
(2014) 02 AHC CK 0136

In the Allahabad High Court

Case No : Special Appeal Defective No. 90 of 2014

State of U.P. and Others

APPELLANT

Vs

Shahnawaz Alam

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2014) 3 ADJ 435 : (2014) 3 ALJ 72 : (2014) 103 ALR 653 : (2014) 4 AWC 4216 : (2014) 141 FLR 650 : (2014) 3 LLN 47

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Vivek Shandilya, Advocate for the Appellant; Siddharth Khare, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. This special appeal is directed against a judgment of the learned Single Judge dated 2 August 2013. By the order which is impugned, the learned Single Judge has set aside an order dated 30 January 2012 (Annexure 4 to the writ petition) by which the services of the respondent as Seenchpal were terminated. In pursuance of an advertisement dated 27 September 2011, a letter of appointment was issued to the respondent on 1 November 2011 appointing him to the post of Seenchpal on a temporary basis. The letter of appointment states that the appointment can be terminated at any time with a notice of one month. The respondent thereafter joined on 2 November 2011. An order was passed by the Superintending Engineer on 30 January 2012 terminating the appointment of the respondent on the ground that the appointment had been irregularly made to the post. A writ petition was filed by the respondent before this Court under Article 226 of the Constitution to challenge the order of termination. The learned Single Judge allowed the petition on two grounds. The first was that though the order of termination, according to the State, was issued in compliance with the interim order passed by this Court in a writ petition but the petition had been

dismissed on 23 November 2012. The second ground was that the order of termination was passed in breach of the principles of natural justice.

2. Now, at the outset, it must be noted, that the interim order of the learned Single Judge in Writ - A No. 60334 of 2011 (Sinchai Singh and others v. State of U.P. and others) was passed on 3 November 2011 by which until the next date of listing, proceedings in pursuance of the notification dated 14 September 2011 were directed to remain stayed. In the present case, the order of appointment was issued to the respondent on 1 November 2011 and he had joined on 2 November 2011. Consequently, the interim order of the learned Single Judge dated 3 November 2011, which was passed subsequently, did not cover the appointment in question. Hence, the dismissal of the writ petition eventually had no bearing in regard to the legality of the appointment of the respondent.

3. The fundamental basis of the termination of the appointment of the respondent, however, is that the selection was not carried out in accordance with the Irrigation Department Patrols Service Rules, 1953. Rule 3(Kha) thereof defines the expression "Selection Committee" to mean a Committee whose members have been constituted by the Superintending Engineer of the Circle and which must consist of two persons holding the rank of Executive Engineer. In the present case, the then Superintending Engineer, had by an order dated 23 September 2011, constituted a Selection Committee. Despite this, Sri Rajesh Kumar, who was one of the two Executive Engineers who had been appointed as members of the Selection Committee on 23 September 2011, issued an order on 21 October 2011 reconstituting the Selection Committee with himself as the Chairperson. Clearly, in view of the provisions of Rule 3 (Kha), the Executive Engineer had no power to do so. In the rejoinder which was filed by the respondent, it was sought to be urged that on 28 October 2011, Sri Kuldeep Kumar, who was also a member of the Selection Committee withdrew himself from the Selection Committee and as Sri Rajesh Kumar was given the authority to include a member in the Selection Committee, the Deputy Collector was included in the Committee with the approval of the District Magistrate. The ground which weighed with the Authority for terminating the appointment of the respondent was in our view clearly justified because the Committee which proceeded to select the respondent was not a Selection Committee which was constituted in accordance with the requirements of Rule 3(Kha) of the Rules that had been framed under Article 309 of the Constitution. Even if one member of the Selection Committee had withdrawn himself, the Selection Committee had to be reconstituted by the Superintending Engineer and it was not open to the remaining Executive Engineer, who was only a member of the Selection Committee, to order reconstitution of the Selection Committee in a manner contrary to the statutory rules. This apart, the reconstituted Selection Committee had only one Executive Engineer which is clearly contrary to the requirement of Rule 3(Kha) which requires two Executive Engineers to be in the Selection Committee.

4. The appointment of the respondent was also clearly on a temporary basis and capable of being terminated with one month's notice. There was no occasion for the learned Single Judge to hold the termination illegal for want of compliance of the principles of natural justice. The entire selection process was vitiated since the Selection Committee was not constituted in accordance with the Rules framed under Article 309 of the Constitution. Consequently, the grounds which have weighed the learned Single Judge in allowing the petition and setting aside the order of termination are clearly erroneous. The special appeal shall accordingly stand allowed. The impugned order of the learned Single Judge dated 2 August 2013 is set aside. The writ petition filed by the respondent shall, in the circumstances, stand dismissed, however, with no order as to costs.