
(1995) 07 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 8582 of 1979

State of U.P.and Others

APPELLANT

Vs

Sharda Saran Pandey and Another

RESPONDENT

Date of Decision : 04-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 5(I)(b)

Citation : (1995) 07 AHC CK 0086

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Dismissed

Judgement

R. H. Zaidi. J.

1. By means of the present petition under Article 226 of the Constitution of India, petitioner State of U.P. and others challenged the validity of the order dated 2671279 passed by respondent No. 2 U.P. Public Services Tribunal II Lucknow, whereby the claim petition of respondent No. 1 was allowed.

2. The facts of the case in brief are that it was on 1121960, respondent No. 1 was appointed on the post of Surveillance Inspector by Addl. Director of Medical and Health. Subsequently, he was transferred from the said Department to National Malaria Epidemic Programme, Kanpur. It was on 5101964 the services of the respondent No. 1 were terminated by Deputy Director Malarialogy. Respondent No. 1 filed Original Suit No. 2135 of 1971 and same was dismissed in default on 1471974. Subsequently, an application for restoration was filed on 2051976. In the meantime U.P. Public Services (Tribunals) Act, 1976, hereinafter referred to as the Act, came into force and the said suit including the proceedings for restoration of the suit were transferred to the Tribunal. Tribunal after hearing the counsel for the parties was pleased to allow the restoration application vide order dated 881978 and to resume the suit (claim petition) to its original number. The order dated 881978 has become final as the validity of the said order was not challenged by the petitioners.

3. Ultimately, after hearing the parties the claim petition filed by respondent No. 1 was allowed by respondent No. 2 vide its judgment and order dated 26/7/1979. The operative portion of the said judgment is quoted below;

ORDER

"The reference petition is allowed and the impugned order of termination is declared to be void and illegal. The petitioner shall be deemed to have been continued in service as before.

In view of the above order the OPS are directed to pass orders under Order F. R. 54 read with order 54A and 54B in respect of pay and allowance of the petitioner for the entire period within six months of this order failing which the petitioner shall be entitled to get his pay and allowance at the rate claimed by him for the entire period.

The petitioner shall get his costs of this petition which are assessed at Rs. 330 including the costs of the civil court."

As stated above, petitioner has challenged the above noted order in the present petition.

4. I have heard learned counsel for the petitioner and Sri K. K. Bajpai learned counsel for respondent No. 1.

5. On behalf of the petitioner it was contended that the application filed by respondent No. 1 for restoration of (he suit was liable to be dismissed in view of the provision of subclause (b) of subsection (I) of Sections of the Act, as the restoration application was not filed within the time prescribed under law. It was contended that the Dy. Director of Health was the appointing authority of the respondent No. 1. Thus the services of the respondent No. 1 were rightly terminated by Dy. Director of Health. On the other hand, it was contended by ,;Mr. Bajpai, learned counsel for respondent No. 1 that principles of res judicata apply by the stages, the order dated 8/8/1978 passed by Tribunal, restoring the suit to its original number has become final and operates as res judicata. Therefore, at this stage it is not open to the petitioner to challenge the validity of the said order. It was also contended that subsequent amendment made in the rules conferring the power of appointment on the other authority of the respondent No. 1, who was actual and initial appointing authority.

6. Having heard learned counsel for the parties I am of the view that the submissions made on behalf of the petitioner have got no force.

7. It is apparent from the record of the office that the validity of the order, dated 8/8/1978 condoning the delay and restoring the suit to its original number was not challenged by the petitioner, and order has thus become final. It is correct that the Tribunal constituted under the Act was not bound by the procedure laid down in Code of Civil Procedure, 1908 or Rules of the evidence contained in Indian Evidence Act, but it is to be guided by the principle of natural justice and had

jurisdiction to regulate its own procedure. Section 5 of the Act further provided that to the judgment and decree passed by the competent court, which has become final, principle of res judicata shall apply. In my opinion, Tribunal has jurisdiction to allow the application for restoration of the suit filed by the respondent No. 1. The said order has become final, the validity of the same cannot be challenged by the petitioners. Further nothing has been placed by the petitioners before me to substantiate their pleas that on facts stated in the restoration application, the application did not deserve to be allowed. In my opinion the restoration application filed by respondent No. 1 was rightly allowed by the Tribunal and order allowing the restoration application having become final is binding upon the parties inasmuch as the principle of res judicata apply by stages. A reference in this regard may be made in Kukum Singh v. Prescribed Authority Muzaffar Nagar, 1980 AWC 639, wherein it was held as under ;

"Though even that case may not come within the preview of Section 11 of C.P.C., yet the doctrine of res judicata has been very broadly applied and its general principle has been extended even to Misc. proceedings and orders passed at different stages of the same litigation or even when one proceeding was the suit and other was not the suit."

In the aforesaid decision, Division Bench referred to and relied upon the decisions of Supreme Court reported in case in Satyadhyan Ghosal v. Smt. Deo Rajin, 1960 SC 941, Arjun Singh v. Mahendra Kumar, AIR 1964 SC 993 and Gulab Chand Chotta Lal Prakash v. State of Gujarat, AIR 1965 SC 1153.

8. In view of the aforesaid decisions, the first contention of the petitioner is rejected. Petitioner has failed to show that either factually or legally the Tribunal was not right in passing the order, dated 881978. In so far as that Dy. Director of Health was the appointing authority of respondent No. 1 and had jurisdiction to terminate his services, same has also got no force inasmuch as it is well settled law that only appointing authority has got jurisdiction to terminate the services of Government servants and subsequent delegation of power to subordinate authority to make appointment to the post in question, would not entitle the subordinate authority to remove the persons appointed before such delegation. A reference in this regard maybe made to the case of Krishna Kumar v. Divisional Assitt. Electrical Engineer, 1979 (4) SCS 289, State of U.P. v. Sri Sharmeshwari Nath, 1977 AISLJ 682, Paras Ram Singh v. State of U. P., 1978 AISLJ 68, O. P. Gupta v. Union of India, 1975 AISLJ 675.

9. In view of the aforesaid discussions, the Tribunal was right in holding that the Dy. Director of Malariology, who terminated the services of respondent No. 1 had no jurisdiction to terminate his services and the impugned order passed by him was wholly illegal.

10. For the aforesaid discussions, the writ petition has got no merit and the same is dismissed with costs.