
(2003) 08 AHC CK 0115
In the Allahabad High Court
Case No : Writ Petition No.4212 of 1982

State of U.P.and Other

APPELLANT

Vs

Suresh Singh Chauhan and Another

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2003) 08 AHC CK 0115

Hon'ble Judges : Pradeep Kant, J and Kamal Kishore, J

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and Sri D.P. Singh, learned counsel for the opposite parties.
2. This writ petition has been filed challenging the order dated 30.12.1981 passed by the U.P. Public Services Tribunal allowing the claim petition preferred by respondent No.1 against the termination of his services and thus reinstating him in service.
3. Admittedly, the respondent No.1 was appointed as Family Planning Health Assistant vide order dated 17th August, 1973 against the temporary post which was liable to be terminated at any time without giving notice. The submission of the petitioners is that the respondent No.1 was terminated vide impugned order dated 6.5.1975 by the Appointing Authority along with five more similarly situated persons, appointed on the post of Family Planning Health Assistant.
4. Before the Tribunal, it was contended by respondent No.1 that his services were terminated because of the economic measure and that since he had not achieved quota of vasectomy. The respondent made representations against his termination but with no result. Further ground was that opposite parties No.3 to 5 namely S/Sri Uma Shanker, Parmod Kumar Misra and K. Yadav were appointed later on by the State of U.P. on the same posts as fresh candidates but were retained in service which is discriminatory.

5. The State put its defence before the Tribunal by asserting that the service of respondent No.1 was terminated in terms of the appointment order, since his appointment was made when there was an embargo placed by the Govt. in making appointment. In this regard, Additional Director sent letters dated 7.2.1975 to all the District Magistrates indicating that the Govt. of India had clearly directed that due to paucity of funds neither any new post would be created nor vacant posts of Family Planning Health Assistant would be filled during the years 1973-74 and 1974-75 but it has come to his notice that despite the said directions, several appointments were made, and such appointments may be regular or temporary, have to be terminated immediately. It was further submitted by the State that opposite parties No.3 to 5 are regular appointees through Employment Exchange in 1977, whose appointment cannot be equated with the appointment of the petitioners.

6. The Tribunal came to the conclusion that there is no document on record to substantiate as to how the respondent No.1 was appointed illegally or his appointment was irregular in any manner and that by a general order how all the appointments after 18.7.1973 can be treated as irregular. The Tribunal did not find sufficient ground for terminating the services of respondent No.1. Further observation of the Tribunal is that termination of the appointment after holding it irregular, certainly casts stigma on the respondent and the order would be punitive which order could have been passed only after affording opportunity of hearing to the respondent No.1. The Tribunal also took note of the fact about fresh appointments made. On these grounds, the Tribunal quashed the order of termination and ordered reinstatement of respondent No.1, in service.

7. We have considered the arguments of the learned counsel for the parties and have perused the record as well as the order passed by the Tribunal.

8. The view taken by the Tribunal that the order of termination of service of a temporary employee appointed against a temporary post in terms of the conditions of appointment order, would amount to casting stigma or can be treated as an order, punitive in nature, because the appointment is found to be irregular, cannot be sustained in the eye of law. Admittedly, the Govt. has issued direction to all the appointing authorities i.e. District Magistrates that because of the financial constraints, no appointment shall be made on the post of Family Planning Health Assistants during the year 1973-74 and 1974-75. These directions were issued much before the appointment of respondent No.1. The directions were issued at least on 18.7.1973, as there is no other date, prior to it, on record and the appointment of respondent No.1 was made on 17th August, 1973. Making appointment by the appointing authority, violating the specific direction issued by the Govt. putting an embargo in making the appointment, would not confer any right on such an appointee to hold the post or to continue in service. For such appointment which has been made without any authority, the Govt. of course, has full power to issue termination order. This has to be viewed with another angle also, that in case any appointment is made by the officer on his

own will after the direction issued by the Govt. showing paucity of funds and prohibiting any further appointment, the liability of salary to such appointee ought not to be fastened on the State. It would be appropriate in given cases, if appointment is made by any authority, in clear violation of the ban on appointment imposed by the State Govt. where State Govt. has to make the payment of salary of such an employee, the monetary liability be fixed upon such an erring officer. The Govt. cannot be burdened with the payment of salary and other emoluments to such appointment. No reason has been given by the appointing authority who made the appointment as to why such appointment has been made when the specific embargo was placed by the Govt.

9. The termination of the employee in terms of the appointment order itself or in view of the appointment being given in violation of the direction of the Govt. the termination of service of such an employee would, in no case be termed as punitive or discriminatory.

10. We do not agree with the view expressed by the Tribunal but for the reasons stated herein below, we are of the view, that no relief can be granted to the State. It has come on record that six persons were terminated who were similarly appointed like the respondent No.1 on the same post and in the same capacity and were subjected to termination of service by the same order dated 6th May, 1975 but out of those persons one Bateshwar Dayal has been allowed to remain in service despite the order of termination, although he has never challenged the order of termination. Sri Rama Ashray and Sri Mamoon Hasan Khan also filed claim petitions before the State Public Services Tribunal like respondent No. 1 and their petitions were allowed but the Govt. did not challenge the aforesaid order and allowed them to remain in service.

11. In the writ petition, there is no interim order and as per the submission made by Sri D.P. Singh that the respondent No.1 was reinstated in service, in pursuance of the order passed by the Tribunal on 20.1.1982 and since then he has been allowed to continue in service with all benefits of service and now he is to retire on reaching the age of superannuation sometimes in year 2005, we do not find it appropriate to disallow the respondent No.1 from continuing in service.

12. The writ petition is dismissed.

(Petition dismissed)