
(2006) 11 AHC CK 0118
In the Allahabad High Court

Shri Mohammad Nihal Siddiqui	APPELLANT
Vs	
State of U.P. and The Additional Director, Industries (Karmik)	RESPONDENT

Date of Decision : 02-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 112 FLR 171

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—Challenging the termination order dated 31st of May, 1999 passed under the U.P. Temporary Government Services (Termination of Service) Rules 1975, by Additional Director Industries (Karmik) the present writ petition has been filed.

2. The petitioner claims that he was appointed on the post of Assistant Manager in pursuance of an advertisement for appointment after facing a Selection Committee constituted for holding interview. On 28.4.1980 he joined as Assistant Manager at Pratapgarh and has not been communicated any adverse entry except two for the last more than 12 years. Against the adverse entries awarded for the year 1983 and 1987 he has already preferred the representations which are pending and has thus completed more than 19 years of service on the post of Assistant Manager and his service was abruptly terminated by the termination order dated 31st May, 1999. No opportunity of hearing before termination and discharging the petitioner from the post of Assistant Manager was afforded. In para 12 of the writ petition although it has been stated that he has been discriminated in the matter of employment in as much as several juniors to him have been retained on the post of Assistant Manager including Shri S.C. Shukla and A.A. Zaidi. But no such argument was advanced at the time of hearing of the writ petition by Shri B.P. Srivastava, advocate, the learned Counsel for the petitioner.

3. In the counter affidavit, the defence set up is that the petitioner was appointed on the post of Assistant Manager, purely on temporary and ad hoc basis which is evident from the appointment letter filed as Annexure - 1 to the writ petition and he was awarded several adverse entries of serious nature in the character roll In the years 1984-85, 1985-86, 1986-87, 1990-91, 1991-92, 1992-93 and 1997-98 and these entries were duly communicated to the petitioner. Copies of these adverse entries have been annexed as Annexures CA -1 to CA 7. The contention that the petitioner has made representation as stated in the writ petition has been denied. The integrity of the petitioner was found doubtful. The termination order has been sought to be justified on the ground that the petitioner was a temporary employee and his services were terminated as per the relevant Rules after giving a month's notice. The termination order is simplicitor causing no stigma. Plea that the petitioner has alternative remedy to file a claim petition before the U.P. Public Services Tribunal, Lucknow was also raised in the para 12 of the counter affidavit.

4. The learned Counsel for the petitioner contended that the petitioner has been working since long on the post of Assistant Manager and while entertaining the writ petition this Court by the order dated 15th of June, 1999 stayed the operation of the termination order dated 31st of May, 1997, annexure 2 termination order the writ petition and as such at this distance of time it is not appropriate termination order dismiss the writ petition. Reliance has been placed on two judgments of this Court: (i) State of U.P. v. Dr. R.P. Goel and Ors. 2000 (18) LCD 183and Shashi Bala Sinha and Ors. v. State of U.P. 2002 (20) LCD 33.

5. In contra the learned standing counsel submitted that passing of interim order by this Court will not confer any right in favour of the petitioner and the petitioner has to establish his case on merits in order to succeed in the writ petition. So long as no illegality is pointed out in the termination order, the petitioner is not entitled to get any relief in the writ petition. Reliance has been placed on a Division Bench decision of this Court in Ram Asrey v. District Judge, Bijnore 2004 (2) E.S.C. 1204. The plea that the writ petition is liable to be thrown on the ground of alternative remedy was also agitated.

6. Having heard the learned Counsel for the parties, it is not desirable to relegate the petitioner to the U.P. Public Services Tribunal. The matter has been pending in this Court for a period of more than 6 years and the petitioner has been working on the strength of the interim order, it is appropriate to decide the matter finally on merits keeping in view the fact that only small controversy is presently involved and the respondents have filed a counter affidavit in the writ petition.

7. The only argument raised by Shri B.P. Srivastava, the learned Counsel for the petitioner Is that since the petitioner has been working for a such long period of time, this Court in view of two judgments already referred, should quash the termination order. It may be noted that no attempt was made by the learned Counsel for the petitioner to point out any illegality in the termination order

except that the petitioner had worked on the post of Assistant Manager for the last about 19 years before the passing of the termination order. Against the adverse entries referred to in the counter affidavit the petitioners have filed representation and the result of the representation is still awaited. In this regard the petitioner in para 8 of the affidavit has stated that he was communicated two adverse entries one in the year 1983 and another in 1987 and he has already filed representation but they have not been decided so far. This averment has been specifically denied in para 5 of the counter affidavit wherein the filing of the representation by the petitioner has not been accepted and it has been specifically stated that the petitioner was awarded bad entries for over seven years namely 1984-85 to 1986-87, 1990-91 to 1992-93 and 1997-98. These entries were duly communicated to the petitioner. The integrity of the petitioner was doubtful and was not certified in these entries. There is no reason not to accept the averments made in para 5 of the counter affidavit to the effect that the petitioner has not filed any representation and that the petitioner was communicated all the adverse entries spread over seven years of service.

8. Now I take the second point urged by the petitioner that at this distance of time it is not appropriate to uphold the termination order. State of U.P. v. Dr. R.P. Goel and Ors. (supra) (D.B.) has been relied upon by the petitioner. The Division Bench in para 5 of the report took the view that the traditional concept that a temporary employee has no right to the post (as held in State of U.P. v. Kaushal kishore 1991 (2) FLR 350 S.C. stands modified in the light of the new interpretation of Article 14 of the Constitution given by the Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, In the next para the Division Bench held that since the petitioner of that case had worked for 19 years in U.P. Government Service, therefore, in their opinion, even if he was a temporary employee, a person who has worked for such a long period of time cannot be suddenly asked to go for no rhyme or reason. In the next sentence it has been stated that position becomes different if the services of a temporary employee is terminated only after two or three years of appointment and in that case the termination order may not be arbitrary. The Division Bench was of the view that if a temporary employee has worked for 10 years, in their opinion the termination of his services without opportunity of hearing would certainly be arbitrary because such an employee would have been married and have children and has become overage for other employment, and has settled down in life with reasonable expectation that ordinarily he would continue in service till the age of retirement. This Court finds that although in the case of State of U.P. v. Dr. R.P. Goel and Ors. (supra) it was observed by a Division Bench of this Court- that the traditional concept with regard to a temporary employee stands modified in view of the interpretation of Article 14 of the Constitution given by the Supreme Court in Meneka Gandhi's case, still the Apex Court is adhering to the old concept with regard to the temporary employee and there has been no change in the said concept by it and the Apex Court has been reiterating time and again that a temporary government servant has no right to hold the post and his services are

liable to be terminated in accordance with the relevant service rules and in terms of contract. The learned Counsel for the petitioner was specifically required by the court to place any judgment of the Apex Court which may support his contention and for this very purpose adjournment was allowed. But he could not place any such judgment of the Apex Court touching the issue.

9. In *Ram Asray v. District Judge Biinore* (supra) a Division Bench of this Court after considering the following cases:

1. *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*,
2. *Parshotam Lal Dhingra Vs. Union of India (UOI)*,
3. *Ravindra Kumar Misra Vs. U.P. State Handloom Corpn. Ltd. and Another*,
4. *Triveni Shankar Saxena Vs. State of U.P. and others*,
5. *Commissioner, Food and Civil Supplies, Lucknow, U.P. and Another Vs. Prakash Chandra Saxena and Another*,
6. *Ram Chandra Tripathi Vs. U.P. Public Services Tribunal IV and Others*,
7. *Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others*,
8. *Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others*,
9. *Life Insurance Corporation of India v. Raghuvendra Sheshgiri Rao Kulkarni* (1997) 8 SCC 460.
10. *State of Punjab and others Vs. Surinder Kumar and others*,
11. *Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others*,
12. *Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others*,
13. *Union of India and others Vs. Shri Bihari Lal Sidhana*,
14. *Chandra Deo Gautam Vs. State of U.P. and Others*,
15. *Nazira Begum Laskar and Ors. v. State of Assam* AIR 2001 SC 102.

and

16. *Dhananjay v. Chief Executive Officer, Zila Parishad, Jalna* AIR 2003 SC 739;

has concluded that a temporary government servant has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and in terms of contract. A person can be said to acquire lien on the post only then he has been confirmed and made permanent on that post and not earlier. No right is conferred on a temporary government servant and he is not entitled to any opportunity of hearing before his services are dispensed with as his termination does not amount for forfeiture of any legal right. The Apex Court

has held that in such matters the court must seek adherence to the terms and conditions of the appointment and there is no reason why terms and conditions of appointment cannot be enforced in a contract of service. The termination of service of temporary employee does not require interference by a court as it does not cast any stigma or aspersion on him. It would not be out of place to mention here that the case of Union of India (UOI) and Others Vs. A.P. Bajpai and Others, and it has been held that the allegations made against the temporary government servant in the counter affidavit by way of defence will not change the nature and character of the order of termination. The law laid down by the Apex Court in the case of State of U.P. and Ors. v. Kaushal Kishore Shukla is being constantly followed by it and the learned Counsel for the petitioner except citing the aforesaid Division Bench Judgment in the case of State of U.P. v. Dr. R.P Goel and Ors. (supra) could not place before this Court to show that there has been a change in the traditional concept with regard to the temporary government servant. At this place it is apt to note another judgment of the Apex Court in Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, The Apex Court has considered the long continuation of a government servant who was appointed for a specified period or till the availability of candidate selected by Public Service Commission. The case of the petitioner was that she had put in 28 years of service: 14 years by the time of order of termination was passed and 14 years on the basis of interim directions given by the High Court. The Learned Single Judge held that though her appointment initially was conditional, in view of the long period of services rendered by her assumed permanency and directed regularization of her appointment on substantive basis. The Apex Court considered the argument of long period of service rendered by such an employee and the consequence and the benefits available to the employee concerned who had rendered such unblemished services. After surveying its number of earlier decisions, it was held that the principle of legitimate expectation has no application and mere continuance does not imply waiver of conditions attached to the original appointment order. It confirmed the order of the Division Bench holding that such government servant is bound by terms and conditions of the appointment order.

10. The ratio of a recent Constitution Bench Judgment of the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, is also to the same effect.

11. The upshot of the above discussion is that the petitioner was a temporary government servant and the impugned order has been passed in accordance with the service conditions as mentioned in the appointment letter and as such there is no legal infirmity in the termination order. The law laid down by the Apex Court in the case of Kaushal Kishore (supra) is still good law and is being constantly followed by the Apex Court till date. In this view of the matter with great respect it is difficult for me to ignore the law laid down by the Apex Court than to follow the ratio in State of U.P. v. Dr. R.P. Goel and Ors. (supra).

12. The other case relied upon Shashi Bala Sinha and Ors. v. State of U.P. is distinguishable on facts and was on a different point in as much as in that case juniors to the petitioners were retained and regularized in service. No such controversy is presently involved in the above writ petition.

13. Ram Asray v. District Judge, Bijnore (supra) is also an authority for the proposition that appointment/continuation in service by interim order does not create any legal right In favour of the appointment.

14. In view of the above discussion, there is no merit in the writ petition. The writ petition is dismissed. No order as to costs,