
(1999) 07 AHC CK 0073
In the Allahabad High Court
Case No : C.M.W.P. No. 36337 of 1992

Ram Bachan Maurya

APPELLANT

Vs

District Magistrate, Ghazipur and others

RESPONDENT

Date of Decision : 19-07-1999

Acts Referred:

Citation : (1999) 3 AWC 2681 : (1999) 3 UPLBEC 1741

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Siddhrath Verma and S.K. Verma, for the Appellant; S.C. and V.J. Sahai, for the Respondent

Judgement

V.M. Sahai, J.—The petitioner was appointed on dally wages as Chowkidar in newly created Sub-Treasury Office, Jakhania, District Ghazipur under the order of District Magistrate dated 8.1.1990 by letter dated 20.1.1990. From 4.3.1992 the respondents stopped taking work from him. The petitioner challenged the action of the respondents by means of Writ Petition No. 11544 of 1992 which was disposed of finally on 8.4.1992 directing the District Magistrate to dispose of the representation of the petitioner as to whether any termination order was passed by the respondents or not. The District Magistrate called for a report from the Treasury Officer, Ghazipur who submitted his report on 29.7.1992 which was approved by the District Magistrate on 30.7.1992 and the representation of the petitioner stood decided. The respondents on application dated 31.7.1992 by the petitioner by an undated letter informed him about the order dated 30.7.1992 by which his representation was rejected. The petitioner challenged the communication made to him by the Treasury Officer, Ghazipur by Annexure-4 to the writ petition as well the order of District Magistrate dated 30.7.1992. The order of District Magistrate dated 30.7.1992 by which the representation was rejected was provided to the petitioner on the direction of this Court dated 24.9.1992 subsequently on 28.11.1992 which has been filed by him along with the application dated 7.5.1993. Petitioner has challenged the order dated

30.7.1992 and its communication Annexure-4 to the petition by means of the present writ petition.

2. In paragraph 3 of the counter-affidavit, it has been stated by the respondents that the petitioner was appointed on daily wage for short term as Chaukidar by order dated 8.1.1990 and he joined on 23.1.1990 on consolidated salary. His services were not required any more by the respondents, therefore, he was orally disengaged. The petitioner has got no right to claim any appointment being a daily wager. In paragraph 8 of the counter-affidavit, it was stated that the Sub-Treasury at Jakhania started working w.e.f. 2.12.1992 and from that date, the petitioner's service automatically ceased.

3. I have heard Shri Siddharth Verma holding brief of Shri S.K. Verma learned counsel for the petitioner and Sri V.J. Sahai learned standing counsel appearing for the respondents.

4. The petitioner was appointed under the order of the District Magistrate dated 8.1.1990 and appointment letter dated 20.1.1990 was issued to him which has been filed as Annexure-1 to the petition. The issuance of appointment letter by the respondents is also not disputed in paragraph 3 of the counter-affidavit. The respondents admitted that they have issued appointment to the petitioner under the order of District Magistrate dated 8.1.1990. The District Magistrate in his order dated 30.7.1992 held that since no appointment letter was issued by the respondents, therefore, it was not necessary to pass any order terminating the services of the petitioner. The respondents had admitted in paragraph 3 of the counter-affidavit that the petitioner was appointed in pursuance of order dated 8.1.1990. The issuance of appointment letter dated 20.1.1990 has not been denied by the respondents. It does not mention that the appointment of the petitioner was for a fixed period or short term. Therefore, the order of District Magistrate dated 30.7.1992 stating that there was no appointment letter issued to the petitioner is contrary to the record. Since the petitioner was appointed under the order dated 8.1.1990 and appointment letter was also issued to the petitioner on 20.1.1990 which was not a fixed or short term appointment, therefore, the petitioner's service could not be terminated orally. The respondents could have terminated the services of the petitioner only by a written order. In order dated 30.7.1992 the District Magistrate has stated that no work was taken from the petitioner after 30.4.1991 whereas in the counter-affidavit it has been stated that the petitioner ceased from working as Chaukidar from 2.12.1992 when the new Sub-Treasury at Jakhania started functioning. Therefore, it is clear that the respondents are taking self-contradictory stand in order to deprive the petitioner of his service.

5. Admittedly no written termination order was passed by the respondents. The respondents could not terminate the service of the petitioner by an oral order. The petitioner was appointed by a written order and his service could be terminated only by a written order. In absence of any written order terminating the service of the petitioner, the petitioner was illegally prevented by the

respondents from performing his duties as Chaukidar. The action of respondents was illegal and arbitrary and cannot be maintained.

6. In the result, this writ petition succeeds and is allowed. The order of District Magistrate dated 30.7.1992 and its communication Annexure-4 to the writ petition are quashed. The petitioner shall be reinstated in service and shall also be paid his entire arrears of salary. The aforesaid directions shall be complied by the respondents within a period of two months from the date a certified copy of this order is produced before the respondents.

7. Petitioner shall be entitled to his costs.