

(2016) 05 AHC CK 0321

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Service Single No. 11782 of 2016.

**Pradeep Kumar - Petitioner @HASH U.P. State Food and Essential
Commodities Corporation Ltd. and Others**

Date of Decision : 26-05-2016

Acts Referred:

Citation : (2016) 10 ADJ 622

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Piyush Chandra Agarwal and Rajesh Tiwari, Advocates, for the Petitioner; Shree Prakash Singh, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Rajan Roy, J. - Heard.

2. The petitioner herein claims to have been working in the respondent-Corporation since 1986 under the orders of this court dated 24.9.2010 passed in writ petition No. 6828(SS) of 2010, Sanjai Kumar & anr. v. State of U.P.. He is being paid minimum of the basic pay-scale of Class IV post, though his initial appointment was on daily-wages.

3. According to Sri S.P. Singh, learned counsel for the Corporation, certain irregularities and illegalities in the petitioner's functioning were detected on account of which it was decided to take action against him, but due to oversight an order of suspension was passed in his case on 7.4.2016 (Annexure-2 to the writ petition). When this error was realized, then the said order was rectified by another order dated 11.4.2016 (Annexure-1 to the writ petition) and instead of the words "NILAMBIT KIYA JATA HAI" words "KARYA LENA BAND KIYA JATA HAI" were substituted in the order dated 7.4.2016.

4. Contention of the learned counsel for the petitioner is that firstly the petitioner cannot be treated as daily-wage employee as he has been paid minimum of the pay-scale of Class IV post and the earlier writ petition of the petitioner is pending; secondly, a perusal of the order dated 7.4.2016 will indicate that

various allegations and imputations of misconduct have been levelled against the petitioner based thereon the petitioner was initially placed under suspension vide order dated 7.4.2016, which was rectified vide order on 11.4.2016 in the terms mentioned herein above, but the result is that the petitioner has been ousted from service by casting a stigma on his conduct and functioning without any inquiry whatsoever, therefore, the impugned order cannot be sustained.

5. Having heard learned counsel for the parties and perused the record this court finds merits in the contention of the learned counsel for the parties.

6. Even assuming for a moment that the petitioner is a daily-wager, if his services are to be dispensed with by making observations regarding his work and conduct as has been done in the order dated 7.4.2016, modified on 11.4.2016, then this would cause stigma on him, a priori, this could have been done only by following the process of law by giving opportunity of hearing/conducting inquiry in the matter.

7. This is not a case of ouster from service of a daily-wager or temporary employee by an order simpliciter. A fact finding preliminary inquiry is also said to have been conducted by him and based on the report order dated 7.4.2016 as rectified on 11.4.2016, has been passed. If it is so, the order impugned cannot be sustained in the eyes of law, as it is apparently a penal action casting stigma on the petitioner. It has not been disputed by Sri Singh that the fact finding preliminary inquiry was conducted without affording any opportunity therein.

8. The impugned order (Annexure nos.1 and 2 to the writ petition) are hereby quashed, however, with liberty to the opposite parties to proceed afresh in accordance with law.

9. With the aforesaid observations/directions this writ petition is disposed of.