
(2011) 08 UK CK 0021
In the Uttarakhand High Court
Case No : Special Appeal No. 59 of 2007

State of Uttarakhand and Another	Vs	APPELLANT
Pooran Singh Bhandari		RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Citation : (2012) 135 FLR 80 : (2012) 2 UC 937

Hon'ble Judges : Tarun Agarwala, Acting C.J.; V.K. Bist, J

Bench : Division Bench

Advocate : Bindesh Kumar Gupta, A.A.G, for the Appellant; I.P. Gairola, for the Respondent

Judgement

Tarun Agarwala, A.C.J. and V.K. Bist, J.—Heard the learned Counsel for the parties.

The present special appeal has been filed against the judgment dated 2nd August, 2004 passed by the learned Single Judge allowing the writ petition and quashing the order dated 30th April, 1994 by which the services of the writ petitioner was terminated.

The facts, in a nutshell, is that the writ petitioner was initially appointed as an instructor in the Industrial Training Institute Gangolihat, Pithoragarh in the year 1986. Thereafter, the petitioner was appointed as a Stenographer in the year 1988 in the office of the Project Officer, Agriculture Department in Pithoragarh. In the year 1990 the petitioner was appointed as a Junior Clerk in the office of District Census Officer, Pithoragarh and continued till 31st May, 1991 when his service came to an end on the completion of the census operations. The petitioner thereafter was appointed as a Junior Clerk in the Collectorate of Pithoragarh with effect from 20th June, 1991 and by the impugned order of 30th April, 1994, the petitioner was informed that his services was terminated with effect from 16th February, 1994.

2. The petitioner being aggrieved, filed the writ petition which was allowed by the

judgment of the learned Single Judge dated 2nd August, 2004 on the ground that the petitioner was a temporary employee under the U.P. Temporary Government Servants (Termination of Service) Rules, 1975 (hereinafter referred to as the Rules) and was required to be given a notice under Rule 3 of the said Rules which had not been given and consequently, the order of termination was passed in violation of the principles of natural justice. The learned Single Judge further found that the petitioner was a retrenched employee from the District Census Office and was liable to be given an appointment as per the decision of the Supreme Court in the case of Govt. of Tamil Nadu and Another Vs. G. Mohamed Ameenuddin and Others, . The respondents, being aggrieved by the judgment of the learned Single Judge has filed the present special appeal.

3. Having heard the learned Counsel for the parties at some length, the Court finds that the order of the learned Single Judge holding that the writ petitioner was a temporary employee, as defined under Rule 3 of the Rules of 1975, is not correct. In this regard, the petitioner's appointment letter dated 21st June, 1991 needs to be perused, which indicates that the petitioner was appointed on a temporary basis, on account of the suspension of another employee. The appointment letter also indicated that the services of the writ petitioner would come to an end at any point of time without even giving a notice. The order of termination dated 30th April, 1994 clearly indicates that the suspended employee against whose post the petitioner was appointed, had joined the services and, therefore, the services of the petitioner was no longer required. "Temporary service" under the Rules of 1975 has been defined as officiating or substantive service on a temporary post or officiating service on a permanent post under the Government but there are certain exceptions where such appointments would not be treated as a temporary service as contemplated under Rule 4. For facility, Rule 4 of the service is extracted hereunder:

4. Savings-Notwithstanding anything in these rules, the "tenure or continuance of engagement or employment of the following categories of persons shall be governed by the terms of their engagement or employment, and nothing in these rules shall be construed to require the giving to them, or by them of one month's notice or pay or penalty in lieu thereof before the termination of their engagement or employment-

- (a) persons engaged on contract;
- (b) persons not in whole-time employment of Government;
- (c) persons paid out of contingencies;
- (d) persons employed in a work-charged establishment;
- (e) persons re-employed after superannuation;
- (f) persons employed for a specific period whose services stand determined on the expiry of that period;

(g) persons employed for a specified period on condition that the period may be curtailed at any time;

(h) persons appointed in short term arrangements or vacancies whose services stand determined on the expiry of the arrangement or vacancy.

4. A perusal of Rule 4(h) indicates that persons appointed in short term arrangements or vacancies whose services stand determined on the expiry of the arrangement or vacancy would not be treated to be appointed on a temporary service. As a result of the aforesaid provision, it is apparently clear that the vacancy on which the petitioner was working came to an end when the suspended employee joined his services for which no notice was required to be given to the petitioner as per the Rules of 1975 and which is also stipulated in the order of appointment. In the light of the aforesaid, the learned Single Judge committed an error in holding that the petitioner was a temporary employee and was liable to be given a notice. To that extent, the order of the learned Single Judge cannot be sustained and is set aside. We are, however, in the agreement with the direction given by the learned Single Judge, directing the respondent to give priority to the petitioner for appointment on a vacant post in accordance with the judgment of the Hon"ble Apex Court (supra). The appeal stands partly allowed.