

(2009) 12 AHC CK 0071
In the Allahabad High Court

S.K. Mandal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

Constitution of India, 1950 — Article 309, 311

Citation : (2009) 12 AHC CK 0071

Hon'ble Judges : Devi Prasad Singh, J; Anil Kumar, J

Bench : Division Bench

Judgement

1. Cause shown seems to be sufficient. The application for restoration of the order dated 21.5.1997 is allowed and the said order is recalled. The writ petition is restored to its original number.
2. Heard Shri D.S. Chaubey, learned Counsel for the petitioner and learned Standing Counsel and perused the record.
3. The petitioner was appointed on the post of Relief and Rehabilitation Inspector by office memorandum dated 6.12.1964 by the Chief Commandant to the Relief and Rehabilitation Camp, situated at Rudrapur. By order dated 27.8.1969, he was appointed by the Commandant on the post of Junior Accountant. Later on, the services of the petitioner were terminated with effect from 31.8.1969 by order dated 18.7.1969. It appears that copy of the termination of service was received by the petitioner on 23.7.1969. However, the petitioner was again appointed on the post of Junior Accountant on 1.9.1969 by the Commandant of the Relief and Rehabilitation Camp at Rudrapur, now falls within the State of Uttaranchal.
4. It has been stated by the learned Counsel for the petitioner that though the order of termination was passed? but it was never given effect to.
5. While the petitioner was continuing on the post of Assistant Accountant, the District Magistrate, Pilibhit vide simplicitor order dated 4.4.1977 had terminated the petitioner's services. The order of termination was passed on the ground that the scheme was abolished. However, it has been stated that after abolition

of the scheme, services of all the employees were merged in the revenue department.

6. Feeling aggrieved with the impugned termination order dated 4.4.1977, the petitioner has approached the U.P. Public Services Tribunal.

7. Solitary argument advanced by the learned Counsel for the petitioner before the tribunal was that the impugned order of termination has not been passed by the appointing authority; rather by an authority who was not competent to pass the order. The tribunal has relied upon the notification dated 31.7.1954 (Annexure-8 to the writ petition). A perusal of the notification dated 31.7.1954 indicates that the power was conferred to the District Magistrates in Uttar Pradesh to be the appointing authority subject to the provisions of Article 311 of the Constitution of India. The notification further provides that the order shall be given effect with regard to non-gazetted staff except the persons employed in the scheme and the Accountant sanctioned from time to time. It shall be appropriate to reproduce the notification dated 31.7.1954 as under:

In exercise of the powers conferred by Article 309 of the Constitution of India and in supersession of all previous orders on the subject the Governor of U.P. is pleased to order that, subject to the provisions of Article 311 of the Constitution District Magistrates in Uttar Pradesh shall, with effect from the date of inception of the Relief and Rehabilitation organisation be the appointing Authorities? in respect of the non-gazetted staff, excepting that for Schemes and the accountants, sanctioned from time to time in connection with the Relief and Rehabilitation Organisation in their respective districts.

8. While assailing the judgment and order passed by the learned Tribunal, the petitioner's counsel submits that the notification dated 31.7.1954 is not applicable to the persons appointed in the camp. He further submits that in identical matter, the tribunal has set aside the order of termination on the ground that the District Magistrate is not competent to pass the order of termination. Learned Counsel for the petitioner has referred to the cases of Makhan Lal Biswas, Bhupati Mohan Vaishya and Manoranjan Lal. In the case of Makhan Lal Biswas who filed claim petition No. 709/F/III/79, the tribunal by judgment and order dated 17.10.1985, recorded a finding that the District Magistrate was not competent to pass the order of termination. Only the Commandant who has issued the appointment order was entitled to do so. The judgment passed in the case of Makhan Lal Biswas was impugned before this Court? by means of Writ Petition No. 5072 of 1986 by the State of U.P.. The writ petition was dismissed by a Division Bench of this Court by order dated 28.8.2003.

9. In view of above, it appears that in identical situation, the tribunal has taken a different view and held that the District Magistrate was not competent to pass the order of termination. The decision rendered by the tribunal in the case of Makhan Lal Vishwash (supra) has been upheld by this Court. Accordingly, the impugned judgment and order passed by the tribunal does not seem to be

sustainable.

10. Apart from above, a plain reading of the notification dated 31.7.1954 indicates that the notification was issued subject to rider of Article 311 of the Constitution of India and there is exception clause which provides that it shall not be applicable with regard to the persons working under the Scheme and Accounts sanctioned from time to time. It has not been disputed that the petitioner was appointed by the Commandant in a Scheme in operation in the then district Rudrapur which falls now in State of Uttaranchal. Accordingly, learned tribunal seems to have not exercised jurisdiction vested in it. The notification dated 31.7.1954 seems to be incorrectly interpreted by the tribunal applying it on the petitioner while upholding the impugned order of termination.

11. Already in identical situation, service benefit has been accorded to other employees by the tribunal as well as by this Court. It has been stated that all persons working in various Schemes have been absorbed in the State of U.P. with continuity of service. We do not think it proper to take a different view than what has been done with regard to identically situated employees.

12. In view of above, the writ petition is liable to be and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned judgment and order dated 13.1.1982, passed by the U.P. Public Services Tribunal in Claim Petition No. 710(F)/III/79 to the extent the order of termination has been upheld. It shall not be appropriate to remand the matter to the tribunal to decide afresh. Accordingly, we also issue a writ in the nature of certiorari quashing the impugned order of termination dated 4.4.1977, passed by the District Magistrate, Pilibhit, as contained in Annexure No. 1 to the writ petition, with all consequential benefits.

13. The writ petition is allowed accordingly. No order as to costs.