
(1992) 01 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19098 of 1988

Ram Nagina Singh and Another

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 27-01-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 311, 311(2)

Citation : (1992) 2 AWC 615

Hon'ble Judges : M.L. Bhat, J

Bench : Single Bench

Advocate : J.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Bhat, J.—The Petitioners' services have been terminated by Respondent No. 2. The present writ petition is filed against the said orders of termination which are contained in Annexures-2 and 3 to the writ petition.

2. The Petitioners' case is that Petitioner No. 1 was appointed as Amin about 13 years ago and Petitioner No. 2. was appointed about 9 years ago, as Amin. Their services were liable to be regularised because they were appointed against permanent vacancies. Instead their services were terminated and the termination order is said to be by way of punishment. It is also contended that the Petitioners' appointing authority was the District Magistrate but their services have been terminated by the S.D.M. The impugned orders do not disclose any ground for termination of the Petitioners' services except that the Petitioners' services were not required any more.

3. Counter-affidavit has also been filed by the Respondents. Their case is that the Petitioners' services were purely temporary and they were appointed for a year as temporary employees. Their services could be terminated at any time without assigning any reason and without prior notice. The Petitioners' services were not required by the department, hence their services were terminated by an order

dated 16-9-88 It is also stated that the Petitioners' services could not be regularised due to various short comings on their part. The Petitioners' work was never upto mark. They were suspended in the year 1985 and many adverse entries were given to them. Written warnings were also given to them for their short-comings. The Petitioners' services are said to have been terminated because they could not collect the land revenue upto mark and the collection was very low. However, their services were terminated not because low collection of land revenue but the State of U.P. did not require their services any more. It was not necessary to give show cause notice to the Petitioners before issuing the order of termination. However, about the lack of authority of the SDM. to pass the impugned order, the Respondents have not given any reply. It is stated that the list of candidates for appointment as Amin was prepared on the direction of the District Magistrate but the appointment orders were issued by Respondent No. 2, who is the appointing authority of the Amin.

4. A rejoinder-affidavit is also filed by the Petitioners. It is stated that the Petitioners' appointing authority is the District Magistrate and not Respondent No. 2. The Petitioners' previous service is claimed to be taken into account while determining the seniority of the Petitioners. It is stated that in the year 1988-89 there was draught in the Ghazipur District and the recovery of dues were suspended for the time being by the Government and the Petitioners were attached to perform their duties in the election of Gram Pradhans. Petitioner No. 2 was given a lady peon to assist him which shows that the Respondents were not serious in collection of dues because the lady peon was incapable of rendering any assistance to the Petitioners; in collection of dues The Respondents did not even call for any explanation from the Petitioners and passed the order of termination at their back in violation of provisions of Article 311 of the Constitution. The Petitioners also pray that by a writ of mandamus the Respondents be directed to regularise their services

5. I have heard learned Counsel for the Petitioners as also the standing counsel. The relevant materials produced before me was also considered. I examined the pleadings of the parties also. On the face of it, the termination order of the Petitioners appears as innocuous and simplicitor. After lifting the veil from it, it appears that the order of termination is not simplicitor as was contended by learned standing counsel. For termination of the Petitioners' services there is some reason which has been detailed out in the counter affidavit. The reason being low collection made by the Petitioners and there being some short-comings in performance of their duties. If this is the reason for the Petitioners' discharge from the services then the Petitioners' removal from the services is not simplicitor or innocuous, but would appear to be as a measure of punishment. If the order of termination is passed without affording any opportunity to the Petitioners, that order cannot be sustained because that would be in flagrant violation of Article 311 of the Constitution It was imperative for the Respondents to give an opportunity to the Petitioners to explain their conduct and to show cause why they did not collect the dues upto the mark and why there were short-

comings in their functioning Unless this was done the Petitioners' services even though they were temporary could not be dispensed with. From the reading of the counter affidavit it transpires that the Petitioner's work was not satisfactory and for unsatisfactory work they have been given warnings also and their work has been termed as not upto the mark and in the opinion of the Respondents there were short-comings in their functioning

6. In Smt. Rajinder Kaur Vs. State of Punjab and Another, the Supreme Court had considered whether discharge from service was simplicitor or by way of punishment. The discharge was made on the basis of misconduct of a lady constable as she used to sit with male constable during nights. As such her discharge was ordered without serving her charge sheet and without opportunity to explain the charges . The Supreme Court held, in the facts of that case, that order of discharge though apparently innocuous amounted to dismissal on ground of misconduct Article 311(2) of the constitution of India was held to be violated. In Babu Lal Vs. The State of Haryana and others, , it has been held that:

It is well settled that though the order is innocuous on the face of it still then the Court, if necessary, for the ends of fair play and justice can lift the veil and findout the real nature of the order and if it is found that the impugned order is penal in nature even though it is couched with the order of termination in accordance with the terms and conditions of the order of appointment, the order will be set aside.

7. In the present case though the order of termination of service is couched in a manner which appears to be innocuous on the face of it, but after reading the counter affidavit of Respondents and after lifting the veil from the said order, the order of termination of the Petitioners is by way of punishment Admittedly, no explanation was called from the Petitioners before the order of termination was passed. No charge-sheet was framed against the Petitioners to enable them to explain the charges against them. The charge against them was that their work was not upto the mark and there was low collection because of some short-comings in their functioning. This charge should have been made known to them so as to enable them to file a reply. On the other hand, the order of termination of Petitioners' services has been passed at their back without affording them an opportunity of being heard. The impugned order therefore, suffers from infirmity and from vice of illegality, as the said orders are passed in violation of Article 311 of the Constitution of India. The termination orders do not satisfy the test of guaranteed enshrined in Article 14 of the Constitution The said Article amongst other things cautions that if any adverse order is proposed to be passed against a person, he must be heard before the said order is passed. The impugned order was passed without hearing the Petitioners, therefore, it has violated the principles of natural justice also.

8. It is admitted by the Respondents that selection was made by the District Magistrate but the appointment letters to the Petitioners, were issued by Respondent No. 2. The Petitioner-; were ordered to be selected by the District

Magistrate but the order of the District Magistrate was made effective by Respondent No 2. He cannot be held to be appointing authority of the Petitioners. On this account also, the impugned orders cannot be sustained because it is the appointing authority or any authority higher to the appointing authority, which can discharge, remove or dismiss an employee from the service Respondent No. 2 has acted without jurisdiction Therefore, the impugned orders are rendered without jurisdiction. As such the impugned orders are void abinitio

9. The Petitioners' services are required to be regularised because they are said to have been completed the requisite period of service for seeking regularisation of their services. Therefore, it is obligatory for the Respondents to consider the Petitioners case for regularisation against the post for which they were appointed.

10. For the reasons stated above, the impugned orders of termination of the Petitioners' services dated 16-9-88 contained in Annexures-2 and 3, passed by the Respondent No 2 are hereby quashed and the writ petition is allowed. By a writ of mandamus, the Respondents are directed to consider the Petitioners' case for regularisation of their services They have already completed the requisite period of service as Amins The Petitioners are entitled to get costs of this petition also from the Respondents

11. The writ petition succeeds and is allowed to the extent stated above.