
(2009) 02 AHC CK 0123
In the Allahabad High Court
Case No : Special Appeal No. 1018 of 2005

Rakesh Chaubey	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Citation : (2009) 02 AHC CK 0123

Hon'ble Judges : H.L.Gokhale, CJ and Dilip Gupta, J

Final Decision : Allowed

Judgement

H.L. Gokhale, CJ.

1. Heard Sri. Rahul Sripat with Sri V.R. Tiwari for the appellant. Dr. Y.K. Srivastava, learned Standing Counsel appears for the State respondents.

2. The appellant seeks to challenge the order passed by the learned Single Judge whereby his writ petition was dismissed.

3. The short facts in this appeal are that the appellant was working as a Homeopathic Pharmacist. During his services under the State of Uttar Pradesh he was posted at Srinagar in a district which is now part of Uttrakhand. He was selected in the year 1989 though subsequently along with so many other Pharmacists his services came to be terminated by an order passed on 11th September, 2001. Identical orders were issued to all the Homeopathic Pharmacists. Some of them filed writ petitions and some of them have filed representations.

4. A learned Single Judge of the High Court at Allahabad in Writ Petition No. 20824 of 2002 stayed the operation of the order of termination. Similar order has been passed in case of other employees at Allahabad as well as at Lucknow Bench.

5. Subsequently by a general order issued on 30th January, 2004 by the Health Department the termination orders dated 11th September, 2001 of all the

Homeopathic Pharmacists were recalled and they were directed to be taken back on duty though they were to face departmental inquiries.

6. Sri Rahul Sripat has placed before us an order passed by the learned Single Judge at Lucknow on 30th January, 2004 that in view of the Government Order dated 30th January, 2004 all the petitions which have been filed in the Lucknow Bench against the termination orders were treated as infructuous and they were all dismissed.

7. Given this fact situation, the appellant filed a writ petition praying for a writ of mandamus that he may be allowed to join his post. The learned Judge has, however, dismissed the petition as there was no prayer for quashing the termination order.

8. It is the submission of Mr. Rahul Sripat that all other Pharmacists were allowed to join back but the appellant petitioner was left behind because he had not filed writ petition. That could not be done so in view of the Government Order dated 30th January, 2004 which was a general order and which directed for taking back every Homeopathic Pharmacists whose services had been terminated. He further submitted that the petitioner was not required to seek the quashing of the termination order inasmuch as the State Government had passed a general order dated 30th January, 2004 by which the termination order dated 11th September, 2001 of all the Homeopathic Pharmacists had been recalled and, therefore, he had sought a writ of mandamus that he be allowed to join on the basis of the order dated 30th January, 2004.

9. Dr. Y.K. Srivastava, learned Standing Counsel appearing for the State submitted that the benefit was given to those Pharmacists who had filed writ petition and not to everybody. The order of the State Government dated 30th January, 2004 was pressed into service for its true interpretation.

10. We have read the order and in our view though the order refers to the filing of the writ petitions by some of the employees and grant of interim order but it recalled all the termination orders dated 11th September, 2001 and further direction was issued that all the Pharmacists should be permitted to resume their duty. The wording of the order speaks of "Samast Pharmacists" i.e. all the Pharmacists whose services had been terminated.

11. This being the position, it cannot be contended by the respondents that the benefit was restricted only to the Pharmacists who had filed writ petitions. It is material to note that in the counter affidavit filed by the State Government it has been stated that 77 of the Pharmacists have been allowed to resume their duty though services of 79 had been terminated. The appellant is one of them who had not been allowed to join the duty. He had, accordingly, filed the writ petition seeking a writ of mandamus.

12. Dr. Srivastava, further points out that the appellant had not reported for duty since 1993 and the services of the appellant as well as all others had been

terminated because they had annexed forged documents while seeking their appointment.

13. Be that as it may, the State will not pay salary to the petitionerappellant for the period for which the appellant was not on duty. Sri Rahul Sripat, learned counsel for the appellant states that the appellant shall not claim past salary but shall claim salary from the date when an order is now passed by the State Government.

14. In view of what has been stated above, we allow this appeal and set aside the order passed by the learned Single Judge. We also allow the writ petition and direct the respondents to allow the appellant to resume his duties by issuing an order within eight weeks from the date of receipt of this order. They will give him a placement in some appropriate place in the State of U.P. as has been done in the case of some other employees who had been working in Uttrakhand and shall be paid salary but he will not be entitled to claim past salary. It will, however, be open to the State Government to proceed with the departmental inquiry against the appellant as has been done in the case of other Pharmacists which could be by suspending the appellant or otherwise as may be done in the other cases.