

(2008) 12 AHC CK 0231

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6886 of 1985 With C.M.W.P. No. 33600 of 1990

Rajni Dubey

APPELLANT

Vs

Director, Harijan And Social Welfare, Lucknow and others

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0231

Hon'ble Judges : S.U.Khan, J

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—Heard learned Counsel for the parties.

2. Through the first writ petition, order dated 27.3.1985 terminating the services of the petitioner has been challenged.

3. Operation of the said order was stayed on 24.5.1985. The writ petition was dismissed in default for several times and was restored thereafter.

4. The case of the petitioner is that the petitioner was appointed as Supervisor (Mukhya Sevika) on 15.9.1982 alongwith 63 other persons under the scheme of integrated child development. It has further been stated on behalf of petitioner that Sri Vachaspati Tiwari the then Harijan and Social Welfare Officer, Smt. Sheela Saxena and Smt. Shashi Srivastava Child Development Project Officer were not carrying out the work of the department properly hence petitioner made several complaints. Report was submitted by S.D.O. Meja, Allahabad to D.M. Allahabad on 29.5.1984. Thereafter a detailed inquiry was held by the officers and a detailed report was submitted on 15.9.1984. Complete copy of which is annexure to the supplementary affidavit. In the said report Smt. Shashi Srivastava, Child Development Project Officer was found guilty of maintaining duplicate register and forging the signatures of petitioner and another employee Kumkum Dev. It was also found that those employees who were entitled to get Rs. 175/ per month were being paid only Rs. 125/ per month. It was also stated

in the report that petitioner was being harassed. Petitioner also made complaint to Chief Development Officer, Allahabad on 1.7.1984 regarding her harassment. In the report it was also mentioned that Sri Vachaspati Tiwari had irregularly withdrawn Rs. 1,80,000/-. The other officers mentioned above were also found guilty. In pursuance of inquiry report Rajendra Das one of the officers who was found guilty in the report was suspended and additional Director wrote a letter that Smt. Shashi Srivastava, Kumkum Dev and Rajni Dubey (petitioner) must be removed from service as they were temporary employees. Copy of the said letter is Annexure10 to the writ petition which is undated. Thereafter through letter dated 27.3.1985 (Annexure11) Director terminated the services of the petitioner under U.P. Temporary Government Servant Termination of Service Rules, 1975.

5. In the report annexed with the supplementary affidavit dated 15.9.1984/18.10.1984 by Review Officers Sri S. Misra, Sri Manmohan Tiwari and Sri K.N. Tandon charges of irregularities and misutilisation of fund have been levelled against higher officers. No finding against petitioner has been recorded.

6. The main argument of the learned Counsel for the petitioner is that as petitioner had brought irregularities committed by the officers to the knowledge of the higher authorities hence her services were terminated.

7. In the second writ petition it has been prayed that petitioner must be promoted to the post of C.D.P.O. w.e.f. the date on which other similarly situated employees were promoted through Annexure4 dated 15.11.1990 issued by Director Bal Vikas Sewa Evam Pusthar.

8. If the services of the petitioner were terminated for the reason that she made complaints against officers then the action is mala fide. If the services were terminated on the ground that she was involved in the irregularities then the order is stigmatic and it could not be passed without providing opportunity to her. In this regard recent Division Bench Authority of Lucknow Bench of this Court in Kanhaiya Lal v. U.P. Lok Sewa Adhikaran and others 2008 (6) ALJ 288 may be referred. It has been held in the said authority after discussing several other authorities that if inquiry has been conducted and services are terminated thereafter, then the allegation of misconduct is foundation of order of termination and not the motive, hence resort of the U.P. Rules of 1975 (dealing with termination of services of temporary employees) cannot be had.

9. Accordingly, first writ petition is allowed and termination order is set aside.

10. As far as second writ petition is concerned, counteraffidavit has been filed in August, 2008 in the said writ petition. It has been stated in the said counteraffidavit that in view of interim order passed by this Court on 26.3.1992 the directorate vide its order dated 9.9.1993 posted the petitioner as Bal Vikas Pariyojana Adhikari. However, in the meeting of the selection committee held on 4.6.2003 the recommendation with regard to regularisation of the petitioner was kept in sealed envelop because she had been suspended and against her departmental proceedings were going on as she was caught red handed for

taking bribe by the anticorruption organisation. Accordingly, it is directed that in case departmental proceedings ends in favour of the petitioner then the sealed envelop must be opened and in case petitioner was recommended for being regularised then her services should be regularised. However, it is clarified that if petitioner is promoted or has been promoted then salary of the promoted post shall be paid only w.e.f. the date of actual promotion but notional seniority from the date on which juniors to her were promoted should be granted.

11. Second writ petition is accordingly disposed of.

W.P. No. 6886/85 Allowed.

W.P. No. 33600/90 Disposed Of.