
(2007) 09 AHC CK 0124
In the Allahabad High Court
Case No : Writ Petition No. 2184 (SS) of 1995

Radhey Shyam Shukla

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Citation : (2007) 09 AHC CK 0124

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Allowed

Judgement

Rajiv Sharma, J.

1. In the instant writ petition, the writ petitioner has assailed the order of termination dated 18.5.1995 (Annexure No. 11) issued by the UpZila Adhikari, Sadar, Sultanpur from the post of Lekhpal, Tehsil Sadar, District Sultanpur in exercise of powers conferred under the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975 (hereinafter referred to as the "Rules" for the sake of brevity) and is claiming for continuity in service uninterruptedly with full salary and allowances including seniority as if the services of the petitioner have not been terminated in pursuance of the impugned termination order dated 18.5.1995.

2. The factual matrix of the petitioner's case is as under:

An advertisement dated 15.5.1989 was published inviting, applications eligible candidates for admission to the Lekhpal Training School, Sultanpur by the District Magistrate, Sultanpur. Pursuant to the said advertisement dated 15.5.1989, the petitioner applied for the post and he was called for the written test, interview and physical test and ultimately, the petitioner was selected and his name figured at SI. No. 63 in the merit list. On the basis of merit, vide letter dated 19.8.1989, the petitioner was called for Lekhpal Training for one year commencing from 28.8.1989. The Commissioner, Faizabad Division vide his order dated 21st December, 1991 declared the merit list and allocated District

Sultanpur to the successful candidates, who have completed training. The name of the petitioner was at Serial No. 32 in the said list. The District Magistrate, Sultanpur on the basis of said merit list allocated Tehsils to these 114 successful Trained Lekhpals. The petitioner was allocated Tehsil Sadar, District Sultanpur. The SubDivisional Magistrate, Sadar, Sultanpur issued appointment letter dated 26th May, 1992 in pursuant thereof the petitioner resumed duties on 28th May, 1992.

3. Pursuant to the Government Order dated 23rd May, 1995 Lekhpals areas were reorganized and it was provided that the services of no Trained Lekhpals shall be terminated on account of the reorganization of the Lekhpals Areas. However, subsequently the reorganization Government Order dated 20th March, 1995 was recalled by the State Government vide G.O. dated 14th August, 1995.

4. Petitioner while was discharging his duties as Lekhpals, his services were terminated by the order dated 18th May, 1995 in accordance with the provisions of U.P. Temporary Government Servants (Termination of Service) Rules, 1975 and the said order of termination has been assailed by the petitioner in the instant writ petition. This Court by an order dated 12th July, 1995 directed the respondents to place on record the reasons for termination of service. In compliance thereof, the respondents filed a counteraffidavit indicating the charges levelled against the petitioner.

5. The first charge indicating in the counteraffidavit relates to the Family Planning Campaign Programme for the year 1994-95 in which petitioner did not take active participation in implementing the scheme of the State Government and exhorted other employees not to take active participation in the said programme. The second charge against the petitioner is that the petitioner exhorted other Lekhpals not to comply the order dated 6.5.1995 which was issued pursuant to the Government Order dated 20th March, 1995 by which reorganisation area of Lekhpals working in the Plain area (56 districts) was made. The Third Charge against the petitioner is that he did not perform the duties in the Three Tier Panchayat Election and misguided the other Lekhpals to abscond from the Three Tier Panchayat Election. Refuting the said charge, the petitioner's Counsel submitted that the petitioner was assigned the duty of Vote Counting Supervisor in Block Bhadaian, District Sultanpur, which duty was performed by him and a certificate/identity card was also issued by the Returning Officer, Block Bhadaian, District Sultanpur.

6. The charges so levelled against the petitioner have been refuted by the petitioner. According to the petitioner, the first charge levelled against him is absolutely false and incorrect. In the meeting, UpZila Adhikari, Sadar, Sultanpur ordered that at least one family planning case should be done every month by each Lekhpals by motivating the persons. As a matter of fact, the petitioner took active part in implementing the Family Programme Scheme of the Government and motivated four persons for Tubectomy in the month of December, 1994 and their Tubectomy was done on 30th December, 1994 by Medical Officer Incharge, Primary Health Center, Kurebhar, District Sultanpur. Similarly, other Tubectomy

were performed on his motivation in the subsequent months.

7. With respect to second charge, the learned Counsel for the petitioner has submitted that the charge of misconduct levelled against the petitioner that he provoked other Lekhpals with regard to reorganisation of Lekhpal areas introduced through the Government Order dated 20th/23rd March, 1995 is not borne out from the record as the said Government Order itself was cancelled by the Government Order dated 14th August, 1995. Thus, it is clear that a flimsy and frivolous charge has been levelled against the petitioner.

8. Learned Counsel for the petitioner has also contended that the petitioner has been treated differently, while other persons, namely, Jamal Ahmad, Rakesh Kumar Chaturvedi and Anoop Kumar Srivastava against whom charges of misconduct were levelled are still continuing in service and a minor punishment was awarded to them either by making their transfer or by withholding salary for a certain period.

9. Relying upon the Supreme Court's decision in *Dipti Prakash Bannerjee v. Satyendra Nath Basu National Centre of Basic Sciences, Calcutta*, 1999 (3) SCC 60, learned Counsel for the petitioner contended that in the present case the foundation of misconduct and stigma can be inferred by referring back to the proceedings in the report dated 15th May, 1995 of Tehsildar, Sadar, District Sultanpur on the basis of which the termination order dated 18th May, 1995 has been passed. Elaborating further, he contended that no disciplinary enquiry was conducted by issuing charge sheet and no opportunity whatsoever was given to the petitioner. At no point of time, the petitioner was ever asked by the authorities to submit any explanation.

10. Learned Standing Counsel, while defending the impugned order, submitted that the order of termination was passed when the appointing authority was satisfied with the report submitted by the Tehsildar, Sadar, District Sultanpur. The petitioner was asked on several occasions to improve his work and conduct but he failed to improve. According to him, the petitioner was a temporary employee and by giving one month's salary his services have been terminated in exercise of powers conferred under the provisions of U.P. Temporary Government Servants (Termination of Service) Rules, 1975. He also urged that the petitioner has an alternative remedy of approaching the U.P. State Tribunal but instead of filing claim petition, he has approached this Court.

11. Having heard the submissions made by the rival parties, it cannot be said that the impugned order is simpliciter and not stigmatic overlooking the fact that the termination was on the basis of allegations made in paragraph 3 of the counteraffidavit and neither any notice was issued nor enquiry was conducted in terms of the provisions of U.P. Temporary Government Servants (Termination of Service) Rules.

12. In *Dipti Prakash Banerjee v. Satyendra Nath Basu National Centre for Basic Sciences, Calcutta and others*, reported in (1999) 3 SCC 60, the Hon'ble

Supreme Court in paragraph 21 of the report observed as under:

"If findings were arrived at in an enquiry to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similarly is the position if the employer did not want to enquiry in to the truth of the allegation because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegation would be a motive and not the foundation and the simple order of termination would be valid."

13. A" perusal of the above, clearly shows that if an enquiry was conducted as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple termination is to be treated as "founded" on the allegations and will be bad.

14. Similarly in Chandra Prakash Shahi v. State of U.P. and others, (2000) 5 SCC 152, the Hon"ble Supreme Court articulated that if for determination of suitability for the post or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate the services, the order will not be punitive in nature. But, if there are some allegations of misconduct and an inquiry is held to find out the trust of that misconduct and thereafter the order of termination is passed, the order would be punitive in nature. In V. P. Ahuja v. State of Punjab, (2000) 3 SCC 239, the Apex Court reiterated that services of temporary servant and even of probationer cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice as they are also entitled to certain protection.

15. It is settled proposition of law that if the order of termination is termination simplicitor then no opportunity is required but if it is founded on certain allegations of misconduct then the natural justice comes into picture. Furthermore, if the order is innocuous on the face of it still then the Court if necessary, for the ends of fair play and justice can life the veil and find out the real nature of he order if it is found that the impugned order is penal in nature even though it is couched with the order of termination in accordance with the terms and conditions of the order of appointment, the order will be set aside. On going to be background of the present case, it will be found that the respondents have relied upon the charges/allegations as enumerated in paragraph 3 of the counteraffidavit to terminate the services of the petitioner.

16. Therefore, find force in the submission made by the learned Counsel for the petitioner that on the ground of allegations enumerated in paragraph 3 of the counteraffidavit and the report submitted by the Tehsildar, Sadar, District

Sultaripur are the foundation of petitioner's termination and as such the order is punitive in nature. Nowhere, it has been stated that the enquiry, referred to above, was conducted to assess the performance of the petitioner or any explanation or opportunity was given by the Tehsildar before submitting his report. Thus, it proves the contention of the petitioner that report by the Tehsildar with regard to the misconduct was submitted behind the back of the petitioner, which is against the principles of natural justice.

17. For the reasons stated above, the writ petition is allowed. The order of termination dated 18th May, 1995, contained in Annexure No. 11 to the writ petition passed by SubDivisional Magistrate, Sadar, District Sultanpur is hereby quashed. The petitioner shall be reinstated in service forthwith with all consequential benefits. However, the petitioner will be entitled to only 50% of the salary subject to his furnishing a certificate to the effect that he remained out of employment.