
(2013) 03 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8005 (SS) of 2010

Ramesh Chandra Maurya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 1 UPLBEC 846

Hon'ble Judges : Anil Kumar Agarwal, J

Bench : Single Bench

Advocate : B.R. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Anil Kumar Agarwal, J.—Heard Sri B.R. Singh, learned Counsel for petitioner, Sri A.N. Trivedi, learned State Counsel and perused the record. Facts of the present case are that petitioner was initially appointed on the post of Gram Panchayat Adhikari on 13.7.1983 in the Panchayat Raj Department, State of U.P. and posted under District Panchayat Raj officer, Raebareilly. While he was working and discharging his duties his services has been terminated by order dated 1/3.5.1984 (Annexure No. 2) on the ground that 35 Gram Panchayat Adhikari who were working on deputation have been repatriated back to their substantive post in the Panchayat Raj Department.

2. Thereafter, on 8.1.1985 (Annexure No. 4) petitioner was given appointment on the post of Gram Panchayat Adhikari by means of order dated 8.1.1985 (Annexure No. 4) and posted at Maharajganj. In the said capacity, he worked and discharged his duties upto 16.12.1987. Again some persons who are working in a different department had been repatriated back on the post of Gram Panchayat Adhikari, so the services of the petitioner was terminated.

3. Subsequently, in view of the Government Order dated 20.10.1986, the petitioner appointed on the post of Gram Panchayat Adhikari by means of the order dated 9.5.1989 (Annexure No. 6) passed by Director, Panchayat Raj, U.P.,

Lucknow.

4. In view of the abovesaid factual background, the petitioner had filed the present writ petition before this Court praying that the services rendered by him w.e.f. 13.7.1983 to 26.5.1989 on the post of Gram Panchayat Adhikari may be counted for his service benefit.

5. Sri B.R. Singh, learned Counsel for petitioner in order to press the said relief submits that from the perusal of the order dated 9.5.1989 (Annexure No. 6) passed by Director, Panchayat Raj, by which the petitioner has been appointed on the post of Gram Panchayat Adhikari, the word mentioned are " ". So taking into consideration the said material fact, the petitioner is entitled for all the service benefits for the services rendered by him in the department from 13.7.1983 to 26.5.1989. In support of his contention, learned Counsel for petitioner has relied on the judgment passed by Hon"ble the Supreme Court in the case of Sushil Kumar Yadunath Jha Vs. Union of India (UOI) and Others, .

6. Sri A.N. Trivedi, learned Additional Chief Standing Counsel while rebutting the contention of the petitioner submits that as in the appointment order dated 9.5.1989, the word which has been mentioned " " so it is a fresh appointment of the petitioner on the post in question which has been accepted by him. Thus, taking into consideration the said facts, the relief as claimed by the petitioner for counting the service rendered by him w.e.f. 13.7.1983 to 26.5.1989 on the post of Gram Panchayat Adhikari cannot be granted to him for the purpose of service benefit.

7. I have heard learned Counsel for parties and gone through the record.

8. The core question which is to be decided in the present case is whether in view of the words mentioned in the appointment order dated 9.5.1989 passed by Director, Panchayat Raj, i.e. " ", means the same is a fresh appointment of the petitioner on the post of Gram Panchayat Adhikari or not?

9. The word " " mentioned in the order dated 9.5.1989 means "reappointment" whereas " " means "absorption".

10. Further, word " "/re-employment is defined in the "Words and Phrases Permanent Edition Volume 36-B at page 96" as "re-employment" means the same service in which he was formerly employed"

11. The word "absorption" is defined in Encyclopaedic Law Lexicon by Justice C.K. Thakker at page 26 as under:--

The term "absorbed" in service Jurisprudence with reference to a post in the very nature of things implies that an employee who has not been holding a particular post in his own right by virtue of either recruitment or promotion to that post but is holding a different post in a different department is brought to that post either on" deputation or by transfer and is subsequently absorbed in that post where after he becomes a holder of that post in his own right and loses his lien on his

parent post (See Devdutta and Others Vs. State of M.P. and Others,).

12. Hon"ble the Apex Court in the case of J and K State Road Transport Corporation, Jammu and Another Vs. Om Prakash and Others, , has held that "reemployment means when regular employment has "ceased".

13. In the case of Union of India and Others Vs. Rekha Majhi, , Hon"ble the Supreme Court has considered the word expression "reemployment" and it has been held that being the object of the rule, we have to give a wider meaning to the expression "re-employed" which finds place in Rule 75(21)(ii) of the Rules. The expression "re-employed", if construed in the light of the object behind the Rule and facts of this case, would also include first regular appointment in the service (See M.S. Chawla and Others Vs. State of Punjab and Another,).

14. Appointment is effected by the employer through a contract of employment. As in every contract, so in a contract of public employment an offer of appointment to the candidate sought to be employed and his acceptance of the offer forms the basis of appointment. Appointment is made to a vacancy and in a post. It is, therefore, made by a positive and deliberate act of engagement creating a relationship between employer and employee. Appointment is the starting point of a career in public employment. It confers a status and ensure all the rights that are attached to public service, including confirmation, seniority, promotion, and so on tenure. (See Basant Lal Malhotra Vs. State of Punjab and Others,).

15. Hon"ble the Supreme Court in the case of Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others, , held that appointment means an actual act of posting a person to a particular office and anything short of it cannot be construed as appointment.

16. As such, although the petitioner has been initially appointed on the post of Gram Panchayat Adhikari on 13.7.1983, however, by order dated 2.5.1984 his services were terminated/dispensed, again appointed on the said capacity uptill 16.12.1987, thereafter, his services were terminated. Lastly, the petitioner was given appointment on the post of Gram Panchayat Adhikari by an order dated 9.5.1989 (Annexure No. 6) in pursuance to the Government Order dated 20.10.1986, even if the words mentioned in the appointment order are " " but the said date (09.5.1989) shall be the date of his appointment in the department on the post of Gram Panchayat Adhikari and that date shall be the starting point of his career. So, the relief as claimed by the petitioner for giving benefit of the service rendered by him w.e.f. 13.7.1983 to 26.5.1989 on the post of Gram Panchayat Adhikari cannot be granted, as such, the petitioner cannot derive any benefit from the law as laid down by Hon"ble the Supreme Court in the case of Sushil Kumar (supra) because the same is not applicable in the facts and circumstances of the present case.

For the foregoing reasons, the writ petition lacks merit and is dismissed.