
(2002) 12 AHC CK 0048
In the Allahabad High Court
Case No : C.M.W.P. No. 21953 of 1998

Smt. Radha Tiwari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Uttar Pradesh Nyayik Sewa Niyamavali, 1951 — Rule 23, 25
Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975
— Rule 3

Citation : (2003) 3 AWC 2219 : (2003) 96 FLR 964 : (2003) 1 UPLBEC 395

Hon'ble Judges : S.P. Srivastava, J;M.P. Singh, J

Bench : Division Bench

Advocate : V.S. Sinha, M.A. Zaidi, Anoop Trivedi, A.K. Singh and Ashok Khare, for the Appellant; Sudhir Agarwal, K.R. Sirohi, Vinay Malviya and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S. P. Srivastava, J.—Heard the petitioner, who has appeared in person, Shri Sudhir Agarwal the learned counsel representing the respondent No. 2 as well as the learned standing counsel representing the respondent Nos. 1 and 3.

2. Perused the record.

3. The petitioner, who had been appointed on the post of temporary Munsif, on the recommendations of the Public Service Commission, Uttar Pradesh, made on the basis of the competitive examination held in the year 1993, on 22.7.1985 has approached this Court by means of the present writ petition feeling aggrieved by the order dated 27.4.1998 passed by the State Government terminating her services exercising the jurisdiction contemplated under the provisions of Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975, indicating that the services of the petitioner were no longer required.

4. The facts in brief, shorn of details and necessary for the disposal of this writ petition lie in a narrow compass.

5. Pursuant to the order of appointment referred to hereinabove, the petitioner had taken over charge as Munsif at Faizabad on 5.12.1985. The character roll entries awarded to the petitioner during the period elapsing between the date of her appointment and the date of termination of service which have been referred to in detail in the counter-affidavit filed by the respondent No. 2, in opposition to the writ petition indicate that her work, performance and conduct had remained far from satisfactory. Even doubt had been raised against her integrity. She was subjected to various departmental enquiries which could not be completed on account of her non-co-operation and ultimately on being apprised of the situation, the Administrative Committee passed a resolution referring the matter for consideration of the Full Court recommending the termination of her services under Rule 3 of the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975. The Full Court in its meeting held on 7.3.1998, after considering the recommendation of the Administrative Committee made in its meeting held on 24.10.1997 and observing that the officer was facing 3 departmental enquiries on different charges and even though the proceedings had been initiated against her long before, they could not be concluded for different reasons and were pending at different stages, on a careful consideration of the relevant aspect of the matter decided to abandon/drop the disciplinary proceedings initiated against the petitioner and to terminate her services under Rule 3 of the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975.

6. It was thereafter that the State Government passed the impugned order which is being challenged in the present proceedings.

7. It may be noticed that the Full Court in its resolution dated 7.3.1998 had come to the conclusion that from the scrutiny of the record it was apparent that the petitioner had been holding the post on temporary basis and her services were terminable under the provisions of the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975. It may also be noticed that by mistake pursuant to the Government order dated 7.2.1990, for the grant of senior pay scale to the officers of U. P. Nayayik Sewa Niyamavali, 1951, who had completed regular and satisfactory service of 5 years, the petitioner was also granted senior pay scale along with 215 officers of U. P. Nayayik Sewa but on the mistake having been brought to the notice of the Court it was rectified and the Court's notification dated 29.9.1992 was modified.

8. The petitioner has strenuously urged that by the date of the issuance of the impugned order terminating her services, she had to her credit about 13 years of service and since she had been appointed under the provisions contained in U. P. Nayayik Sewa Niyamavali, 1951, her appointment could only be taken to be an appointment as contemplated under Rule 23 of the aforesaid rules on probation for a period of 2 years.

9. The contention urged is that since she was allowed to cross the two year's period of probation, she had to be treated to have been confirmed and consequently her services could not be terminated in purported exercise of the jurisdiction vesting in the appointing authority under the Rules of 1975 and if at all it could have been terminated after complying with the procedure prescribed under the Niyamavali of 1951 as applicable to the confirmed employees of the U. P. Nayayik Sewa.

10. The learned counsel for the contesting respondent has, however, urged that the petitioner's appointment had to be taken to be on purely temporary basis and taking into consideration the definition of temporary service as contained in Rule 3 of the Rules of 1975 had to be taken to be regulated by the provisions contained under the aforesaid Rules, 1975. It is further urged that the petitioner had never objected to the nature of the appointment offered to her and having accepted a temporary appointment with her eyes wide open it is too late for her to urge that the appointment was of a character other than that as specifically indicated in the appointment order.

11. It is also urged that the scheme underlying the Uttar Pradesh Nayayik Sewa Rules, 1951, does not contemplate only a substantive appointment on probation and there may be other categories of appointments which may include a temporary appointment on a permanent post or appointment on a temporary post. The contention is that the appointment of the petitioner was not a substantive appointment and had to be treated as purely temporary appointment liable to termination in accordance with the Rules of 1975.

12. It is further urged that even after the completion of the period of probation in the case of a temporary appointment on a substantive post against the permanent post under the Rules, 1951, the confirmation after the expiry of the period of probation is not automatic and unless the High Court as provided under the rules of the Court recommends confirmation after evaluating the service record of an officer, the State Government cannot issue an order of confirmation which is a must. The contention is that the petitioner's claim of her being automatically confirmed even in the absence of confirmation is totally misconceived and is baseless.

13. We have given our anxious consideration to the rival submissions of the learned counsel for the parties.

14. The question in regard to the possibility of an appointment other than a substantive appointment on probation as contemplated under Rule 23 of the U. P. Nayayik Sewa Niyamavali, 1951, which appointment may be on a purely temporary basis or against a temporary post or in any manner other than being substantive appointment against a permanent post and on probation for 2 years as contemplated under Rule 23 of the Rules of 1951 had come up for consideration before a Division Bench of this Court in the case of Civil Misc. Writ Petition No. 14647 of 1995, Lihazur Rehman Khan v. State of U. P. and Ors.,

decided on 15.3.1996. The learned counsel for the contesting respondent has produced the copy of the appointment order issued in favour of Lihazur Rehman Khan to show that the said appointment was identical to the appointment granted to the present petitioner.

15. The Division Bench of this Court in its aforesaid decision after critically analyzing the provisions contained in Rules of 1951 specially Rules 4, 5, 23, 24 and 25 of the said Rules had come to the conclusion that the Rules contemplate appointment in temporary or officiating vacancies also and the Governor was competent to make appointment as such. It was clarified that the rules do contemplate making appointment in a temporary capacity and every appointment need not be made in a substantive capacity. Such appointments in a temporary capacity on a temporary post had to be governed by 1975 Rules. This being the position in law, the appointing authority had to be taken to be vested with ample jurisdiction to terminate the services of such an employee in accordance with Rules, 1975, once the recommendation to that effect had been made by the High Court.

16. So far as the question relating to the deemed confirmation of an employee on the expiry of the period of probation was concerned, the Division Bench in its aforesaid decision had negated that contention indicating that the provisions contained in Rules 25 of the Rules specifically dealt with confirmation laying down that if at the end of the period of probation or at the end of extended period of probation in any particular case, the Court recommends that a candidate is fit for confirmation, he shall be confirmed by the Governor in his appointment and that all confirmations under this rule shall be notified in the official Gazette. It was also emphasized that the High Court of Judicature at Allahabad had framed the rules in exercise of powers conferred by Article 225 of the Constitution providing that the matter of confirmation of officers of the subordinate judiciary shall be considered by the Full Court. It was also indicated by the Division Bench that no maximum limit of extension of period of probation has been provided in Rule 23 and, thus, there is no embargo on the power of the Governor to extend the period of probation to any length of time. Moreover, the rules contemplate a specific order of confirmation to be passed by the Governor and this can be done only after a recommendation to that effect has been made which recommendation can only be made by the Full Court. The underlying policy under the rules, therefore, indicated that they do not contemplate an automatic confirmation of a member of the judicial service merely on the ground of his having worked for a certain number of years.

17. The Division Bench had drawn support for its view from the observations made by a Constitution Bench of Hon'ble Supreme Court in the case of State of Punjab v. Dharam Singh 1968 SC 1210. After examining the ratio of various decisions of the Apex Court, the Division Bench was of the view that the rules in the present case do not contemplate a right to be confirmed or to be deemed to have been confirmed merely because of the completion of the period of

probation. It was also indicated that under the rules in question the function of confirmation implied the exercise of judgment of the confirming authority on the over all suitability of the employee for permanent absorption in service specially when the rules do not prohibit the extension of the period of probation beyond any certain maximum period in which situation if the employee is allowed to continue the work beyond that maximum period he may acquire the status of a confirmed employee.

18. Much stress has been laid by the petitioner on the fact that she had by the time of the issuance of the impugned order put in about 13 years of service. What has been urged is that in such a situation she was entitled to an opportunity of hearing before taking the decision to dispense with her services. So far as this aspect of the matter is concerned, the Division Bench in its decision in the case of Lihazur Rehman Khan (supra) had expressed the opinion that the application of the Rules of 1975 could not be taken to be dependent upon the period of service put in by a Government servant and, therefore, the mere fact that the concerned employee had worked for considerable long period could not render invalid an order passed by the competent authority exercising the jurisdiction contemplated under the Rules of 1975. The Division Bench in support of its view had drawn ample support from the observations made by the Apex Court in its decision in the case of Triveni Shankar Saxena Vs. State of U.P. and others, and State of U. P. v. Prem Lata Mishra, AIR 1994 SC 2411, as well as in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla,

19. We have carefully examined the Rules of 1975 as well as the Rules of 1951 referred to hereinabove and we are clearly of the opinion that no justifiable ground has been made out for taking a departure from the view expressed by the Division Bench in its decision in Lihazur Rehman Khan (supra),

20. It has been next contended by the petitioner that the impugned order is really punitive in nature and stands vitiated in law on account of its having been passed in violation of the elementary principles of natural justice. What has been urged is that the impugned order if considered in the light of the antecedent circumstances including the service of three separate charge-sheets and initiation of three different disciplinary proceedings and the nature of the charges levelled against her has to be treated to have been passed as a measure of punishment for the alleged misconduct without taking recourse to conclude the disciplinary proceedings.

21. The learned counsel for the contesting respondent has, however, urged that the impugned order is innocuous in nature and is not at all stigmatic. It is further pointed out that the impugned order is not founded on the alleged misconduct as the enquiry proceedings initiated against the petitioner had been abandoned as is apparent from the resolution passed by the Full Court.

22. In the present case what we find is that the impugned order cannot be held to be punitive in nature and further it cannot be taken to be founded on the

charges relating to the misconduct. The Hon'ble Apex Court in its decision in the case of Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta 1999 (2) AWC 1184 : 1999 (1) SLR 622 had clearly indicated that if the findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no finding were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad.

23. The Apex Court, while observing so, had referred to its earlier decision in the case of State of Punjab and Another Vs. Shri Sukh Raj Bahadur, In that case a charge memo for a regular inquiry had been served, reply given and at that stage itself the proceedings were dropped and a simple termination order was issued. It was held that the order of simple termination was not founded on any findings as to misconduct. Reference was also made to the decision in the case of C. A. No. 1341 of 1996. A. S. Benjamin v. Union of India, decided on 13.12.1996, wherein it was indicated that where a charge memo was issued, explanation was received, an Enquiry Officer was also appointed but before the enquiry could be completed, the proceedings were dropped and a simple order of termination was passed, the reason for dropping the proceedings was that "departmental proceeding will take much longer time and we are not sure whether after going through all the foundations, we will be able to deal with the accused in the way he deserves", the termination was upheld.

24. Considering the totality of the circumstances, we are clearly of the view that the impugned order cannot, in the peculiar facts and circumstances of the present case, be taken to be vitiated in law on account of violation of the principles of natural justice as claimed specially when as indicated by the larger Bench of the Apex Court in its decision in the case of State of U. P. and Anr. v. Kaushal Kishore Shukla (supra) a temporary employee cannot be taken to have any right to hold the post.

25. In view of what has been indicated hereinabove, we are not satisfied that sufficient ground can be said to have been made out for any interference in the impugned order by this Court while exercising the extraordinary jurisdiction envisaged under Article 226 of the Constitution.

26. Consequently, this writ petition being devoid of merits deserves to be and is hereby dismissed.

27. However, there shall be no order as to costs.