
(2004) 08 AHC CK 0332
In the Allahabad High Court
Case No : C.M.W.P. No. 45059 of 2003

Swarna Kanti Dixit

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

Citation : (2005) 5 AWC 4238

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : R.B. Trivedi, for the Appellant; U.N. Sharma and Chandan Sharm, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard R.B. Trivedi for Petitioner and Sri Chandan Sharma for Respondent No. 5. Learned standing counsel appears for State Respondents.

2. Brief facts, giving rise to this writ petition, are that the Petitioner was appointed as Stenographer/ Typist, on 7.5.1973, on temporary basis by Regional Food Controller, Kanpur. By a subsequent order dated 26.7.1973 the Regional Food Controller, Kanpur, appointed her on temporary basis on a leave vacancy of Sri M. C. Nigam, Stenographer, who had gone on 35 days earned leave. By a third order dated 15.9.1973, the Regional Food Controller allowed her to continue as Sri M. C. Nigam had not returned back after availing the leave. By a fourth order dated 17.5.1975, the Petitioner was promoted from the post of clerk to the post of Stenographer and that on 12.7.1975 the Petitioner was reverted back to the post of clerk III grade. The Petitioner was again promoted as Stenographer by the Regional Food Controller, Kanpur on 2.2.1977.

3. The Petitioner submitted a resignation letter to the Regional Food Controller, Kanpur, giving her circumstances, and stating that she does not want to serve w.e.f. 8.8.1977 and that her resignation may be accepted. This resignation was accepted on 6.8.1977 and the Petitioner was relieved on 8.8.1977. It appears

that the Petitioner again approached the Regional Food Controller, Kanpur and that by order dated 2.5.1980, the Petitioner and seven other persons were appointed as clerk grade IV on 30.6.1981 on temporary basis and that subsequently after closing of the scheme for procurement of foodgrains in which the Petitioner was appointed on temporary basis, her services were terminated.

4. The Petitioner filed a Writ Petition No. 13541 of 1995, which was disposed of with a direction to decide her representation. This representation was decided by the Regional Food Controller, Kanpur, on 15.5.1995, which was challenged by the Petitioner in a second Writ Petition No. 10734 of 1996 which was dismissed on 27.3.1996. This Court found that the Petitioner's appointment was seasonal in nature and was made for specific duration. She did not acquire any right on the basis of such seasonal appointment in the year 1980-81 and that the Government order dated 13.10.1982 did not confer any right in her favour to claim re-employment. This Court gave her liberty to apply to Regional Food Controller to engage her on seasonal basis/temporary basis, if there is no legal impediment in such appointment.

5. The Petitioner filed Special Appeal No. 329 of 1996. This special appeal was disposed of on 23.4.1996 with the following observations and directions:

It is not disputed before us that though the Appellant was given a seasonal employment during 1980-81, she continued as stenographer in the department till 18.8.1993, when she was denied to work. Therefore, it is not reasonable to hold that the Appellant is not entitled to the benefit of priority consideration for fresh employment on the basis of the Government order dated 13.10.1982.

On consideration of the entire matter, we dispose of this special appeal with the order that if the Appellant files an application for appointment in the future vacancy of the post (stenographer) in the department, her application will be considered by the competent authority in accordance with the Government order dated 13.10.1982 (Annexure-1 to the stay application).

6. The Petitioner thereafter applied for appointment and that the then Commissioner, Food and Civil Supplies, U.P. by his order dated 1.11.1999, rejected her representation. The Petitioner filed a Contempt Petition No. 3877 of 1998. It was disposed of on 28.11.2002 with a direction to examine her matter in accordance with law. In this background the Commissioner, Food and Civil Supplies, U.P. has again considered and rejected Petitioner's representation on 16.1.2003. Aggrieved, the Petitioner has approached this Court for the third time, with same prayers.

7. The Commissioner, Food and Civil Supplies, U.P., found that the Petitioner was appointed in the year 1977 on seasonal/leave vacancy. She had resigned and that her resignation letter was accepted on 6.8.1977. The Petitioner was again appointed in the scheme for procurement of wheat in 1981-82 on 30.6.1981, on ad hoc and temporary basis and that thereafter she had not worked in the department. She gave wrong and incorrect facts in the High Court that she had

worked upto August, 1993, whereas she was not employed in the department after 1981. It was found by the Commissioner that after 1982 the department has not made any appointment on clerical posts, in the office of Regional Food Controller, Kanpur, and that the order dated 13.10.1982 does not give her any rights. The seasonal employees of the Food Department do not fall in the category of retrenched employees and as such the orders of the Personnel Department in respect of retrenched employees are not applicable to such persons. The Supreme Court, in SLP No. 14169 of 1983, Shivdutt Sharma v. Government of U.P. Petition No. 14169 of 1983, while deciding the matters of seasonal employees, held in its order dated 20.1.1984, that ad hoc promotions may be made as per seasonal requirement, specially during the procurement season.

8. The Commissioner also found that one more Writ Petition No. 44659 of 1998 is pending in the High Court in which counter-affidavit has been filed. In these circumstances, he has concluded that the Petitioner's appointment cannot be treated to be regular appointment and she cannot be taken in employment or given any relief.

9. Counsel for Petitioner submits that in pursuance of the order passed by this Court in special appeal dated 23.4.1996, the Petitioner had applied for appointment and that orders were issued by the Commissioner but the Regional Food Controller did not give appointment to the Petitioner. The Commissioner also wrote letters to Regional Food Controller at Saharanpur, Basti, Mirzapur, Azamgarh and Faizabad but no steps were taken to appoint Petitioner failing which she again filed contempt petition in which orders were passed directing the Food Commissioner to appear before the Court and a detailed order was passed, in the contempt petition directing the Petitioner to approach the Food Commissioner for necessary consequential orders. The Contempt Petition No. 3877 of 1998 was, however, rejected by this Court on 1.5.2003.

10. Counsel for Petitioner contends that the Petitioner is a retrenched employee and is entitled to the benefits which are available to the retrenched employee of the State Government namely that they should be given priority in employment in future. He submits that inspite of repeated orders of this Court and directions issued in special appeal, the Respondents have not given due consideration to the Petitioner for regular employment and that all the efforts of the Petitioner and the orders of this Court have not resulted in giving employment to the Petitioner.

11. Sri Chandan Sharma appears for V. V. Singh Vishven presently posted as Secretary, Small Industries, U.P. and impleaded in personal capacity has adopted the counter-affidavit filed by Sri Sachin Kumar, Deputy Regional Marketing Officer, Kanpur Nagar.

12. The Petitioner's right to continue as stenographer were finally decided in Special Appeal No. 329 of 1996, which was filed against the judgment and order

dated 27.3.1996 passed in Writ Petition No. 10734 of 1996. The Division Bench had observed in its order dated 23.4.1996, that it was not disputed before the Court that though the Appellant was given a seasonal employment during 1980-81 when she was denied to work. The Bench found that it was not reasonable to hold that the Appellant is not entitled to be given priority in consideration for fresh employment on the basis of Government order dated 13.10.1982. I find that the statement of facts given in the order dated 23.4.1996, based on admission of the State Respondents, was not accurate. Now after the Commissioner, Food and Civil Supplies, U.P., has investigated into the matter and has gone through the record, he found that the Petitioner was not employed in any capacity after 1980-81. In this writ petition, the Petitioner has not denied the finding of Commissioner, Food and Civil Supplies that the Petitioner had resigned in the year 1977 and that she was given seasonal appointment in the year 1980-81 and thereafter she was not appointed or served in any capacity. The Government order dated 13.10.1982 (Annexure-12 to the writ petition), refers to seasonal/retrrenched employees of the Food and Civil Supplies Department, to claim regular or temporary posts according to their seniority. This Government order cannot give any benefit to the Petitioner inasmuch as she had resigned in the year 1977 and her resignation was accepted on 6.8.1977. In the year 1981-82, she was employed on ad hoc and purely on temporary basis by order dated 30.6.1981, and thereafter she was not employed. She cannot, therefore, claim to be retrrenched employee with sufficient seniority to claim a fresh appointment on the basis of Government order dated 13.10.1982. The Commissioner has also found that the Regional Food Controller, Kanpur has not appointed any such seasonal/ retrrenched employee in his region after 1982.

13. The Petitioner had last worked in the procurement season 1981-82 only upto 30.6.1981. She has no right to claim any appointment or any preference on the basis of such a short term seasonal employment, after twenty years.

14. The Commissioner, Food and Civil Supplies has not committed any error and has not acted arbitrarily or in violation of the orders of this Court in rejecting Petitioner's representation. The writ petition is consequently dismissed. No order as to costs.