

(1998) 12 AHC CK 0027
In the Allahabad High Court
Case No : C.M.W.P. No. 46026 of 1992

Ram Singar Yadav and others	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 18-12-1998

Acts Referred:

Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975
— Rule 3, 4

Citation : (1999) 2 AWC 1133

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : B.P. Srivastava, for the Appellant; S.C. and Shyam Sundar Sharma, for the Respondent

Judgement

D.K. Seth, J.—The petitioners were alleged to have been appointed in the posts of Mali-cum-Chowkidar on 16th June, 1992. The said appointments were found to be irregular by the Conservator of Forest, Gorakhpur, which is apparent from the order dated 29th June 1992 being Annexure-11, to the writ petition. Accordingly, the appointments were cancelled by an order dated 30th June, 1992, which is Annexure-12 to the writ petition. Aggrieved by the said order of cancellation, the petitioners filed a writ petition before this Court being number MI of 1992. By an order dated 27th August, 1992, the said writ petition was disposed of. A copy of the said order is Annexure-13 to the writ petition. In the said order, the order of cancellation was quashed on the ground that it was not an order of termination and was passed in violation of the principles of natural justice without giving any opportunity of hearing. In the said order, however, it was made clear that the respondent would be free to pass fresh similar orders after giving an opportunity of hearing to the petitioners. It was made further clear that if the respondent No. 3 is of the view that a simple order of termination is to be passed, it can be done so even without giving any opportunity of hearing. Thereafter by an order dated 17th September, 1992 contained in Annexure-14, the services of the petitioners were terminated under

the U. P. Temporary Government Servants" (Termination of Service) Rules, 1975 without assigning any reason and without any stigma, giving one month's pay in lieu of notice. This order has since been challenged in this writ petition.

2. Mr. B. P. Srivastava, learned counsel for the petitioners contends that in an Identical case which was involved in series of writ petitions, leading one being Civil Misc. Writ Petition No. 16985 of 1984, which was involved in Special Appeal No. 653 of 1995, was decided by this Court on 10th December, 1997. He had produced a certified copy of the said order. Relying on the said decision, Mr. Srivastava contends that in the said case also financial constraint was pleaded as a ground against the proposal for regularization. In the present case, the petitioners' services were dispensed with on the ground of financial constraints. The facts of this case being identical with the case involved in State of U. P. v. Putti Lal, Special Appeal No. 653 of 1995, disposed on 10th December, 1997, the petitioners should also be directed to be considered for regularization in the same manner. He further contends that the petitioners would be eligible for being so considered by reason of an interim order passed in this writ petition on 6th May, 1993 due to which they are continuing in service and due to which the petitioners are also similarly situated with those of the petitioners in the said writ petition. On these grounds, he contends that the writ petition should be allowed.

3. Mr. Shyam Sunder Sharma, learned standing counsel on the other hand contends that the case of the petitioner as made out in the present writ petition is completely distinguishable from the case cited by the counsel for the petitioner and there is no rationale, which could be compared having regard to the facts of the present case with reference to those of the other cases cited by the counsel for the petitioner. He had contended that in the present case, the appointment was made illegal and, therefore, it was sought to be cancelled. The said order having been challenged, was quashed with a liberty to pass fresh order. Fresh orders having been passed according to the liberty granted in the said decision, it is no more open to the petitioners to claim otherwise because the order is covered by the liberty granted in the decision in the writ petition moved by the petitioners. Therefore, the writ petition should be dismissed.

4. I have heard both the learned counsel at length.

5. In the facts and Circumstances, the petitioners were appointed on 16th June, 1992. Immediately a report was prepared that the appointments were made illegally and an order of cancellation was passed on 30th June, 1992, namely, within less than 14 days from the date of appointment. Therefore, till the date of moving the earlier writ petition by the petitioners, the petitioners cannot claim that they had continued for some time. The earlier writ petition disposed of on 27th August, 1992 made it clear that the respondent No. 3 would be free to pass fresh orders after giving an opportunity to the petitioner, or to pass a simple order of termination without giving an opportunity of hearing. The question is governed by the said order which it had directed by reason of a fresh order. A fresh order that has been passed in terms of the order dated 27th August, 1992,

has to be decided in the light of the decision in the said case. A decision being a decision *inter se* between the parties, it is binding on both the parties. The petitioners cannot claim any further right beyond the scope of the order dated 27th August. 1992.

6. In the present case, a perusal of the order passed in Annexure-14 dated 17th September, 1992 shows that it is a termination simpliciter. The said order complies with the provisions contained in U. P. Temporary Government Servant. (Termination of Service) Rules, 1975. Thus, the order having been passed in terms of the order dated 27th August. 1992, it cannot be said that there is any infirmity in the said order.

7. Now the question of regularization may be considered in the light of the facts and circumstances of this case. In the present case, till the termination of services, the petitioners did not continue in service for a long period which was one of the consideration on the basis whereof the decision in the case of Putti Lal (*supra*), had proceeded. Then again, in the present case, the contention was that the petitioners' appointment was illegal, which was immediately sought to be cancelled. On the basis of such illegal order, the petitioners cannot claim any right *qua* the petitioners in the Writ Petition No. 16985 of 1994 and the series of other writ petitions decided along with Special Appeal Wo. 653 of 1995, Putti Lal (*supra*). This case on the face of it is distinguishable from the facts which were dealt with in the said decision of Putti Lal (*supra*).

The continuation of the petitioners by virtue of an interim order does not come to any help to the petitioners. Interim orders are always passed subject to the result of the writ petition. Interim order does not confer any independent right on the petitioner on the basis whereof he can claim any right. The interim order is an order interim during the pendency of the writ petition subject to the final decision. An interim order cannot have any effect on the outcome of the result of the writ petition, which has to be decided on the basis of its own merits without being influenced by the interim order granted. Therefore, the grant of an interim order does not confer any right on the petitioners to be considered in the light of the decision in the case of Putti Lal (*supra*).

8. For the foregoing reasons, I do not find any merit in this writ petition. It is accordingly dismissed. There will, however, be no order as to cost.