
(1985) 02 AHC CK 0045
In the Allahabad High Court
Case No : Writ Petition No. 1152 of 1979

Tej Narain Misra

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 21-02-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1985) 02 AHC CK 0045

Hon'ble Judges : K.N.Goyal, J

Final Decision : Partly Allowed

Judgement

K.N. Goyal, J.—The petitioner was a Family Planning Health Assistant. He was a temporary government servant for about eight years. His services were terminated by the competent authority on payment of one month's pay in lieu of notice by order dated 8376. Against this termination order the petitioner filed, a claim petition. That petition has been dismissed by the Public Services Tribunal. Aggrieved thereby, the petitioner has come to this Court.

2. It appears that a large number of posts of Family Planning Health Assistants had been created for motivating persons to undertake vasectomy and tubectomy operations and to use contraceptives devices. The government found that many officials were not taking sufficient interest in their work and, therefore, it was decided that any such official who had failed to complete even nine vasectomy cases and other family planning work together with which the aggregate was treated to be equivalent to twelve vasectomy cases in a year, need not be retained in service. The petitioner was one of the persons whose services were so terminated. The termination order has been found by the Tribunal to be valid because the petitioners performance was not satisfactory and this unsatisfactory performance formed only the background motive.

3 On behalf of the petitioner, however, reliance was placed on certain subsequent decisions of the Government issued in April and May, 1977. The GOs are annexures 4 and 5 to the writ petition. In those GOs the new Government had

taken the view that if during the years 1975-1976 and 1976-1977 any such Assistant had succeeded in obtaining even one vasectomy case in a year his services need not be terminated and even if any such employee's services had already been terminated then he may be taken back in service. The Tribunal took the view that these GOs could not invalidate the original termination order validly passed earlier.

4 I have heard learned counsel for the parties.

5. The order of the Tribunal does not suffer from any manifest error. So far as the subsequent GOs were concerned, the proper remedy for the petitioner was to have approached the Government for reinstatement on the basis of those GOs and if the Government failed to implement those GOs in his case, then, to have approached this Court for a writ of mandamus. He could not canvass these GOs in support of his claim before the Tribunal about invalidity of the termination. Thus, the Tribunal cannot be blamed for not giving the petitioner redress on the basis of these GOs.

6 However, now that the matter has come to this Court and this Court has inherent jurisdiction under Article 226 of the Constitution to mould the relief suitably, despite the aforesaid procedural lapse on behalf of the petitioner.

7. If others similarly situated as the petitioner have been allowed to be reinstated it will be proper to reinstate the petitioner as well, as was ordered in *Sengara Singh Vs. State of Punjab* (1983) 4 SCC, 225. In that case their lordships, however, did not grant any back wages as the dismissal orders were not found to be void. The petitioners before the Supreme Court were directed to be reinstated prospectively in terms of the directions contained in para 12 of the report. It would, therefore, be proper to grant similar relief to the petitioner.

8. In the result, the writ petition is allowed in part and the opposite parties 1 to 3 are directed to reinstate the petitioner forthwith from the date the petitioner reports for duty. His "services should be treated as continuous, and the period between the date of termination order dated 8/3/76, annexure I, and the reinstatement shall be treated as leave if available and admissible, or leave without pay if leave of any kind is not available. To the extent he is treated as on leave, if any, he should be paid leave salary. He shall, however, not be entitled to any other salary for the period between the date of his termination of service and the date of his reinstatement. The petitioner shall be entitled to the costs of this petition.

(Petition Partly allowed)