
(2001) 01 AHC CK 0113

In the Allahabad High Court

Case No : Writ Petition No. 1359 (SS) of 1998 and 67 other writ petitions

Smt. Ambi Bisht

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 17-01-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Uttar Pradesh Palika (Centralised) Service Rules, 1966 — Rule 20, 21, 31, 6, 6(2)

Citation : (2001) 3 AWC 1706 : (2001) 3 UPLBEC 2003

Hon'ble Judges : Jagdish Bhalla, J

Bench : Single Bench

Advocate : S.S. Chauhan and A.K. Katiyar, for the Appellant; N.C. Mehrotra, C.S.C. and A.G., for the Respondent

Final Decision : Allowed

Judgement

Jagdish Bhalla, J.—All these writ petitions involve the same questions of fact and law as same orders of termination of services of the petitioners have been challenged, therefore, these petitions were heard together and are being disposed of by a common judgment.

2. By means of these writ petitions, the petitioners have prayed for quashing the orders of termination of their services dated 24.3.1998 and 27.3.1998 passed by the State Government with a further prayer to direct the opposite parties to consider the petitioners for regularization in service on their respective posts and to continue them with all benefits of service.

3. The facts of the case, in brief, are that on 22.3.1995 the petitioners were initially appointed on ad hoc basis under Rule 31 of the U. P. Palika Centralized Service Rules. 1966 (hereinafter referred to as the Rules) on different posts, i.e., Executive Officers of Nagar Palika, Tax Superintendent. Nagar Nigam. Tax Superintendent. Nagar Palika category I, II and III, Assistant Tax Superintendent. Nagar Palika Category I, Tax Inspector Nagar Nigam, Tax Inspector Nagar Palika Category II and III and Accountants, for a period of one

year or till the regularly selected candidates from the U. P. Public Service Commission are made available, whichever is earlier. Subsequently this period was extended by the State Government by order dated 16th February, 1996 for a period of six months or till 31st October, 1996, whichever is earlier. Thereafter the period of ad hoc appointment was not extended. By order dated 10th December, 1996 the petitioners were reappointed on ad hoc basis on their respective posts for the period till the selected candidates from the U. P. Public Service Commission are not made available. Thereafter by the impugned orders dated 24.3.1998 and 27.3.1998 the services of all the petitioners were terminated. Aggrieved against the said termination orders dated 24.3.1998 and 27.3.1998 the petitioners have come up before this Court.

4. By ad-interim order dated 13.4.1998, this Court had directed the opposite parties to allow the petitioners to continue on their respective posts on which they were working prior to passing of the impugned orders of termination till the duly selected candidates from the U. P. Public Services Commission are not made available. Thereafter a list of duly selected candidates from the U. P. Public Services Commission was made available to the State Government on 21st September, 1998 in some categories of posts and on the ground of availability of duly selected candidates from the U. P. Public Services Commission, the services of some of the petitioners were terminated by the State Government by order dated 20th March, 1999.

5. On behalf of the petitioners Sri S. K. Kalia, Sri S. C. Misra, Sri S. S. Chauhan and Sri 1. P. Singh mainly addressed the Court. The other counsel for the petitioners in different writ petitions, namely Sarvashri H. P. Srivastava, S. D. Singh, Rakesh Pathak, S. C. Jalswal, N. K. Pandey, Alam Singh, A. K. Tewari, A. K. Bajpai, and Lalit Shukla adopted the arguments advanced by the above mentioned counsel. On behalf of the opposite parties, learned Advocate General, learned Additional Advocate General, learned Chief Standing Counsel and Standing Counsel argued the matter.

6. It has been submitted on behalf of the petitioners that ad hoc appointments of the petitioners are statutory in nature and termination of their services by orders dated 24th March, 1998 and 27th March, 1998 is a colourable exercise of power and malice in law. It has further been submitted that the services of the petitioners were sought to be terminated on the pretext that the selected candidates recommended by the U. P. Public Services Commission were available but actually no such recommendation had been received by the State Government from the U. P. Public Services Commission. It has further been submitted that the opposite parties have intentionally passed orders terminating the services of the petitioners with a view to appoint fresh persons on ad hoc basis for extraneous considerations otherwise there is no reason or justification for terminating the services of the petitioners especially when the State Government itself filed an affidavit in Writ Petition No. 5814 (SS) of 1996 Justifying the continuance of the ad hoc appointees. It has further been

submitted that the impugned orders of termination are violative of Articles 14, 16 and 21 of the Constitution of India Inasmuch as the opposite parties have acted discriminately because on one hand the State Government has been regularizing the ad hoc appointees from time to time while on the other hand the services of the petitioners are should to be terminated adversely affecting their livelihood. It has further been submitted on behalf of the petitioners that a large number of posts are lying vacant, excluding departmental promotion quota, yet the petitioners instead of being regularized are being ousted from the job in an arbitrary manner only with the Intention to appoint fresh persons for extraneous considerations, therefore, the impugned orders terminating the services of the petitioners are liable to be quashed and all the petitioners are liable to be regularized in their respective posts with all benefits of service.

7. On behalf of the opposite parties, it has been argued that the orders terminating the ad hoc services of the petitioners have been passed in accordance with law as the petitioners were appointed on ad hoc basis and it was specifically mentioned in their appointment letters that their services can be terminated any time, therefore, the petitioners have no legal right to challenge the impugned orders of termination of their services.

8. It has been submitted on behalf of the opposite parties that Rule 6 as well as Rule 31 of the Rules were not followed by the State Government while appointing the petitioners and. therefore, the services of the petitioners have been rightly terminated. Rule 6 of the U. P. Palika Centralized Services Rules, 1966, provides for source of recruitment, absorption and determination of service of existing officers and servants. The said Rule 6 is quoted below :

"6 (I) Subject to the provisions of sub-rule (2) :

(i) the posts mentioned in Schedule I shall be filled in by promotion in the manner laid down in Rule 20 ;

(ii) the posts mentioned in Schedule II shall be filled in by direct recruitment in the manner laid down in Part V ;

(iii) the posts mentioned in Schedule III shall be filled in equally from the two sources and in the manner mentioned above, .so, however, that the odd post, if any, shall be filled in by promotion :

Provided that if suitable candidates are not available in the number required under this sub-rule for recruitment by promotion or by direct recruitment, as the case may be, the deficiency may be made good from the other of the two sources or a temporary appointment may be made by deputation from amongst the officers serving under Government."

9. Rule 31 of the Rules provides for ad hoc or temporary officiating appointments for the posts falling vacant substantively or temporarily. The said Rule 31 is quoted below :

"Rule 31. Ad hoc and temporary officiating appointments. Notwithstanding anything contained in Rule 21, the State Government may also make ad hoc appointments or temporary officiating arrangements for the posts falling vacant substantively or temporarily."

10. In support, he has placed reliance on the cases of (i) State of U. P. v. Kaushal Kishore Shukla. (1991) 1 SCC 697 . (ii) State of U. P. v. Krishna Kumar Sharma, (1997) 11 SCC 437 and (iii) Raja Ram Maurya v. Rajkiya Krishi Utpadan Mandi Samiti, 1998 UPLBEC 196, wherein the Hon"ble Supreme Court has laid down the law that the appointees of such appointments which have been made in contravention of the procedure for appointment, are not entitled for any hearing before passing the order of termination,

11. It has further been submitted on behalf of opposite parties that the orders of termination dated 20.3.1999 with regard to some of the petitioners have been passed in compliance of the Interim order dated 13.4.1998 whereby it was provided that the petitioners shall be allowed to continue in service till regularly selected candidates are available from the U. P. Public Services Commission. Since some regularly selected candidates from the U. P. Public Service Commission were made available, therefore, the services of some of the petitioners were terminated by order dated 20.3.1999 and in their place, regularly selected candidates from the U. P. Public Services Commission were appointed.

12. It has been further argued that the impugned orders of termination have been passed by the State Government after the Hon"ble Supreme Court of India criticized the ad hoc appointments made by the State Government of Uttar Pradesh, in Civil Appeal Wo. 16750 of 1996 arising out of SLP (C) No. 1105 of 1996, Ram Ganesh Tripathi and others v. State of U. P. and others. The Hon"ble Supreme Court in its judgment dated 17.12.1996 delivered in the above case, observed as under :

"In spite of serious criticism by the High Court, in the earlier proceedings between the parties. that the Government had abused its powers and indulged into favouritism and nepotism, the Government had again tried to frustrate the legitimate rights of direct recruits in order to favour and protect those ad hoc promotees who are alleged to be relations and favourites of Ministers. Members of Legislative Assemblies and Secretaries to the Government. The wrong committed is not only required to be set at right, but the Government also deserves to be criticized for acting in that manner.....

In order to accommodate those direct recruits, the Government was really required to terminate the services of as many as ad hoc appointees, including the respondents. Instead of doing so. with a view to favour to them, the Government promoted them to the higher posts of Up-Nagar Adhikaris on ad hoc basis."

13. It has further been submitted on behalf of the opposite parties that the

petitioners who have been appointed under Rule 31 of the Rules have no legal right to work on the posts of promotional quota as they have not been appointed in accordance with Chapter V of the U. P. Centralized Services Rules, 1995. Only in case of deficiency, as provided in proviso to Rule 6, the same can be made good by appointing candidates from either of the two sources of recruitment, i.e., direct appointment and promotion. It has been submitted that in the present case there was no occasion for making any appointment by direct recruitment on the posts of promotional quota. It has further been submitted that it is the prerogative of the State Government to keep the posts of promotion quota vacant or to fill them by promotion. For filling up the posts under the promotion quota a separate procedure has been laid down in Rule 21 of the Rules. It has also been submitted that the financial position of the State Government is very poor at present and hence the State Government is not in a position to bear any further burden on Its exchequer.

14. I have carefully gone through the records of the writ petitions and considered the arguments advanced by the learned counsel for both the parties. In paragraphs 11, 13, 21 and 23 of the affidavit dated 1st November, 1996 sworn by Sri M. S. Raizada, the Joint Secretary, Nagar Vikas Department of U. P. Government, filed on behalf of the State of Uttar Pradesh along with application for vacation of stay order (C.M. Application No. 19342 (W) of 1996) in Writ Petition No. 5814 (SS) of 1996, Awadhesh Kumar Tewari v. State of U. P. and others, challenging the ad hoc appointments under Rule 31 as well as the extension of such ad hoc appointments) the stand of the State of Uttar Pradesh is altogether different. The stand of the State of Uttar Pradesh is that all the ad hoc appointments were made in accordance with law, under Rule 31 of the Rules ; since duly selected candidates from the U. P. Public Services Commission were not available and the work of the local bodies was badly suffering therefore, these appointments and their extensions were made in order to cope with the urgent needs in the public interest ; the local bodies will suffer substantial injury in case the working hands (i.e., the petitioners) are allowed to go, meaning thereby that the State of U. P. has supported the contentions of the petitioners. The relevant paragraphs of this affidavit filed on behalf of the State of U. P. are quoted below :

"11. That about 112 appointments were made in the year 1995 under Rule 31 of the Rules on account of non-availability of candidates duly selected by the Public Service Commission.

13. That this procedure was followed as the work of the local bodies was badly suffering and these appointments were made in order to cope with the urgent needs in the public interest. It is made clear that under Rule 31 the State Government was competent to make such appointments.

21. That on the other hand the local bodies will suffer substantial injury in case the working hands are allowed to go.

23. That the interim order granted in the case amounts to put in abeyance the action which has been taken in accordance with law."

15. In view of the above stand of the State of U. P., the argument made on behalf of the State that since Rule 6 as well as Rule 31 of the Rules were not followed while making appointments, therefore, the services of the petitioners are liable to be terminated has no legs to stand since in the above quoted paragraphs, the contention of the State of U. P. is that the appointments of the petitioners were made in accordance with law and their continuance was necessary. Therefore, the cases of the Hon''ble Supreme Court relied upon by the learned counsel for the opposite parties, i.e.. State of U. P. v. Kaushal Kishore Shukla (supra) and State of U. P. v. Krishna Kumar Sharma (supra) are not applicable to the present case.

16. As far as the question of appointment of the petitioners on the posts falling in promotional quota is concerned, learned counsel for the petitioners have submitted that a large number of posts meant for direct recruitment are lying vacant which are more in number than the petitioners and, therefore, there is no question of disturbing the promotion quota. Sri S. C. Misra, learned counsel for the petitioners has submitted a detailed chart showing the details of sanctioned posts, sources of their recruitment, direct quota, promotion, quota, persons working on ad hoc basis and the posts still lying vacant. This chart shows that even after adjustment of the petitioners on their respective posts, including those petitioners whose services have already been terminated, some posts in each category still will remain vacant and the promotion quota will also not be disturbed. This position has not been denied by the opposite parties.

17. Having great regard to the observations made by the Hon''ble Supreme Court in Civil Appeal No. 16750 of 1096 arising out of SLP (C) No, 1105 of 1996, Ram Ganesh Tripathi and others v. State of U. P. and others, quoted above, it is observed that the same do not apply to the present case because in the said case, the selected candidates from the Public Service Commission were not being allowed to Join who were running from pillar to post to get a posting while on the other hand, the State Government was not terminating the services of the ad hoc appointees and was allowing them to continue because they were either the relations or men of the Members of Legislative Assembly or the Secretaries of the Government, Here the position is different. In the present case, the stand of the State Government that since the selected candidates from the Commission are not available, therefore, in public interest it is necessary to continue them otherwise it will not be possible to cope with the situation, as quoted above from the counter-affidavit filed in Writ Petition No. 5814 (SS) of 1996.

18. Keeping in view the above circumstances and the stand taken by the opposite parties in Writ Petition No. 5814 (SS) of 1996 as well as the relevant rules, it is held that all the petitioners were appointed on their respective posts on 22.3.1995 in accordance with law and the extension of their term by order dated 16th February, 1996 and thereafter re-appointment by order dated 10th

December, 1996 were also in accordance with law. The impugned orders dated 24.3.1998 and 27.3.1998 terminating the services of the petitioners suffer from colourable exercise of power, are arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India and are liable to be quashed and the petitioners are liable to be allowed to continue and to be considered for regularization on their respective posts. Those petitioners whose services have been terminated by the impugned order of termination dated 24.3.1998, 27.3.1998 or otherwise, during the pendency of their writ petitions, are also liable to be adjusted on their respective posts on which they were working prior to termination of their services and they are also liable to continue and to be regularised on their respective posts.

19. In the light of the above all the writ petitions are allowed. The impugned orders of termination of services of the petitioners dated 24.3.1998 and 27.3.1998 are hereby quashed. The opposite parties are directed to allow the petitioners to continue on their respective posts and to adjust those petitioners who are not continuing in service by posting them on the posts on which they were working prior to their termination and to allow them to continue on their respective posts and pay them salary, including arrears of salary, if any. and to consider all the petitioners for regularization on their respective posts. In this process. It would be open for the State Government, if they so desire, to amend/relax the relevant Rules. No order as to costs.