
(2009) 05 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11410 of 1991

Raj Kumar Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Citation : (2009) 122 FLR 65

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : B.N. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri B.N. Singh, learned counsel for the petitioner and learned Standing counsel for the respondents.

The petitioner was appointed as Tube-Well Operator in Division-II vide order dated 20.1.1984 by the Executive Engineer as a temporary employee for a period of three years. The petitioner after joining the post continued in employment even after expiry of three years stipulated in the appointment order. While on he met with an accident and his right hand was badly injured. The petitioner filed a compensation case No. 9 of 1986 before the Labour Court which was allowed and a sum of Rs. 19,600/- was awarded as compensation. The case of the petitioner is that this annoyed the respondents authorities and vide order dated 11.3.1991 passed by the Executive Engineer, the services of the petitioner was terminated with effect from 1.5.1991.

2. It is contended that even though the petitioner was appointed temporarily in the year 1984 but was allowed to continue till 1991 and the impugned order has been passed levelling charges against him and casting an stigma. It has further been contended that no inquiry whatsoever was conducted into the alleged charges mentioned in the impugned order of termination which, as a matter of fact are the foundation of the termination order. It has next been contended that

termination casting an stigma without holding an inquiry is bad in law and cannot be sustained and reliance in support of the contention has been placed on a decision of the Apex Court in the case of Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar, In reply, learned Standing counsel has tried to justify the impugned order.

3. I have considered the argument advanced by learned counsel for the parties and perused the record.

In the case Nehru Yuva Kendra Sangathan (supra), the Hon"ble Apex Court finding that even though the order of termination was a speaking one and the petitioner was only a probationer but since in reply to his representation, the authorities informed him that in an inquiry conducted behind his back, he was found guilty of misappropriation of government fund, held that since the charges against the petitioner found in the ex-parte inquiry was the foundation for terminating his services hence was bad in law.

4. In the case in hand, the charges has been levelled against the petitioner in the impugned order of termination itself. It is not disputed that no disciplinary inquiry of any kind was conducted against the petitioner nor any opportunity was afforded to him to defend himself of the charges levelled against him which admittedly formed the foundation of passing of termination order.

5. It has been pointed out that during the pendency of the writ petition and in continuance of the interim order passed by this Court, the petitioner was reinstated back and continued in service and vide order dated 20.12.2002 his services has been regularised with effect from 1.9.2002. The copy of the order has been brought on record as RA-1 & RA-2 to the rejoinder affidavit.

6. In view of the settled legal position that an order casting an stigma terminating the services of even a temporary employee without conducting disciplinary inquiry and opportunity to defend himself is not liable to be sustained and the fact that the petitioner has been regularised in service, the impugned order of termination dated 11.3.1991 (annexure-6 to the writ petition) is not liable to be sustained and is hereby quashed.

7. Since the petitioner has continued in service on the strength of the interim order passed by this Court and the impugned order has been quashed, the period shall be counted towards his service.

The petition stands allowed.

However, in the facts and circumstances, there shall be no order as to costs.