt. Teachers.

8. In *Mohd. Rais Ahmad v. State of U.P. and Ors.* (1988) 2 UPLBEC 1232, an order of cancellation of appointment of odhoc/temporary employees passed without giving opportunity of hearing to the employees was quashed by this Court relying on Supreme Court decision in *Shravan Kumar Jha (supra)*. Regard being had to the authorised cited above, I am of the firm view that it is not necessary to dwell upon the questions as to whether the appointments had been stayed by an order of the Chief Engineer as asserted by Smt. Poonam Srivastava, appearing for the U.P. Jal Nigam or it was not stayed as asserted on behalf of the petitioners, nor it is necessary to delve into the question as to whether the Superintending Engineer of Allahabad Division and Azamgarh Division were stripped of their powers to make appointment as asserted by Smt. Poonam Srivastava or they continued to hold power as asserted by the Counsel appearing for the petitioners, for I am of the considered view that the impugned orders having been passed sans an opportunity of hearing being given to the petitioners, are unsustainable.

9. *Union Territory of Chandigarh Vs. Dilbagh Singh and others*, , reliance on which was placed by Smt. Poonam Srivastava in support of her contention that opportunity in the instant case was not required to be given, is unavailing and has no application to the facts of the present case. It has been held in that case that cancellation of injudicious select list is not open to challenge for want of opportunity of hearing to the members of the Selection Committee nor an opportunity is required to be given to the selectees for mere selection does not confer any right to be appointed. In the instant case, the selectees were not only appointed but they had joined their duties and the order of termination/cancellation of appointment has been challenged not by the members of the Selection Committee but by the appointees. Similarly, the decision in *Municipal Corporation, Bilaspur v. Beer Singh Rajput and Ors.* JT 1998 (1) SC 390, too has no application to the facts of the present case. That was a case of Daily rated employees who had been appointed by the Standing Committee because of political consideration. The High Court issued a direction for regularisation of such Daily rated employees. It was held that in view of serious irregularities discovered in these appointments direction given by the High Court for regularisation of such persons was not warranted. On the facts of the present case, the decision aforestated has no application to the present case.

10. As a result of the foregoing discussions, the writ petitions succeed and are allowed. The impugned orders of termination/cancellation of appointments are

quashed. The petitioners shall be treated to be in continuous service entitled to get their salaries. The respondents shall, however, have the liberty to give notice to the petitioners pointing out therein the illegality or irregularities, if any, in the process of selection/appointments and take such decisions as may be open to them in law after reckoning with the replies if any that may be submitted on behalf of the petitioners in response to the show cause notice. Petitions allowed.