

(2001) 05 AHC CK 0169
In the Allahabad High Court
Case No : Writ Petition No. 9296 of 1989

Radhey Shyam

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

Citation : (2001) 4 AWC 2574 : (2002) 1 UPLBEC 176

Hon'ble Judges : Bhanwar Singh, J

Bench : Single Bench

Advocate : Ramesh Kumar Singh, S.K. Singh and S.S. Chauhan, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Bhanwar Singh, J.—This writ petition has been filed for a writ in the nature of certiorari quashing the oral termination order. A writ of mandamus commanding the opposite parties to regularise the petitioner on the post of Telephone Parichar has also been sought for.

2. According to the matrix of the petitioner's case, he was selected for appointment to the post of Telephone Parichar (Attendant) on 5.3.1986 by a Selection Committee duly constituted for the purpose. After his selection, he was appointed as Telephone Attendant on 1.8.1986 in leave arrangement of one Sri Jamil Ahmad who proceeded on marital leave. His appointment was to be valid until Sri Jamil Ahmad resumed his duty. Despite, that Jamil Ahmad never came back to take charge of his post. the petitioner's services were terminated in October. 1989, without any order in writing. He was paid his salary up to the month of November. 1988. but thereafter his salary was not disbursed in spite of his repeated requests to the Executive Engineer and the Superintending Engineer, VIth Circle. Irrigation Department, Lucknow. He was a workman within the meaning of the U. P. Industrial Disputes Act as he completed more than 240 days continuous service in a calendar year and further he was also entitled to be regularised in view of the Government Order dated 7.2.1981. Apart that, many

juniors to the petitioner are still working and the post on which he was appointed is still lying vacant. As a matter of fact, the petitioner's oral termination was arbitrary besides being violative of principles of natural justice. The petitioner submitted several representations to the authorities but all his prayers went unheard. It was under these circumstances that he was obliged to file the present petition.

3. The State and other opposite parties had filed a counter-affidavit with a view to resist this petition but it remained untraceable for quite a long time and, therefore, eventually, the opposite parties were directed on 4.1.2001 to file a fresh counter-affidavit but no fresh counter-affidavit has been filed. As the matter was old, it was heard on 15.2.2001 and during the course of arguments, the learned State counsel pointed out that a copy of the counter-affidavit filed earlier is on the file of the learned counsel for the petitioner. The petitioner's counsel was then asked to submit the counter-affidavit on record. Thus, the counter-affidavit was reconstructed with the help of the learned counsel for both the parties.

4. The opposite parties in their counter-affidavit admitted that the petitioner was engaged as a Telephone Attendant but on provisional basis. Initially, his appointment was approved by the competent authority for a period of two months but he continued in service in a leave arrangement up to 31.10.1988. His salary until he worked was disbursed to him and thereafter neither he worked nor the question of payment of salary to him had arisen. The petitioner was never appointed on the work-charged establishment but his appointment was merely provisional as a stop gap arrangement. The petitioner's contention that one person junior to him was working was denied. However, it was not denied that Jamil Ahmad had not resumed his duty but at the same time, it was pleaded that no one till date has been appointed in his place.

5. I have heard learned counsel for the petitioner and learned standing counsel and perused the record.

6. It is noteworthy that the petitioner was selected for appointment on the post of Telephone Attendant by a duly constituted Selection Committee. An examination was held and after the test, the petitioner and other candidates were also called for interview. After the entire selection process, the Selection Committee submitted a select list of two candidates, namely, Ram Bilas and Radhey Shyam, the petitioner. In the year 1986, there was only one vacancy at Udbatpur Telegraph Office and out of the two candidates, the one at Serial No. 1 Sri Ram Bilas was appointed. In the office memo of March 29, 1986, submitted by the Executive Engineer to the Superintending Engineer, it was clearly revealed that the other candidate, Sri Radhey Shyam, whose name appeared in the waiting list, would be given appointment soon after a vacancy had arisen. Sri Jamil Ahmad proceeded on leave with effect from 1.7.1986 and it was in his leave arrangement that Sri Radhey Shyam, Telephone Attendant was appointed. In the appointment letter, a copy of which is Annexure-2, it was clearly recited

that Radhey Shyam's services would come to an end on Sri Jamil Ahmad having resumed his duty. It is an admitted fact that Sri Jamil Ahmad never came back to report for duty. When it was so, the termination of the petitioner's services was illegal. Being the fact that he was selected and waitlisted after following a due selection process by a Selection Committee which was constituted by a competent authority, his service should not have been terminated merely by virtue of a verbal order. It has not been asserted on behalf of the opposite parties that any order in writing terminating the petitioner's service or discharging him from duty was ever issued or served upon him. A crucial question arises as to when a written order of appointment was issued, why the petitioner was asked orally to go back home and not to come to perform his duty? A reasoned written order was required to terminate the petitioner's service, particularly when Sri Jamil Ahmad, in whose leave arrangement the petitioner was appointed, has not, till date, reported for duty. The opposite parties' contention that the petitioner did not work after October 19, 1988, does not seem to be sustainable. The attendance sheets. Annexures-5 and 6, corroborate his averment that he continued to be on his job until 6.10.1989. The petitioner also clearly recited in his representation dated 21.8.1989 submitted to the Superintending Engineer. VIth Circle that he was continuously working in leave arrangement of Sri Jamil Ahmad but still his salary was withheld from November, 1988, onwards, in his representation, he prayed for regularisation of his service as well.

7. Keeping all the above averments and the counter averments in view, two conclusions can safely be drawn, firstly that the petitioner was appointed after a Selection Committee had selected him and once he had been appointed, he was entitled to continue in service. Secondly, he was given appointment in a leave vacancy and since he was a duly selected candidate and further since Sri Jamil Ahmad in whose leave arrangement he was appointed has not, till date, resumed his duty, he was fully competent and entitled to continue in service. The regularisation of his services in due course would have taken place under the Rules.

8. When the petitioner was appointed by virtue of a written appointment letter and with a condition that he will continue until Sri Jamil Ahmad resumes his duty, his services could not have been terminated without passing a written reasoned order. The verbal termination order asking the petitioner to sit at home and not to report for duty was arbitrary, unreasonable and unconstitutional.

9. Keeping all these aspects of the matter. I am inclined to hold that this writ petition deserves to be allowed.

10. Accordingly, the writ petition succeeds and the oral termination of the petitioner, passed by the opposite parties, is hereby quashed. A writ of mandamus is issued commanding the opposite parties to appoint the petitioner as a Telephone Attendant. However, since there has been a long gap of about 12 years, the petitioner will not be entitled to his back wages but the opposite

parties shall appoint him with immediate effect as a Telephone Attendant and regularise him in due course of time.