

(2004) 01 AHC CK 0211

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35180 of 1997

Tej Prakash Jaiswal and Another

APPELLANT

Vs

Mukhya Nagar Adhikari, Nagar Nigam and Others

RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Citation : (2004) 5 AWC 4405 : (2004) 2 UPLBEC 1182

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : R.G. Padia, Prakash Padia and Shesh Kumar, for the Appellant; S.D. Kautilya and Dinesh Dwivedi and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J.—Heard Dr. R.G. Padia, learned Senior Advocate for the petitioners and Sri S.D. Kautilya, learned Counsel for the respondents.

2. In this petition prayer has been made to quash the order dated 7.10.1997 (Annexure-8 to the writ petition) whereby the services of the petitioners were terminated as they could not achieve in the prescribed proficiency Hindi Typing test.

3. The petitioner, petitioner No. 1 was B.Com. and petitioner No. 2 was B.A. and both were appointed as Dailywagers in Nagar Nigam on 1.9.1988 and 28.9.1988 respectively as a clerk as a dailywage employee and have rendered service. The petitioners were required to appear in Hindi Typing Test where petitioner No. 1 had 25 w.p.m. (words per minute speed) and petitioner No. 2 had 30 w.p.m. as acknowledge: by the respondent authorities, therefore, on the recommendation of the selection Committee and on the basis of marks achieved, they were declared successful. The petitioners were regularised by an order dated 20.3.1997 (Annexure-7 to the writ petition). However, afresh condition was imposed in this order dated 20.3.1997 whereby they were to be show their performance by achieving typing parameter of 25 w.p.m. It appears that on the

basis of subsequent typing test the petitioners could not achieve the required target, therefore, the regularisation order was cancelled and they were directed to work as dailywagers.

4. According to the learned Counsel for the petitioners in their earlier appointment as daily wagers they had already achieved the minimum typing requirement and proficiency and since their main work was not typing however, the selection Committee had acknowledged their proficiency in typing and on its recommendation, their services were regularised on their experience and merits and after regularisation in view of the fresh condition they are not supposed to achieve again a prescribed condition and the petitioners were regularised and for not achieving certain standard in typing test, the status of petitioners was changed without any rhyme or reason arbitrarily more so against the principle of natural justice in view of the judgment. 2002 (1) AC 483 Smt. Anju Tiwari v. District Magistrate/Collector, Etawah, However, according to the learned Counsel for the respondent the case of Smt. Anju Tiwari is not applicable in the facts and circumstances of present case as Smt. Anju Tiwari was appointed on the compassionate ground under U.P. Recruitment of Dependents of Government Servants (Dying-in-Harness) Rules, 1974 where imposition of fresh condition for achieving by an executive officer by subsequent order by the writ petition was not held justified and the action of the respondents was declared illegal.

5. According to learned Counsel for the respondent Sri S.D. Kautilya the relevant rules for recruitment to the post of Clerk and in view of the order March 1, 1963 published in Extraordinary Gazette, Government of Uttar Pradesh Nagar Mahapalika Services (Designations, Scales of pay, Qualification, Conveyance Allowances and Methods of Recruitment) Order, 1963 the candidate for recruitment as a clerk was required to possess High School certificate or equivalent examination certificate and 25 w.p.m. proficiency in Hindi typing and knowledge of English Typing also as additional qualification which at subsequent stage was enhanced and the minimum requirement was Intermediate with a minimum typing speed of 25 w.p.m. in Hindi. According to learned Counsel for the respondent the petitioners might have been tested earlier and achieved typing text more than 25 w.p.m. in Hindi, however, was not found to have achieved the minimum requirement of 25 w.p.m. at subsequent stage. For this purpose learned Counsel for the respondent has relied (1994) 3 UPLBEC 1963 Ved Prakash Sagar and Ors. v. U.P. Financial Corporation and Anr., where the services of the writ petitioners were terminated for not achieving 40 w.p.m of typing as a condition provided in the terms of appointment embodied in pursuance to the advertisement in recruitment as such the termination of the writ petitioners were

6. According to learned Counsel for the petitioner the decision of this Court (Single Judge) in Ved Prakash Sagar (supra) was passed as the writ petitioners were the typists, and their main work was typing, and they were expected to maintain certain standard of typing as an essential condition required in service

as such verdict of Ved Prakash (supra) is not referable and applicable in the present case as writ petitioner was appointed as clerk whose main work was not of typist only and the proficiency in typing is additional need.

7. I have heard learned Counsel for the petitioner, I find that petitioners were earlier appointed as dailywagers and had achieved the proficiency of 25 w.p.m. at that stage and the selection Committee after acknowledging this fact recommended the cases of petitioners and the petitioners were given appointment of as a clerk i.e. since they were above Intermediate and were having proficiency in 25 w.p.m. typing. Keeping in view the recommendations of the selection Committee they were regularised also. Now at later stage a condition of 25 w.p.m. in typing was not necessary to be imposed afresh in the regularisation order as the regularisation was only made keeping in view of the performance experience merits and the recommendation of the selection Committee. In view of the above observations I find that the decision of Ved Prakash Sagar (supra) as referred by respondents is not applicable in the present facts and circumstance and in view of the above observation the order dated 7.10.1997 is not legally sustainable, therefore, it is set aside and the petitioner are to be treated as regular employee and their termination on the ground of not achieving the typing test of 25 w.p.m. in Hindi on the ground of change in service condition of the petitioner is illegal not justifiable. In view of the above the writ petition is allowed. No order as to cost.