

(2010) 05 AHC CK 0007
In the Allahabad High Court
Case No : Special Appeal No. 372 of 2010

Surendra Kumar Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Citation : (2010) 126 FLR 69

Hon'ble Judges : R.R. Awasthi, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Kant and R.R. Awasthi, JJ.—Heard the learned Counsel for the petitioner Sri Asit Chaturvedi and Sri Krishna Chandra for the respondents. This special appeal has been filed against the judgment and order dated 4.2010 passed by the learned Single Judge, by means of which the appellant has been relegated to the District Magistrate once again, without adjudicating upon the claim raised by him in the writ petition, with a direction that the appellant may make a representation with regard to continuance of his services, which shall be decided by a speaking and reasoned order in accordance with law, within four months and that for four months or till disposal of the appellant's representation, whichever is earlier, the appellant shall be permitted continue in service and paid salary.

2. Before entering into the merits of the case, we find it apposite to mention that the appellant, who was inducted into service on 1.3.1983 as temporary Peon/Messenger in the pay scale of Rs. 305-390, was faced with an order of simplicitor discharge on 11.10.1989, aggrieved of which, he filed the present writ petition in the year 1989 itself, in which an interim order of stay was passed by the Court on 24.10.1989. On the strength of the aforesaid interim order, has been continuously working and is being paid salary.

3. Not only this, the appellant has also been given the service benefits of

promotional pay scales on completion of his satisfactory services of 10 years, 14 years and lastly on 18 years of service.

4. The aforesaid writ petition has been disposed of on 19.4.2010 i.e. after 2 years but without adjudicating upon the validity of the termination order.

5. We are constrained to observe that in a matter like the present one, if the petitioner/appellant is relegated to the forum of representation, which otherwise also is not a statutory representation nor would be covered by any of the provisions of the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975, without adjudicating the issue involved and without testing the validity of the termination order against which the petition has remained pending for 18 years, it would mean giving one more opportunity to the District Magistrate to exercise his discretion either in favour of the petitioner/appellant or against him and thereby giving opportunity to the District Magistrate to confirm his order of termination by passing a fresh order and ousting the petitioner/appellant from service for any good or bad reason, as per his own discretion.

6. If a person comes to the Court, aggrieved by an order passed by any authority and the petition is entertained, there would be little justification, after a considerable period, to ask him to revert back to the same authority, who has passed the order, which is under challenge.

7. This would cause undue hardship to the litigant.

In the instant case, it is not in dispute that the appellant was appointed on 1.3.1983 as temporary Peon/Messenger against a permanent vacancy after selection and that his services were terminated in pursuance of a telex message dated 7.8.1989 on 11.10.1989, though the order of termination said that the same has been passed under the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975.

8. In the counter-affidavit filed by the State, it has been specifically pleaded in Para 3 sub-para (iii) that the services of the appellant were terminated by the District Magistrate only because of the telex message dated 7.8.1989.

9. The aforesaid sub-para (iii) of Para 3 reads as under:

(iii) That thereafter in pursuance of the directions issued vide Radiogram No. 1630/Ayikta-A-Poorti dated: 7.8.1989, the District Magistrate, issued an order dated: 11.10.1989, whereby the services of the petitioner were terminated.

10. The telex message of 7.8.1989 has also been brought on record, which says that no appointment be made on any category of post without prior approval of the State Government and that all appointments made without prior approval of the State Government be cancelled immediately.

11. This telex message of 7.8.1989 was clarified by D.O. letter dated 11.12.1989 issued by the Commissioner, Food and Civil Supplies, U.P., Lucknow to all the District Magistrates, all Assistant Divisional Commissioners (Food) and all District

Supply Officers by saying that in respect of the aforesaid telex/radiogram No. 1630/Ayukta-A-Poorti dated 7.8.1989, the appointment which have been made between the period 6.2.1981 to 20.3.1982 and after 13.12.1987 need be cancelled, except those appointments, which have been made under the Dying in Harness Rules.

The aforesaid D.O. letter very clearly details the appointments which were to be cancelled in pursuance of the telex/radiogram message dated 7.8.1989, which covers all the appointments which were made between the period commencing from 6.2.1981 to 20.3.1982 and also the appointments, which were made after 13.12.1987.

The appellant's appointment having been made on 1.3.1983 was not covered under the aforesaid telex message, which stood clarified explicitly by the D.O. letter dated 11.12.1989.

12. The termination order, therefore, was passed on misconception and reading of the telex message after the petitioner had put in more than six of service, absolutely without application of mind. The termination order, before, cannot be sustained.

The plea of the respondent-State that the services of the appellant were terminated under the Uttar Pradesh Temporary Government Servants (termination of Service) Rules, 1975, would thus be of no assistance for reading the said order.

13. The cause, motive and foundation of the order being the issuance of the Message, which was not applicable, would make the order stigmatic and determinative, that too without affording any opportunity.

We also take notice of the fact that the appellant has not only been continuously working even after the order of termination under the interim orders passed by this Court but during this long period of 21 years, he has been awarded promotional pay scales at all three stages and, therefore, also we do not and any ground either to send the matter back to the District Magistrate or to hold the order of termination.

14. We, therefore, set aside the order passed by the learned Single Judge dated 19.4.2010 and also the order of termination dated 11.10.1989 passed by the district Magistrate.

The special appeal is allowed and consequently the writ petition also stands allowed.