

(2012) 02 AHC CK 0353

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26384 of 1991

Sughar Pal Singh

APPELLANT

Vs

Cane Commissioner, U.P. Lucknow and Another

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) 5 ADJ 396

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Birendra Kumar Srivastava and Dhiraj Srivastava, for the Appellant;
Shashi Nandan and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Sudhir Agarwal, J.—Heard learned counsel for the parties. The petitioner was seasonal employee. By means of the impugned order he has been disengaged by an order passed by the Cane Commissioner as Seasonal Clerk in the Cooperative Societies. It is contended that termination is in violation of Regulation 34 of U.P. Cane Co-operative Service Regulation, 1975 which reads as under:

Termination of Services: The Services of a seasonal employee may be terminated by the recruiting or appointment authority at any time on a week's notice or with a week's salary in lieu thereof. This provision shall not apply in cases of termination as a result of disciplinary proceedings or the termination at the close of crushing season.

2. The aforesaid provision makes it clear that seasonal employee can be terminated with a notice of a week or a week's salary in lieu thereof. Therefore, at the best, if the petitioner has been terminated without giving a week's notice he would be entitled for a week's salary. A pari materia provision was considered by Apex Court in the case of Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, and it has been held when an employee can be

terminated by a month's notice or paying in lieu thereof, in case no such notice is given, the termination itself would not be bad but the employee would be entitled to claim salary for the period of notice provided in the rules. In the present case also at the best the petitioner can claim a week's salary but that will not vitiate the termination as such.

3. In *K. V. Gopinath (supra)* Rule 5 of Central Civil Services (Temporary Service) Rules, 1965 was up for consideration. It says that a temporary Government servant is liable for termination by a notice in writing given by either side. The notice period was one month and proviso also said that Government Servant may be terminated forthwith by payment of a sum equivalent to an amount of his pay and allowances for a period of notice or for the period by which such notice fall short of one month.

4. In the present case, term of notice is one week or a week's salary. The aforesaid Rule construed that services may be terminated by payment of salary, if notice of one month is not given but while holding so, Apex Court also referred to another decision of this Court i.e. *State of Uttar Pradesh v. Dinanath Rai*, Civil Appeal No. 1734 of 1968 decided on 11.10.1968 considering the following rule:

(1) Notwithstanding anything to the contrary in any existing rules and orders on the subject, the services of a Government servant in temporary service shall be liable to termination at any time by notice in Writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.

(2) The period of such notice shall be one month given either by the appointing authority to the Government servant, or by the Government servant to the appointing authority, provided that in the case of notice of the appointing authority the latter may substitute for the whole or part of this period of notice pay in lieu thereof; provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period, without requiring the Government servant to pay any penalty in lieu of notice.

5. Therein Apex Court said that rule does not say that pay should be given in cash or by cheque at the time notice is issued which only mean that Government servant would be entitled to the pay in lieu of notice but that would not vitiate the termination otherwise.

6. Unlike Rule 5 of 1965 Rules, in the present case Rule 34 of U.P. Cane Co-operative Service Regulations, 1975 clearly provides that termination of service can be made by a week's notice or a week's salary in lieu thereof. In my view, therefore, termination of the petitioner cannot be said to be vitiated in law.

7. Learned counsel for the petitioner placed reliance of a decision of this Court in Writ Petition No. 14695 of 1991 [*Raj Pal Singh and others v. President Distt Cane Service Authority and others*], decided on 28.4.1998. This Court while holding

the order of termination bad therein has referred to Regulation 21 and 22 of 1975 Regulations which I have perused and find have no application to this case at all.

8. Learned counsel for the petitioner also could not show as to how Regulation 21 and 22 of U.P. Cane Cooperative Service Regulations, 1975 would have any application in this matter.

9. In view of the law laid down by the Apex Court, the order of termination of the petitioner cannot be said to illegal and hence no interference is called for.

10. The writ petition is dismissed. Interim order, if any, stands vacated.