

(2002) 09 AHC CK 0053
In the Allahabad High Court
Case No : C.M.W.P. No. 21460 of 1994

Ram Lochan Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Central) Rules, 1957 — Rule 12
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 4K, 6N

Citation : (2002) 5 AWC 3928

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : I.N. Singh and R.N. Yadav, for the Appellant; R.D. Gupta and S.C., for the Respondent

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The Petitioner has approached this Court by means of the aforesaid writ petition for quashing the order of termination dated 16.5.1994 passed by the Executive Engineer, Public Nalkoop Nirman Khand, Varanasi and further for a direction to the Respondents to pay him salary in accordance with law.

3. It is alleged that the Petitioner was appointed as part time tube-well operator by the Executive Engineer, Public Nalkoop Nirman Khand, Varanasi, on monthly salary of Rs. 150 on certain conditions vide order dated 16.3.1982 (Annexure-1 to the writ petition). Thereafter he was promoted as Assistant tube-well Operator.

4. From perusal of the appointment letter of the Petitioner (Annexure-1 to the writ petition), it appears that the Petitioner was initially appointed only for a period of three months. By the impugned order dated 16.5.1994, the Petitioner was informed by the Executive Engineer that his services are being terminated by giving him one month's advance salary as the World Bank, financed tube-well No. 326 has been abandoned. The order of termination reads as under:

other language

5. It is contended by the Petitioner that the tube-well was functioning under the control of the State Government and it was the duty of Respondent No. 2, the Executive Engineer, Public Nalkoop Nirman Khand, Varanasi to maintain it. It is further contended that the tube-well is not the property of the World Bank as it has been constructed for the benefit of the agriculturists and public at large.

6. It has, however, not been deemed that the tube-well was constructed with the financial aid of the World Bank under the scheme sponsored by it. Lastly, it is contended that the Petitioner has worked for a period of 12 years as part time tube-well operator. In para 14 of the writ petition, a vague assertion has been made that there are several vacancies of Assistant tube-well operators and the Petitioner may be adjusted in any of the tube-wells where there is a vacancy. It is asserted that the Respondent have adjusted Ram Chandra Prasad and Kamta Prasad Maurya in the similar circumstances.

7. The Petitioner has also filed an amendment application along with an affidavit, inter alia stating that he had completed 240 days of service in each calendar year from the date of his appointment and as such his termination from service is in violation of Section 6N read with Section 2 (g) of the U.P. Industrial Disputes Act, 1947.

8. On the basis of averments made in the counter-affidavit filed by the Respondents, it is submitted by the standing counsel that Nalkoop Sahayak is appointed on a particular tube-well and he has to be from the same village in which the tube-well is situated. On failure and cancellation of that tube-well service of concerned Nalkoop Sahayak has to be terminated, as his services are not transferable. In para 5 of the counter-affidavit it has been specifically stated that as the water from the tube-well was not suitable for irrigation as per test report, therefore, the tube-well was cancelled and abandoned by the World Bank. The services of Nalkoop Sahayak being non-transferable as per Annexure-C.A. 1, C.A. 2 and C.A. 3, the Petitioner could not be transferred to any other tube-well on failure of the tube-well on which he was working.

9. The Petitioner has neither filed copy of the World Bank scheme under which he was appointed nor he has given the tube-well numbers in which posts to tube-well operators are said to be vacant and on which he could have been appointed.

10. It has not been denied in the rejoinder-affidavit that terms and conditions of the service of an Assistant Nalkoop operator are governed by G.O. as contained in Annexure-C.A. 1, C.A. 2 and C.A. 3 to the counter-affidavit. On the contrary, it has been alleged that termination is against the principles of natural justice and the Respondents have no power to impose such conditions of service. The Petitioner disputes that tube-well has not been failed by the competent authority on the ground that the water was not suitable for irrigation as per test report but has not submitted any material to support his contention that the tube-well has not failed and the water from it was fit for irrigation purposes but it had also not

been denied that his services are not transferable or that he has been appointed against a particular tube-well in his village as part time tube-well operator.

11. There is no material on record of the writ petition by which it can be ascertained that there are other tube-wells on which the Petitioner could be appointed. The writ petition is wholly vague in this aspect except giving of names of two persons who are said to have been transferred to another tube-well, there is no other material to show that in fact those persons were appointed under the scheme and were transferred to any other tube-well.

12. Counsel for the Petitioner submits that since the services of the Petitioner have been terminated without giving an opportunity of hearing to him which is against the principles of natural justice, hence the impugned termination order dated 16.5.1994 passed by Respondent No. 2 is liable to be quashed by this Court. He has placed reliance on the following cases: Pramod Kumar Yadav Vs. State of U.P. and others, ; Pancham Ram and Others Vs. Chief Engineer, U.P. Jal Nigam and Others, ; Sanjeev Kumar and Ors. v. State of U.P. and Anr. 1999 (1) UPLBEC 575; Jawed Ahmad and Ors. v. State of U.P. and others 1999 (1) UPLBEC 655 and Suresh Singh v. Director, North Central Zone, Cultural Centre, Allahabad and others 2000 (1) UPLBEC 626.

13. The cases relied upon by the counsel for the Petitioner do not support the case of the Petitioner.

14. In Pramod Kumar Yadav's case, the question before the Court was whether the appointments were made in the teeth of the ban is question of fact. Without giving an opportunity of showing cause the services of the Petitioners ought not to have been terminated on the assumption that the appointments were made in the teeth of the ban order. In this view of the matter, the Court has held that the impugned order of termination could not be sustained as it was passed in breach of principles of natural justice.

15. In Pancham Ram's case, the Petitioners were appointed in special recruitment drive launched by the State Government to fill up quota reserved for S.C./S.T. candidates on basis of recommendations of duly constituted Selection Committee in U.P. Jal Nigam. Subsequently, their appointments were rescinded by the order of the Chief Engineer, U.P. Jal Nigam, Lucknow. It was held that the impugned orders having been passed sans an opportunity of hearing being given to the Petitioners are unsustainable.

16. In Sanjeev Kumar's case, the services of the Petitioners were terminated as "no longer required". The Court held that thus the termination of service of the Petitioners in violation of principles of natural justice and without giving due weight to their legitimate expectation, is violative of their fundamental right guaranteed by Articles 14, 21 and 41 of the Constitution.

17. In Jawed Ahmad's case, the Court held that cancellation of appointment without affording an opportunity of hearing to the Petitioners is violative of

principles of natural justice and the order of cancellation of appointment is liable to be quashed.

18. In Suresh Singh's case, it was held that it is obvious that the centre wanted to reduce its administrative expenses and this approach cannot be faulted by the Court. Obviously, there has been overstaffing in the centre and there is nothing wrong in remedying this situation.

19. In all the aforesaid cases, the termination of service had not come to an end due to closure of place of employment. The principles of natural justice are not attracted in case where the place of employment is itself closed permanently.

20. Counsel for the Petitioner, however, submits that question whether there are vacant tube-wells on which the Petitioner can be appointed as well as whether any other persons have been given employment by transfer on other tube-wells can be looked into by the labour court. In case the Court comes to the conclusion that the disputed questions of facts are involved in this case, the matter may be relegated to the labour court for decision in a time bound period. In view of his submission, it is directed that if the Petitioner makes an application to the Regional Conciliation Officer/Deputy Labour Commissioner, Varanasi, the said authority will call the employer and the employee for settling the dispute amicably in exercise of power under the U.P. Industrial Disputes Act, 1947. In case no settlement is arrived at, the matter shall be referred by him to the State Government u/s 4K of the Act of Labour Court, Varanasi, within a period of one month from the date when application is made. On receipt of the reference the Labour Court shall proceed in the matter in the manner provided in Rule 12 of the U.P. Industrial Disputes Rules, 1957 and shall decide the dispute within a period of six months from the date of receipt of reference and shall for the purpose even hold hearing on day to day basis as provided in Rule 12 of the Rules.

21. No other point has been argued before me.

22. The questions raised in the writ petition require oral and documentary evidence. This Court will not delve into questions of facts or adjudicate by oral and documentary evidence in exercise of power under Article 226 of the Constitution of India. Admittedly, the Petitioner's appointment was made under the scheme sponsored by the World Bank and the tube-well on which he was working was established from the financial relief granted by it. The services of the Petitioner having come to an end due to closure and abandonment of the tube-well by the World Bank, as the water did not remain suitable for irrigation cannot be said to be illegal. The Petitioner is, therefore, not entitled to any relief as prayed.

23. With the aforesaid observations, the writ petition is disposed of.

24. No order as to costs.