
(2003) 11 AHC CK 0159
In the Allahabad High Court
Case No : C.M.W.P. No. 2990 of 1990

State of U.P. and Others

APPELLANT

Vs

Bhagwant Singh and Another

RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2004) 1 AWC 503 : (2004) 1 UPLBEC 455

Hon'ble Judges : U. Pandey, J; M. Katju, J

Bench : Division Bench

Advocate : S.C, for the Appellant; Ram Mohan, S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order of the U.P. Public Service Tribunal dated 4.4.1989 vide Annexure-3 to the petition.

2. Heard learned counsel for the parties.

3. The respondent No. 1 was appointed on a purely temporary basis as a Basic Health Worker on 12.11.1981 and his service was terminated on 22.6.1985. He filed a claim petition which was allowed by the Tribunal.

4. We have carefully perused the impugned order of the Tribunal, and we are of the opinion that it cannot be sustained. It is well-settled that a temporary appointee has no right to the post. Hence, there was no need to give, opportunity of hearing to the petitioner, who was a temporary appointee, before terminating his service.

5. From a perusal of the impugned order of the Tribunal, it appears that the only ground for allowing the claim petition mentioned in para 5 of the Tribunal's order was that juniors to the petitioner having inferior record of service were retained but his service was terminated.

6. Thus, the petitioner's allegation is that Articles 14 and 16 of the Constitution

have been violated by the impugned termination order.

7. In our opinion, when a temporary employee whose service is terminated simpliciter alleges that his junior has been retained and hence Article 16 of the Constitution is violated, he must give full details in his pleadings and in his evidence in this connection, otherwise the plea cannot be entertained. It is well-settled that Articles 14 and 16 only apply to persons who belong to the same class. Reasonable classification does not violate Article 14 of the Constitution vide *State of Bombay v. Balsara* (1951) SCR 682 (708) ; *Ameeroonissa v. Mehboob* (1953) SCR 404 ; *Babulal Amthalal Mehta Vs. The Collector of Customs, Calcutta*, and *Gopi Chand Vs. The Delhi Administration*, etc.

8. There is no clear pleading in the claim petition filed by the respondent No. 1 before the Tribunal (Annexure-1 to the writ petition) stating that the nature of work the claimant was performing was the same as that which his juniors who were retained were performing. It may be that the petitioner was doing different work from that of his juniors, and the department may have felt that the service of the junior has to be retained because the juniors need to be retained as they have acquired experience in the work which they are doing and such work subsists, while there may be no work of the kind the claimant has been doing. There is mention of one Kailash Chandra Srivastava in paragraph 9 of the claim petition (Annexure-1 to the writ petition) who is said to be junior to the petitioner and who has been retained, but there is absolutely no mention in paragraph 9 as to the nature of work Kailash Chandra Srivastava was doing. Even if both the claimants and Kailash Chandra Srivastava were Basic Health Workers, they may have been doing different kind of work.

9. It has been alleged in para 3 of the claim petition that the petitioner was appointed as basic health worker but it is possible that he was doing a kind of work for which there may be no need any more, whereas the work which Kailash Chandra Srivastava may be doing may be continuing, and hence it may have been necessary to retain him. Unless full details are given in the pleadings, the plea of Articles 14 and 16 of the Constitution cannot succeed. The claim petition is very vague in this connection, and all that has been said in para 10 is that the service record of the juniors is inferior to that of the petitioner. Even this is a vague allegation as no name or any details of any particular junior have been given in paragraph 10 of the claim petition.

10. No doubt the written statement filed by the Government in reply to the claim petition is equally vague, but it is well-settled that a plaintiff has to succeed on the strength of his own case, and not the weakness of the defendant's case.

11. In *M/s. Larsen and Toubro Ltd. Vs. State of Gujarat and Others*, the Supreme Court observed :

"It is not enough to allege that a particular Rule or any provision has not been complied. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non-compliance with a statutory requirement.

Ordinarily, no notice can be taken on such an allegation which is devoid of any particular. No issue can be raised on a plea, foundation of which is lacking."

12. In *Bharat Singh and Others Vs. State of Haryana and Others*, the Supreme Court observed :

"In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point."

13. Since the respondent No. 1 has not raised specific and detailed pleadings in the claim petition, we are not inclined to entertain the plea of Articles 14 and 16 of the Constitution in relation to his allegation, that his juniors have been retained in service.

14. For the reasons given above the petition is allowed. Impugned order of the Tribunal dated 4.4.1989, is set aside.