
(2007) 05 AHC CK 0021
In the Allahabad High Court

Santosh Kumar Porwal

APPELLANT

Vs

Director, Bal Vikash Sewa Evam Postahar Yojana, Deputy
Director, Bal Vikash Sewa Evam Pushtahar, Kanpur Mandal
and Bal Vikas Pariyojana Adhikari

RESPONDENT

Date of Decision : 02-05-2007

Acts Referred:

Citation : (2007) 7 AWC 7013 : (2007) 115 FLR 109

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri Yogesh Kumar Saxena counsel for the petitioner and Sri. Shree Prakash Singh standing counsel.

2. Case of the petitioner is that he was appointed on ad hoc basis as Junior Clerk in the office of Bal Vikash Pariyojana Adhikari. Farrukhabad respondent No. 3 vide letter of appointment dated 25.7.1987 appended as Annexure 1 to the writ petition. His appointment was conditional till selection of regularly selected candidate.

3. It appears from letter dated 3.4.1987. appended as Annexure 2 to the writ petition, that some recommendation was made by Bal vikash Pariyojana Adhikari. Tirua, district Farrukhabad for regularization of the services of the petitioner on the post of Junior Clerk. However, services of the petitioner were terminated vide order dated 20.6.1987, enclosed as Annexure 3 to the writ petition on the ground that he was an ad hoc employee and his services were no longer required.

4. Aggrieved by the order of his termination, the petitioner filed Civil Misc. Writ No. 12234 of 1987 in which an ad-interim order dated 14.7.1987 was passed in his favour.

5. On the basis of averments made in the counter affidavit on that case stating

that one Sri S.K. Katiyar, a regularly selected candidate, had already joined the post on 25.6.1987, the writ petition was disposed of vide judgment and order dated 1.2.1989 with the observations that if the post which the petitioner was holding was still vacant, his case may be considered for appointment on ad hoc basis till joining of regularly selected candidate.

6. Counsel for the petitioner submits that when petitioner came to know that aforesaid Sri S.K. Katiyar had only worked for nine days, whose services had been terminated vide order dated 15.9.1987, appended as Annexure 6 to the writ petition, and that Sri Sushil Kumar Pandey, another person was appointed in his place on ad hoc basis vide order dated 10.10.1987, appended as Annexure 7 to the writ petition. He filed this writ petition in September, 1992.

7. Contention of counsel for the petitioner is that the earlier Civil Misc. Writ No. 12234 of 1987 of the petitioner was got dismissed by the respondents by incorrectly alleging that Sri S.K. Katiyar, a regularly selected candidate had already joined the post; that he has not handed over charge of the post till date as such is entitled to continue on the post.

8. Despite repeated opportunities, no counter affidavit has been filed in the instant writ petition. Hence, with the consent of the parties, the writ petition has been heard and is being decided on merits.

9. Admittedly, the petitioner's appointment was on ad hoc basis till joining of regularly selected candidate. Recommendation for regularization of the services of the petitioner by the respondent No. 3 as permanent employee tantamount to back door entry. When the post is to be filled up by regularly selected candidate by selection process under the recruitment rules the conduct of respondent No. 3 in appointing the petitioner on ad hoc basis and then recommending his case for regularization comes under legal scrutiny.

10. An ad hoc employee has no legal right to hold the post substantively. Such an employee can enter into service only after regular selection in accordance with; the recruitment rules and not in any other manner.

11. The contention of counsel for the petitioner that the petitioner has not handed over charge even after termination of services is fallacious. A terminated employee cannot hold charge of the post after his termination like in the case of a transferred or promoted employee. The petitioner cannot get the benefit of the interim order passed by the Court in the earlier petition which was dismissed as at that time when counter affidavit was filed Sri S.K. Katiyar was Working in place of the petitioner and the petitioner had been dismissed. The interim order, therefore, merged in the final judgment passed by the Court.

12. In the admitted facts that Sri S.K. Katiya had been posted only for 9 days and thereafter on the own showing of the petitioner another person namely, Sri S.K. Pandey was appointed on the post. The petitioner has not arrayed any of them as party in the writ petition and as such no relief against them can be

granted to him in this petition which has been filed in September. 1991 after more than three years of decision in writ petition No. 12234 of 1987 on 1.2.1989. The petitionr has, therefore, no legal right to claim his appointment. Admittedly, the ad hoc appointment of the petitioner came to an end w.e.f. 20.6.87, i.e., about 20 years ago hence no effective relief can be granted to him now in May, 2007.

13. The writ petition is dismissed. No order as to costs.