

(2010) 11 AHC CK 0221
In the Allahabad High Court
Case No : Special Appeal No. 809 of 2010

State of U.P. and Others

APPELLANT

Vs

Narendra Rai

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Citation : (2010) 11 AHC CK 0221

Hon'ble Judges : Pradeep Kant, J and Ritu Raj Awasthi, J

Final Decision : Dismissed

Judgement

1. Though the State has filed the special appeal with a delay of about 10 months but counsel for the respondent has no objection in case the delay is condoned. We also find the ground sufficient. The delay in moving the special appeal is condoned.

2. Sri Vivek Shukla appearing for the State, assailing the order passed by the learned Single Judge, submits that the very appointment of the respondent since was not made in accordance with law/rules, therefore, no weightage could have been given to him for his working under the interim orders passed by this Court nor the writ petition could have been allowed.

3. In support of his plea, he submits that, in fact, appointment of the respondent was made by the officiating Deputy Director and no approval was taken by the Director, which was the requirement under the Government order dated 6.2.84.

4. The respondent was appointed in pursuance of an advertisement issued by the Deputy Director on 8.5.86, published in local newspaper. He applied for the post of Mombatti Prashikshak and after interview, he was selected for the said post. The appointment order was issued by the Deputy Director aforesaid and in pursuance thereof, he joined services on 24.5.86. His services were terminated by an order dated 25.2.87 issued by the Deputy Director, saying that the appointment of the respondent has been declared to be irregular and illegal in the D.O. letter dated 9.2.87 issued by the Director and, therefore, his services

are being terminated.

5. It is not being disputed by the appellantState that the appointing authority of the respondent was Deputy Director. The only plea which has been taken is that the officer who appointed him was actually officiating as Deputy Director.

6. The Government order dated 6.2.84 only required for sending the information after interview to the Director, i.e. subsequent concurrence of the Director was required.

7. The order of termination has been passed by the appointing authority, namely, Deputy Director but it has been based merely on the D.O. letter issued by the Director, which finds mention in the order itself.

8. There is nothing on record to indicate that officiating Deputy Director could not have made the appointment or that any formality which was required to be done was not done before making the appointment. If the intimation was not sent by the then Deputy Registrar to the Director, it could have been sent later on or if the Director had come to know that such an appointment was continuing, he could have verified the record and asked for a report so that the veracity of the appointment could have been seen and if the Director had found that the appointment was not validly made, only then services of the respondent could have been terminated.

9. In the instant case, the order of termination has been passed on the dictates of the Director, who is not the appointing authority, without application of mind of the appointing authority, who in turn could have sent the information of his own, if he could not send the same immediately after the selection was made.

10. The learned Single Judge has come to the conclusion that the appointment was made after due selection and considering the fact that the respondent was working for the last 23 years though under the interim orders, observed that the termination order has been passed without affording any opportunity of hearing.

11. Learned counsel for the respondent Sri Amrendra Nath Tripathi further brings to the notice of the Court that two more persons, namely, Smt. Vedwati Devi and Smt. Anusuiya, who were appointed under the same selection, also faced termination on the same ground. They also filed writ petitions, namely, Writ Petition No. 5770 (SS) of 1987 and 2766 (SS) of 1987, respectively in which initially interim order of stay was passed and ultimately both the writ petitions were allowed vide order dated 5.7.07 and 31.2.06 respectively, which orders have been implemented and no special appeal has been filed against them, and the persons have been accommodated in service, whereas the State has singled out the respondent by challenging the order in special appeal.

12. Though it is the pure discretion of the State to challenge an order or not but selective challenge cannot be appreciated.

13. Under the circumstances, we do not find any ground to interfere with the

order passed by the learned Single Judge.

14. The special appeal is dismissed.