
(2009) 12 AHC CK 0280
In the Allahabad High Court

Pati Ram Gangwar and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975
— Rule 1(3), 2, 9(19)

Citation : (2010) 3 AWC 3060 : (2010) 124 FLR 1055

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—The petitioners are aggrieved by the order of termination dated 5.9.2009 which has been passed in purported exercise of power under U.P. Temporary Government Servants (Termination of Services) Rules, 1975 (hereinafter referred to as "1975 Rules") and have filed the present writ petition seeking a writ of certiorari for quashing the same. It is submitted that though initially the petitioners were sought to be appointed temporarily but before issuance of the order of appointment, the posts became permanent, therefore, the appointment of the petitioners must be deemed to be "substantive" and "permanent" and 1975 Rules would not apply to their case and, hence, the impugned order is illegal.

2. I find no substance in the submission. So far as the appointment of the petitioners is concerned, the appointment letter dated 26.8.2008 (Annexure-1 to the writ petition) shows that it was purely a temporary appointment liable to be terminated at any point of time. Whether the appointment is made on a permanent post or temporary post would not be relevant since the nature of appointment of the petitioners is purely "temporary". To attract provisions of 1975 Rules, it would be evident from Rule 1(3) that the same shall apply to all the persons holding a civil post in connection with the affairs of Uttar Pradesh and who are under the rule-making control of Governor, but who do not hold a

lien on a permanent post under the Government of Uttar Pradesh.

3. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, the Apex Court said that a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier. It was also held that a Government servant holding a post "temporarily" has no right to hold the said post. The same thing was reiterated in *Triveni Shankar Saxena Vs. State of U.P. and others*,

4. The word "lien" has been defined by the Apex Court in *Ramlal Khurana (Dead) By Lrs. Vs. State of Punjab and Others*, as under:

Lien is not a word of Article It just connotes the right of a civil servant to hold the post substantively to which he is appointed. Generally when a person with a lien against a post is appointed substantively to another post, he acquires a lien against the latter post. Then the lien against his previous post automatically disappears. It is a well-accepted principle of service jurisprudence that no Government servant can have simultaneously two liens against two posts in two different cadres.

5. In *Ali M.K. and Others Vs. State of Kerala and Others*, again the Apex Court held that it is well-settled position of law that a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier.

6. A Division Bench of this Court in Civil Misc. Writ Petition No. 21442 of 2002, *Raj Nath Ram v. State of U.P. and Ors.* decided on 26.5.2006, 2006 (6) AWC 6111, in paras 15 and 28 of the Judgment held that since the petitioner on the post of Assistant Employment Officer has not been confirmed till he joined the post of Registrar, he cannot be said to hold a lien on the post of Assistant Employment Officer.

7. Following the aforesaid authorities, a single Judge of this Court (Hon'ble Pankaj Mithal, J.) in Civil Misc. Writ Petition No. 4467 of 1990, *Aizaz Ahmad v. Principal, Industrial Training Institute, Bulandshahr and Ors.* decided on 1.12.2006 has taken the same view.

8. Counsel for petitioners, at this stage, sought to argue that it is not the temporary appointment on a permanent post which is included within the term "temporary service" under Rule 2 of 1975 Rules, but it is the officiation on a permanent post which is mentioned therein. A similar argument came to be considered before this Court in *Pushkar Nath Tripathi v. State of U.P. and Ors.* 2006 (101) RD 675 : 2008 (6) AWC 6054, wherein this Court held:

Reading the word "officiating" in the light of the above observations as defined under Fundamental Rule 9(19) would mean that if a person is already appointed to a post on regular basis may officiate on a higher post where some person has a lien, but he may also officiate on a post where no person has a lien but before officiation, the appointment must be in accordance with Rules. In my view, the

word "officiate" in the aforesaid Government order is an appointment made in accordance with rules after following due procedure, the appointment is though not "substantive" or permanent but on officiating basis, t.e., in the nature of a temporary appointment but made in accordance with Rules.

9. In Kumari Mamta Jauhari Vs. State of U.P. and another, a Full Bench of the Court in para 38 of the Judgment held:

A Government servant appointed to hold a post, temporary or substantive, on temporary basis, acquires no right to or lien upon the post.

10. It is thus evident that Rule 1(3) makes 1975 Rules applicable in the case of the petitioners which is also covered by the terms "temporary service" as defined in Rule 2 of 1975 Rules. I, therefore, find no reason to interfere with the order impugned in the writ petition, which is an order of termination simplicitor showing ex facie no reason to treat the same to be penal and hence there was no requirement of any opportunity or show cause notice before passing the same. I, therefore, do not find any merit in this writ petition. Dismissed.