

(1996) 02 AHC CK 0089

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 41084 of 1992

Suresh Chandra

APPELLANT

Vs

Chairman, President, Nagar Palika, Mainpuri and Others

RESPONDENT

Date of Decision : 27-02-1996

Acts Referred:

Constitution of India, 1950 — Article 311
Uttar Pradesh Municipal Board Services (Inquiry, Punishment and Termination of Services) Rules, 1960 — Rule 5(1)

Citation : (1996) 02 AHC CK 0089

Hon'ble Judges : P.K.Mukherjee, J

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—In the present writ petition, the petitioner who was a clerk, has challenged the impugned order of termination, dated 28101992, passed by the Executive Officer, Nagar Palika, Mainpuri, being respondent No. 2, set out at Annexure 5 to the writ petition.

2. It appears from the aforesaid impugned communication that the services of the petitioner was terminated as the petitioner was temporary incumbent in the post,

3. Short facts of the writ petition are as follows ;

The petitioner was engaged by the respondent No. 2 on the post of Amin on daily wages at the rate of Rs. 18/ per day in the year 1989, and continued on the said post till September 1991. Thereafter one Krishna Bahadur Singh who was working on the post of Motiarrir, on regular basis, proceeded on long leave in the month of September 1991, and the petitioner was asked to officiate aforesaid post.

4. On 3041992 the said Krishna Bahadur Singh, on the ground of his ill health and adverse family circumstances tendered his resignation by moving an application to this effect before the respondent No. 2. As such, after tendering

the resignation of the said Krishna Bahadur, a clear and substantive vacancy of Maharrir arose, on which the petitioner was officiating. Hence the petitioner moved an application on 151992 before the respondent No. 2, and requested that he be appointed on the aforesaid post on regular basis.

5. The respondent No. 2 made an endorsement on the application of the petitioner on 151992 directing the second clerk to submit a detailed report as is evident from the endorsement on the application.

6. Pursuant to the aforesaid direction, by means of the endorsement dated 151992 made by the respondent No. 2 the second clerk submitted a detailed report to the said respondent, clearly mentioned therein the total period of service and its nature, rendered by the petitioner in various capacities. It was reported that the petitioner has been working on the post of Amin, and thereafter, on leave vacancy of Krishna Bahadur Singh, keeping in view the petitioner's sincerity and devotion to the duties, which he rendered in the past, a strong recommendation was made in favour of the petitioner as admittedly he had completed more than 240 days of continuous service in each year. This report was submitted on 251992.

7. Considering the aforesaid report of second clerk dated 251992, the respondent No. 2 duly appointed the petitioner on substantive basis, on post which occurred after the resignation of Krishna Bahadur Singh, as is evident from the endorsement made by the respondent No. 2, on the report itself.

8. Thus, according to the petitioner, since the respondent No. 2, had already taken decision to appoint the petitioner on clear and substantive vacancy, as such in pursuance thereof, he issued letter of appointment dated 351992 to the petitioner, which has been annexed as annexure 4 to the writ petition.

9. Further, according to the petitioner, he was continuously working since 1989 till the date of moving of the instant writ petition, without any break of even a single day, as such, his services cannot be terminated by a simple order of termination, as has been done in the facts of the present case.

10. Unfortunately, by means of impugned order dated 20101992, respondent No. 2 arbitrarily, in a most illegal manner terminated the services of the petitioner with immediate effect, taking a ground that the post on which the petitioner was working has been abolished by the Government.

11. Heard learned counsel for the parties. Learned Standing Counsel, appearing for the respondents has referred to the averments made in paragraph 12 of the counteraffidavit, affirmed by Sri Vimal Kumar Singh, Tax Inspector, Nagar Palika Mainpuri wherein the deponent has asserted that there was no further workload, nor there was any likelihood of any workload in future. The petitioner was given purely temporary appointment only to complete the part work occurred due to long leave of Sri Krishna Bahadur Singh.

12. In paragraph 13 of the counteraffidavit it has been asserted by the deponent

that apprehending the termination of the services of the petitioner, the petitioner moved an earlier writ petition, before a Bench consisting of Hon'ble J, N. Dubey, and Hon'ble I. S. Mathur, JJ. on 31/7/1992, wherein the orders dated 12/8/1992 were passed to the following extent :

"List for admission on 12th August, 1992. Meanwhile the petitioner may file supplementary affidavit to bring on record the copy of the impugned order."

13. Thus, the respondents have come up with the story of abolition of post.

14. In reply, Sri Birendra Kumar Srivastava, learned counsel for the petitioner asserted that since juniors to the petitioner are still retained in the post, the plea, of abolition of post cannot stand in the acid test and/ or judicial scrutiny.

15. Having heard the rival submissions of both the parties at length, this Court sitting in summary jurisdiction, under Article 226 of the Constitution of India, is not in position to adjudicate the factual aspect of the matter, but, this Court can take the relevant view that even services of the temporary servant are to be interfered with, as the provision of Rule 5 (I) of U. P. Municipal Boards Servants (Inquiry, Pensions and Termination of Services) Rules, 1960 should be adhered to. The aforesaid Rule 5 (I) of the Rules is being quoted herein below :

"No order (other than an order based on facts which have led to his conviction on a criminal charge) of dismissal, removal or reduction in rank (which includes reduction to a lower post or time scale, or to a lower stage in a time scale but excludes the revision on the ground of general unsuitability for holding the higher post to a lower post of a person who is officiating in a higher post) shall be passed on a servant unless he has been informed in writing on the grounds on which it is proposed to take action and has been afforded an opportunity of defending himself. The grounds on which it is proposed to take action, shall be reduced in the form of a definite charge or charges which shall be communicated to the charged servant and which shall be so clear and precise as to give sufficient indication of the facts and circumstances against him. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. , If he so desires, or if the authority concerned so directs, an oral enquiry shall be held in respect of such of the allegations as are not admitted. At the enquiry such oral evidence will be heard as the inquiring authority considers necessary. The person charged shall be entitled to cross-examine the witnesses, to give evidence in person, and to have such witness called in his defence as he may wish, provided that the authority conducting the inquiry may for sufficient reasons to be recorded in writing, refusing to call a witness. Neither the Municipal Board nor the servant charged shall be entitled to be represented by a counsel. The inquiry proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof. When the punishing authority is different from the inquiring authority the latter may also, separately from these proceedings, make his own recommendations regarding the punishment to be imposed on the

charged servant;

Provided that the provisions of this subrule shall not apply where the person charged has absconded or where it is for other reasons, to be recorded in writing impracticable to communicate with him :

Provided further that all or any of the provisions of this subrule may, for reasons to be recorded in writing, be waived where there is a difficulty in observing such requirements and the nonobservance thereof is not in the opinion of the inquiring authority, likely to result in injustice to the person charged."

16. Admittedly, if it was a case of abolition of post, the respondents can get the benefit of the observations of Hon'ble Supreme Court in the cases of M. Ramanatha Filial v. Kate of Kerala, 1974 (1) SLR (SC), 225, State of Haryana v. Sri Desk Raj Sugar & another, 1976 (1) SLR (SC) 191 and Dr. N. C. Singhal v. Union of India and others, 1980 (2) SLR (SC) 118 wherein it has been held that abolition of post relating to the termination of services does not effect the provisions of Articles 19 (1) and 311 of the Constitution of India.

17. But, in the facts of the present case, since the provision of Rule 5 (1) of the aforesaid Rules has since been violated, the order of termination of services, in my view cannot be sustained in law, and deserves to be set aside.

18. Accordingly, the impugned order dated 20101992 passed by the Executive Officer, Nagar Palika, Mainpuri, being respondent No. 2, set out at Annexure 5 to the writ petition is hereby set aside.

19. The petitioner will be entitled to be reinstated in service, but he will not be entitled to back wages, in view of the facts of present case, and the reinstatement of the petitioner will be treated as reemployment.

20. In case the respondents decide to terminate the services of the petitioner, who is a temporary employee, according to the respondents the respondents have to proceed in accordance with the provision of Rule 5 (1) of the aforesaid Rules, after giving opportunity of hearing to the petitioner, under the provisions of Article 311 (2) of the Constitution of India and will take steps to remove the petitioner. But in that case if the junior to the petitioner are retained in service, steps for regularisation of the services of the petitioner shall be taken by the respondents.

21. Respondents are further directed to consider the continuance of the service rendered by the petitioner and will take steps for regularization of the services of the petitioner in terms of Government orders dated 751992.

22. In the result, writ petition succeed and is allowed in terms indicated above.

23. There shall be no order as to costs.