
(2011) 09 UK CK 0036

In the Uttarakhand High Court

Case No : Writ Petition No. 6614 (SS) of 2001, (Old Writ Petition No. 5996 of 1996)

Piyush Chandra Kapil

APPELLANT

Vs

The State of UP. and Others

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Citation : (2012) 133 FLR 1096 : (2013) 1 UC 739 : (2012) 1 UC 739

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Rajendra Dobhal Assisted by Mr. Sunil Upadhyay, for the Appellant; N.P. Sah, Learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Sudhanshu Dhulia, J.—Heard Mr. Rajendra Dobhal, Senior Advocate assisted by Mr. Sunil Upadhyay, Advocate for the petitioner and Mr. N.P. Sah, learned standing counsel for the State of Uttarakhand. This writ petition was filed by the petitioner, before the High Court of Judicature at Allahabad in the year 1996. Consequently, the same was transferred before the Court u/s 35 of the U.P. Reorganization Act, 2000.

2. Since pleadings are complete in this case, the same are being heard and disposed of finally.

3. The petitioner was appointed as a Junior Clerk on daily wage basis but later on adhoc capacity vide order dated 30.08.1989 in the office of " Regional Ayurvedic & Unani Adhikari, Nainital". Consequently, vide order dated 18.06.1992 (Annexure-1 to the writ petition) the services of the petitioner were terminated stating that as per Government order dated 17.06.1992 and in compliance with the rules presently framed known as "U.P. Ayurvedic & Unani (Ministerial Staff) Rules, 1991", the post of Junior Clerk comes within the purview of Public Service

Commission. Moreover, there is a ban on ad hoc appointments. There is no provision for ad-hoc appointments for the Junior Clerk, therefore, the services of the petitioner were terminated.

4. Admittedly, impugned orders dated 18.06.1992 and 30.06.1992 have been passed by the State Government, without affording any opportunity of hearing or show cause to the petitioner.

5. The petitioner had filed the present writ petition before the High Court of Judicature at Allahabad, Lucknow Bench Lucknow. At that stage, no interim order was granted to the petitioner. Consequently, when the matter was transferred to this Court, Division Bench of this Court vide order dated 8th July 2002 passed the following orders:

Heard Sri Piyus Kapil in person, Sri J.P. Joshi, learned counsel for the Government of Uttaranchal and Sri Brahm Singh, S.C. Government of U.P.

According to the petitioner, he was appointed on 22.06.1989 on ad-hoc basis as Assistant Clerk. He was terminated on 18.06.1992. His contention is that the termination is arbitrary. His juniors are still kept in service.

One of his submission is that his recruitment was not in any way covered by the Ayurvedic Scam Appointment.

Repeatedly we have given opportunities to the respondents. They could not controvert the submission.

Mr. J.P. Joshi, appeared for the State. He made a statement that instructions are not coming from the Directorate at Dehradun.

In these circumstances, we feel it expedient to direct the respondents to appoint the petitioner forthwith as Assistant Clerk/ Junior Clerk. This will be subject to the final decision of the writ petition.

List after four weeks.

6. Consequently, on the strength of the aforesaid order, the petitioner is working as Junior Clerk in the said department at Nainital.

7. Mr. Rajendra Dobhal, learned Senior Advocate also drawn attention of the Court towards order dated 1st June 2011 passed by the Director General, Ayush to the Principal Secretary, Ayush and Ayush Shiksha, Government of Uttarakhand, wherein the name of the petitioner finds mentioned at serial number 11, where the recommendation has been made for regularization of the petitioner on the said post. Learned Senior counsel for the petitioner has given a statement at the bar that other similarly situated persons along with the petitioner, whose services were terminated, obtained interim orders by the High Court of Judicature at Allahabad and subsequently these writ petitions were allowed. He further drawn the attention of the Court towards the judgment passed by a learned Single Judge of Allahabad High Court in writ petition no.

24413 of 1992 (Rama Shanker Yadav Vs. State of U.P. and others) in which learned Single Judge of the Allahabad High Court had allowed the writ petition on the ground that the termination order was bad in the eyes of law inasmuch as no opportunity of hearing was given" to the petitioner before passing such orders. Moreover, it has also been held by the learned Single Judge that there was no illegality or irregularity in the initial appointment of the petitioner. The learned Senior Counsel also submitted before this Court that the case of Rama Shankar Yadav Vs. State of U.P. and others (Writ Petition No. 24413 of 1992) as referred by him was absolutely similar to that of the present petitioner.

8. Impugned order dated 18.06.1992 says that subsequent to the appointment of the petitioner rules have been framed in the year 1991 where there is no provision for appointment of a Junior Clerk on ad hoc capacity. There is also a ban of the State Government for such appointment; therefore, services of the petitioner were terminated. However, before passing such order, the petitioner was not afforded any opportunity of hearing. Moreover, termination order does not seem to be valid inasmuch as the petitioner was appointed on ad hoc capacity on 30.08.1989 i.e. much before the rules of 1991 came into existence. Therefore, admittedly these rules regarding which reference has been given in the impugned order would work prospectively not retrospectively. Moreover the State Government was liable to give an opportunity of hearing to the petitioner, the same has not been done before the impugned orders were passed.

9. While passing any order, this Court has taken note of the facts that during the pendency of the writ petition, proceedings regarding the regularization of the present petitioner are already in process and other similarly situated persons has already been regularized.

10. Consequently, impugned order dated 18.06.1992 passed by respondent no. 2 and consequential order dated 30.06.1992 passed by respondent no. 3 are liable to be quashed and are hereby quashed.

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