
(2000) 10 AHC CK 0025
In the Allahabad High Court
Case No : Special Appeal No. 99 of 2000

State of U.P. and others

APPELLANT

Vs

Ahmad Shaheed and others

RESPONDENT

Date of Decision : 18-10-2000

Acts Referred:

Citation : (2000) 4 AWC 3253 : (2000) 3 UPLBEC 2531

Hon'ble Judges : Shitla Pd. Srivastava, J;G.P. Mathur, J

Bench : Division Bench

Advocate : S.C, for the Appellant; I.H. Khan, for the Respondent

Judgement

Shitla Pd. Srivastava, J.—This special appeal has been filed by the State of U, P. against the judgment and order dated 13.3.1997 passed by the learned single Judge in Civil Misc. Writ Petition No. 21087 of 1988, Ahmad Shaheed and others u. State of U. P. and others. By the impugned judgment and order, the learned single Judge has disposed of the writ petition filed by the respondents (writ petitioners) on the basis of the judgment and order dated 29.8.1996 passed in the Writ Petition No. 20393 of 1988, Anil Kumar and another v. State of U. P. and others.

2. Brief facts for the purposes of this special appeal, as stated in writ petition, are that respondents (writ petitioners) namely, Ahmad Shaheed, Habibeb Khan and Shakeel Khan filed a writ petition giving rise to the present special appeal. Their case was that they were daily wages employees (on temporary muster roll) in the office of the Executive Engineer, Temporary Division, P.W.D., Aligarh, they continuously worked for a period of three years, the Assistant Engineer made a recommendation in their favour, the Chief Engineer. P.W.D.. Lucknow vide his order dated 21.6.1980 confirmed the petitioner No. 2 and he was appointed on temporary basis w.e.f. 1.1.1988, the petitioner No. 1 was also appointed on temporary basis (on permanent muster roll) vide order dated 30.1.1988. The petitioners contention is that their services were regularised and they were working as regular employees w.e.f. 1.1.1988, have been paid their regular

salary upto the month of July, 1988. They have stated that in October, 1988, they were served with an order of the Assistant Engineer along with the copy of the order dated September 26, 1988, passed by the Executive Engineer (respondent No. 3) to the effect that the status of the petitioners have been changed from regular employee to daily paid employees. The petitioners have challenged this order dated 26.9.1988 by means of writ petition giving rise to this appeal on the ground that when the petitioners approval as permanent employees was made by the Chief Engineer, Agra Division, Public Works Department, Agra (respondent No. 2) on 18.8.1988, the respondent No. 3 (Executive Engineer) had no jurisdiction to pass any order changing the status of the petitioners from permanent employee to that on temporary muster roll. It is further alleged that no opportunity was given to the petitioners to defend themselves before passing the impugned order and the impugned order is in violation of the principles of natural justice.

3. A counter-affidavit has been filed in the writ petition. In counter-affidavit, it is stated that the petitioners were directed to be placed on the muster roll by the Executive Engineer, who was not a competent authority to do so. Consequently, Chief Engineer on 18.8.88 passed an order which was communicated by the Superintending Engineer that the order passed by the Executive Engineer was not legal. In paragraph 5 of the counter-affidavit, it is stated that the Executive Engineer had no authority to regularise the services of the petitioners and he passed the order putting the petitioners on the muster roll without any authority or jurisdiction. The said order can only be passed by the Superintending Engineer who was the competent authority to regularise the services of the petitioners, therefore, the matter was reported to the Chief Engineer, Agra that such regularisation is irregular and accordingly, the order was withdrawn by the competent authority.

4. The writ petition, filed by respondent Ahmad Shaheed, Habibeb Khan and Shakeel Khan, was allowed by the learned single Judge, the State has challenged the aforesaid order. We have heard Sri Sabhajeet Singh, learned standing counsel and Sri Manzar-ul-Islam holding brief of Sri I. H. Khan.

5. Sri Sabhajeet Singh, learned standing counsel, has vehemently urged that as the order on the basis of which the learned single Judge has parsed the impugned order has already been quashed by a Division Bench in Special Appeal No. 195 of 1997 on 28.5.1997, therefore, this Special Appeal may be allowed in terms of the order dated 28.5.1997 passed by the Division Bench. In support of his contention, an affidavit has been filed annexing therewith copies of writ petition, counter-affidavit of Writ Petition No. 20393 of 198R, judgment dated 29.8.1996 and judgment of Special Appeal No. 195 of 1997.

6. As the learned single Judge has not given the full facts of the case and has only mentioned that writ petition to be decided in terms of the order dated 29.8.1996 passed in the Writ Petition No. 20393 of 1988, it is necessary for us to see the order dated 29.8.1996 and the order passed in Special Appeal No. 195 of 1997,

dated 28.5.1997. From the perusal of this judgment of Special Appeal No. 195 of 1997 dated 28.5.1997, it is clear that against the judgment dated 29.8.1996, the Special Appeal was filed by the State and it was urged before the Division Bench by the learned standing counsel that the petitioners of that case were brought from daily wages to permanent muster roll and they were not regularised on any post and the said order was cancelled by the competent authority.

7. The Division Bench allowed the special appeal in part and passed the following orders :

"For the reasons stated above, this appeal is allowed in part. The following portion of the order of the learned single Judge, dated 29.8.96 is hereby quashed.

The respondents are directed to treat the petitioners in regular service and to pay salary to which they are entitled in regular service and go on paying their monthly salary as and when the same becomes due.

Rest of the order dated 29.8.1996 passed by the learned single Judge shall remain unaltered. There will be no order as to costs.

Sd. R. R. K. Trivedi

Sd. Dr. B. S. Chauhan.

28.5.1997"

8. After hearing the learned counsel for the parties, we are of the view that as the order on the basis of which, this judgment was passed had already been subject-matter of the Special Appeal No. 195 of 1997 and that order has been quashed in part, this case is fully covered by the order passed in the Special Appeal No. 195 of 1997, we accordingly allow the present Special Appeal and quash the order dated 13.3.1997 passed by the learned single Judge and it is held that the case of the appellants is fully covered by the decision given in the Special Appeal No. 195 of 1997 and as per the stand taken by the State before the appellate court, they shall be kept on monthly roll.