

**(2002) 08 AHC CK 0188**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 33303 of 1992**

Sudhir Kumar Chaturvedi

APPELLANT

Vs

Zila Parishad, Kanpur Dehat and Anr .

RESPONDENT

**Date of Decision :** 28-08-2002

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226  
Industrial Disputes (Central) Rules, 1957 — Rule 12, 42  
Uttar Pradesh Industrial Disputes Act, 1947 — Section 2A, 4K, 6N, 6P  
Uttar Pradesh Zila Parishad Service Rules, 1970 — Rule 4(3), 51(1)

**Citation :** (2002) 5 AWC 3801

**Hon'ble Judges :** Rakesh Tiwari, J

**Bench :** Single Bench

**Advocate :** Brij Mohan, R.G. Padia, P. Padia and Amit Sthalekar, for the Appellant; Rajesh Kumar, S.C., for the Respondent

**Final Decision :** Dismissed

## Judgement

Rakesh Tiwari, J.—Heard the learned Counsel for the parties and perused the record.

2. The Petitioner was appointed on 6.6.1989 as Road Roller Driver against permanent vacancy by the Adhyaksha, Zila Parishad. The post of Road Roller Driver is mentioned at serial No. 32 of Schedule A to the U.P. Zila Parishad Service Rules, 1970.

3. The Petitioner is aggrieved by the order of his termination dated 2nd September, 1992. It is alleged that the Petitioner had put more than three years service as Road Roller Driver and the termination of his service without any show cause notice is in violation of the principles of natural justice as well as the provisions of G.O. dated 30.3.1979.

4. The case of the Petitioner is that a new District, Kanpur Dehat, was carved out and the Petitioner was appointed on temporary basis. It is contended that he was

paid salary upto 30.10.1991 regularly except increment and house allowance, but all of a sudden, the Respondents stopped paying salary to him with effect from 1.11.1991. The Petitioner sent a reminder to Respondent No. 2 on 31.8.1992, for payment of his salary, but on 3.9.1992, he was served with the impugned order of termination. It is averred in paragraph 13 of the writ petition that about 19 persons junior to the Petitioner are still working and as such, his termination order is illegal and arbitrary and is in violation of Articles 14 and 16 of the Constitution of India. It is submitted that the termination order has been passed by way of punishment under U.P. Temporary Government Termination of Service Rules, 1975 and that the impugned order of termination is without jurisdiction inasmuch as Rajendra Singh Chauhan is not the Adhyaksha, who has passed the impugned order, but Sri R.N. Tripathi is duly elected Adhyaksha.

5. In the counter-affidavit, it has been stated that the Petitioner was not appointed against any vacancy under Rule 51 (1) of the U.P. Zila Parishad Service Rules, 1970. His appointment was temporary/ad hoc and as such, his services can be terminated at any time. Besides this, one Surendra Kumar was a permanent Road Roller Driver on the sanctioned post of Road Roller Driver, which has been sanctioned on 16.2.1990 under Rule 4 (3) of the U.P. Zila Parishad Service Rules, 1970. There was only one vacancy of Road Roller Driver on which Surendra Kumar was working. The Petitioner was not appointed on the sanctioned post and being temporary, has no right to the post. It is further stated that the second post of Road Roller Driver was never created, but the Petitioner was illegally appointed as his father was the then Office Superintendent exerted under influence. It has also been averred in paragraph 4 of the counter-affidavit that the Petitioner does not have any certificate for driving heavy vehicle.

6. It has been submitted by the standing counsel that the appointment of the Petitioner was illegal and temporary, hence there is no illegality in the order of termination, and the same has not been passed by way of punishment under U.P. Temporary Government Termination of Service Rules, 1975.

7. In the rejoinder-affidavit, the Petitioner states that he has a licence to drive light Motor Vehicle and Road Roller. Photostat copies of the licence have been annexed as Annexures-R.A. 1 and R.A.-2 to the rejoinder-affidavit. He denies that he was illegally appointed or that he was not eligible for appointment. It has been submitted on behalf of the Petitioner that no enquiry what-so-ever has been conducted and the Petitioner was never called upon to assist any enquiry. It has further been submitted that the Petitioner was a workman and his services could not have been terminated under the provisions of Sections 6N and 6P of the U.P. Industrial Disputes Act, 1947.

8. It is not disputed that the Petitioner is a workman. From perusal of Annexure-C.A. 1, it appears that three years experience is required for appointment on the post of Road Roller Driver. The Petitioner in the writ petition has not pleaded that he was having licence for driving Road Roller. From the Photostat copy of

Annexure-R.A.-2, it appears that the licence to drive Road Roller was issued in the year 1995. The Photostat copy is very illegible and blurred and the exact date of issuance of the licence cannot be properly made out.

9. This dispute requires appreciation of facts and taking of evidence. There is no material on record on the basis of which it can be said that the juniors to the Petitioner have been retained in utter violation of the provisions of Sections 6N read with Rule 42 of the U.P. Industrial Disputes Act, 1947. It is also in dispute whether the Petitioner had a licence or not when he was appointed or he was not appointed against any vacancy and had been appointed as his father exerted influence being Office Superintendent. Adjudication of these questions of facts require oral and documentary evidence to be adduced for which proper forum is labour court/Industrial Tribunal.

10. In view of the above, this Court cannot go into the questions requiring findings of fact on the basis of oral and documentary evidence. It is, therefore, not a fit case, for exercise of powers under Article 226 of the Constitution of India.

11. The Petitioner has an alternative and efficacious remedy, for approaching the labour court under U.P. Industrial Disputes Act, 1947, as has been held by the Full Bench of this Court in Chandrama Singh v. Cooperative Union Lucknow and Ors. 1991 (2) AWC 1005 : 1991 UPLBEC 898.

12. In view of the above, the writ petition is dismissed on the ground of alternative remedy with the direction to the conciliation officer to make reference u/s 4K to the labour court within a month on application made by the Petitioner u/s 2A of the U.P. Industrial Disputes Act, 1947. The labour court shall decide the reference within four months from the date of its receipt in accordance with Rule 12 of the U.P. Industrial Disputes Act, 1947. No order as to costs.