
(2001) 04 AHC CK 0108

In the Allahabad High Court

Case No : Writ Petition No. 4382 (S/S) of 1997 and 4 other writ petitions

Shashi Bala Sinha and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 1 AWC 263 : (2002) 94 FLR 800 : (2001) 3 UPLBEC 2462

Hon'ble Judges : U.K. Dhaon, J

Bench : Single Bench

Advocate : Kamaluddin Khan, A. Mannan, D.K. Dixit, Bimla Misra, S.K. Kalia, R.S. Pandey and I.P. Singh, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

U.K. Dhaon, J.—Heard the arguments of Sri R. S. Pandey, Sri K. S. Bajpai and Sri Kamaluddin Khan for the petitioners and the learned standing counsel on behalf of the opposite parties. As the common question of law and facts are Involved in the above noted writ petitions, they are being disposed of by a common judgment and order.

2. The brief facts of the case are that applications were invited for filling 13 posts of Instructor Stenographer (Hindi) In the Coaching-cum-Guldance Centres at various Employment Exchanges in U. P. through the letter dated 14.4.1983 Issued by Director of Employment and Training, U. P. The Employment Exchanges were required to forward the names by 30.4.1983. The petitioners were directed to appear in the interview on 22.6.1983 at 10 a.m. at the Directorate, Lucknow. On 22.6.1983, a written test was conducted and thereafter the petitioners were also required to appear for interview. The Director of Employment and Training, U. P., on 6.8.1983 issued letters of appointment to the petitioners and they were appointed as Anudeshak Ashulipiks in the pay-scale of Rs. 515-860 on temporary basis till 20.2.1984. They were also directed to join at their respective Coaching-cum-Guidance Centres latest by 20.8.1983. In

compliance of the appointment letters, the petitioners joined in the respective Employment Exchanges. The appointments which were valid upto 20.2.1984 were extended till 28.2.1985 on the condition that the petitioners should attain the required speed as fixed by the State Government latest by 31.8.1984. In the said order dated 25.2.1984. it was also mentioned that if the required speed is not attained, the services of the petitioners shall be deemed to have been terminated after 31.8.1984. The petitioners were allowed to continue even after 28.2.1985. By letter dated 15.4.1985, which has been annexed along with the writ petition, the Director of Employment and Training, U. P. informed all the District Employment Officers that the petitioners shall continue in service in anticipation of approval from the State Government. By the letter dated 2.5.1986, the Director of Employment and Training, U. P., again directed the petitioners to appear in the test for the required speed to be held on 19.5.1986 in the Office of the Directorate. The test scheduled for 19.5.1986 was cancelled by the order dated 19.5.1986 and it was also mentioned in the said order that there shall be no test in future also. The petitioners were allowed to continue in service subsequent to 19.5.1986 and thereafter a tentative seniority list was published by the Director of Employment and Training, U. P. in which the petitioners' names figured from Serial Nos. 6 to 16. By the order dated 19.6.1987, the services of the petitioners were terminated. The petitioners being aggrieved by the impugned orders of termination dated 19.6.1987 filed writ petitions before this Court and the order of termination was stayed. The Writ Petitions Nos. 4382 (SS) of 1987, 4385 (SS) of 1987 and 4373 (SS) of 1987 were dismissed on the ground of availability of alternative remedy by the judgment and order dated 4.12.1987. The petitioners of Writ Petitions Nos. 4382 (SS) of 1987, 4385 (SS) of 1987 and 4373 (SS) of 1987 filed special leave petitions before Hon'ble the Supreme Court of India. The Hon'ble Supreme Court by the judgment and order dated 5.4.1989 allowed the special leave petitions and the matter was remanded back to this Court. Hon'ble the Supreme Court while allowing the special leave petitions also provided that it will be open to the petitioners to move fresh application for interim relief before this Court. The petitioners thereafter moved fresh applications for stay and this Court by the order dated 4.7.1989 granted the stay order to the effect that if the posts are still available, the petitioners shall be allowed to continue till the disposal of the writ petitions. In pursuance of the said order dated 4.7.1989, the petitioners were reinstated in service and since then they are continuously working on the post in question. Here it is relevant to mention that Writ Petition No. 4303 (SS) of 1987 and 4372 (SS) of 1987 were not linked with Writ Petition No. 4382 (SS) of 1987 and these two petitions were not dismissed by this Court on the ground of alternative remedy.

3. Learned counsels for the petitioners submit that the appointment letters were Issued to the petitioners after the written test and interview and as the posts were available, the termination orders are arbitrary and illegal. Learned counsels for the petitioners further submit that the persons Junior to the petitioners have

been retained in service and they were subsequently regularised and as such, the impugned termination orders are violative of Articles 14 and 16 of the Constitution of India. It has also been argued on behalf of the petitioners that before passing the Impugned termination orders, no opportunity was afforded to the petitioners and as such, the impugned orders are violative of the principles of Natural Justice. Learned counsel for the petitioners have relied upon the decisions of the Hon"ble Supreme Court in *Kanshi Ram Verma v. Municipal Committee Mansa* (1981) 2 SCO 70 *Jarnail Singh and Others Vs. State of Punjab and Others*, ; AIR 2000 1706 (SC)

4. The learned standing counsel submits that the petitioners were the temporary employees and there is no illegality in the impugned termination orders. He further submits that the appointments of the petitioners were made without following the prescribed procedure and they are not the regularly selected candidates and as such, they cannot maintain the petitions. The learned standing counsel further submits that the writ petitions have no force and deserve to be dismissed with costs.

5. I have considered the arguments of the learned counsel for the parties and gone through the record.

6. There is no dispute that the petitioners appeared in the written test and interview which was held on 22.6.1983 and initially they were appointed for a period upto 20.2.1984 and the said appointment was extended tilt 28.2.1985 through the order dated 25.2.1984 a copy of which has been annexed along with the writ petition. There is no dispute that the test scheduled for 19.5.1986 was cancelled and thereafter the petitioners were continued in service till the impugned termination orders were passed. The Impugned termination orders were stayed by this Court and till date, the petitioners are working on the post on the basis of the interim orders passed by this Court. There is also no dispute that the names of the petitioners were mentioned in the tentative seniority list from Serial Nos. 6 to 16 and 29 persons Junior to the petitioners were retained in service when the impugned termination orders were passed. The impugned termination orders were passed by the Director of Employment and Training, U. P., without affording any opportunity to the petitioners as they were working on their respective posts since August. 1983. The Impugned termination orders are violative of the principle of natural justice as the petitioners have worked for more than three years when the Impugned termination orders were passed. Hon"ble the Supreme Court in *Jarnail Singh and Ors. v. State of Punjab and Ors.* (supra) has held as under :

"The mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e., the attending circumstances as well as the basis of the order that have to be taken into consideration. When an allegation is made

by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is Incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of In order to determine whether the order was made on ground of misconduct and inefficiency or not."

7. In the present case, Juniors to the petitioners were retained and regularised in service when the impugned termination orders were passed against the petitioners and as such, it is violative of Articles 14 and 16 of the Constitution of India. The arguments of the learned standing counsel that the appointments of the petitioners were made without following the prescribed procedure cannot be accepted as the petitioners were given appointment letters after the written test and interview. The petitioners are working till date on the strength of the interim orders passed by this Court and now more than 14 years have elapsed and all the petitioners have become overage for other services.

8. In the result, the writ petitions succeed and a writ in the nature of certiorari is issued quashing the impugned termination orders dated 19.6.1987 passed by the Director of Employment and Training, U. P. and the petitioners shall be deemed to be in continuous service with all consequential benefits. In the circumstance, there will be no order as to costs.