
(2009) 02 UK CK 0014
In the Uttarakhand High Court

The State of Uttar Pradesh and Others	APPELLANT
Vs	
Sri Vikram Singh and Another	RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Citation : (2009) 1 UC 701 : (2009) 1 UD 142

Hon'ble Judges : B.C. Kandpal, Acting C.J.; B.S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.C. Kandpal, A.C.J.

1. This writ petition No. 3316 (S/B) of 1997 (New No. 620 (S/B) of 2003), State of U.P. and Ors. v. Sri Vikram Singh and Anr., has been filed by the petitioners challenging the order dated 14.2.1997 passed by State Public Services Tribunal (hereinafter referred to as the "Tribunal") in Claim Petition No. 329/F/II/1988, Vikram Singh v. State of U.P. and Ors. (contained as Annexure No. 1 to the writ petition).

2. It is pertinent to mention here that this writ petition was previously heard by the Division Bench of this Court and this Court allowed the writ petition, vide Judgment and order dated 6.4.2004. The respondent No. 1 against the aforesaid Judgment passed by the Division Bench of this Court filed the SLP before the Hon'ble Apex Court on the ground that no notice was given either to him or his counsel with regard to the transfer of his case to the State of Uttaranchal from the State of U.P., hence, he did not have any opportunity to place his case before the High Court.

3. The Hon'ble Apex Court although dismissed the SLP but gave liberty to the petitioner/respondent No. 1 to approach the High Court. The respondent No. 1 thereafter filed recall application before this Court and in view of the order passed by the Hon'ble Apex Court in SLP dated 3.9.2004, the recall application was allowed on 13.3.2007. With the result, this writ petition has been listed for

final disposal before this Court.

4. Heard Sri P.C. Bisht, learned Brief Holder representing the State-petitioners. None is present on behalf of respondent No. 1- Vikram Singh in spite of the sufficient service upon him. The cause-list also indicates that names of Advocates namely Sri Gopal Narain and Mrs. Nishat Intezar are printed for the respondents. The case was repeatedly called out but neither Mrs. Nishat Intezar nor Sri Gopal Narain have appeared before the Court in order to place their arguments. Therefore, we have heard learned Brief Holder for the State and perused the record in order to decide the petition.

5. Brief facts are that respondent No. 1- Vikram Singh filed the claim petition before the Tribunal for quashing the order by which services of Vikram Singh were terminated. Respondent No. 1-Vikram Singh by way of the writ petition has also prayed for his reinstatement. The grounds taken by Vikram Singh in the petition are that he was employed on the post of "Van Daroga" on 1.10.1971 and is still working as such on that very post. The respondent No. 1 also alleged that his salary for December 1984, January 1985 and February 1985 has not been paid to him in spite of representations made by him. It is further alleged that his pay from July 1986 to October 1986 has also not been paid to him. It is further alleged by respondent No. 1 in the claim petition filed by him before the Tribunal that his salary for February 1987 was paid to him in December 1987 and thereafter he is entitled to get the interest @ 18.5% on delayed payment. The respondent No. 1 further alleged that T.A. bill amounting to Rs. 4500/- has also not been passed so far and one adverse entry for the year 1987-88 has been awarded to him and this adverse entry was received by him on 15.5.1988. Against this adverse entry, he made the representation but the same is pending as yet. It is further alleged that the service of respondent No. 1 has been terminated by order dated 24.9.1988 and thereafter he got his claim petition amended and challenged the termination order also on the ground that no reason whatsoever has been given as to why his services have been terminated. The petitioner, therefore, prayed for quashing his termination order.

6. The case was contested by the State and the State took the plea that respondent No. 1 remained absent from duty and thereafter his leave application for 31.12.1984 to 20.1.1985 was sanctioned as leave without pay. The pay for remaining period was paid to him. The State has also contended that even the pay for July 1986 to 4 October 1986 has been paid to respondent No. 1. It was further pleaded that T.A. bill submitted by respondent No. 1 was defective and the same was sent to respondent No. 1 for correction with the note that whenever the correction would be made by respondent No. 1 in the T.A. bill, the same shall be considered. As far as the adverse entry is concerned, it was pleaded by the State that the same has been correctly awarded to respondent No. 1. Thereafter, respondent No. 1/petitioner before the Tribunal filed rejoinder affidavit reiterating the facts made by him in the claim petition.

7. It is worthy to mention here that respondent No. 1-Vikram Singh filed an

amendment application before the Tribunal and along with the amendment application filed termination order as Annexure No. 3.

8. The Tribunal after having considered the entire material available on record and hearing learned Counsel for the parties came to the conclusion that the services of the petitioner/respondent No. 1 could not have been terminated arbitrarily or without assigning any reason. The Tribunal has also observed that the petitioner/respondent No. 1 had served in the Department for about 17 years and show cause notice was therefore must. The Tribunal accordingly quashed the termination order. The Tribunal further directed that petitioner/respondent No. 1 shall be deemed in continuous service with all consequential benefits, vide Judgment and order dated 14.2.1997. 5

9. Feeling aggrieved by the Judgment and order passed by the Tribunal, the State preferred the writ petition before the Hon''ble Allahabad High Court (Lucknow Bench, Lucknow). The writ petition was transferred after creation of the separate State.

10. The record reveals that the order of termination dated 24.9.1988 was passed indicating therein that the services of respondent No. 1-Vikram Singh were no more required by the Department and he was offered one month's salary in lieu of one month's notice. This order was passed under the Rules known as U.P. Temporary Government Servants (Termination of Service) Rules, 1975. Nothing is indicated in the termination order which may connect any misconduct of respondent No. which could form the termination order to be punitive in nature. We are thus of the opinion that the termination order is a termination simpliciter. The Tribunal fell in error by quashing the termination order without assigning any basis. It is mentioned by the State in the written statement filed by it before the Tribunal that there were various adverse entries in the character roll of respondent No. 1 and he was given warning as well for disobedience of orders of superiors and misconduct. The State also pleaded in the written statement that respondent No. 1 remained absent from duty unauthorizedly on several occasions. Thus, these facts were taken into account while judging the general suitability of respondent No. 1 as to whether he was fit to be retained in service or not and accordingly his services were terminated. 6

11. As we have already observed that that termination order does not disclose any word therein connecting any misconduct of respondent No. 1 which may form the termination order to be punitive in nature. The Hon''ble Apex Court in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, has held that " a temporary Government servant has no right to hold the post. Whenever, the competent authority is satisfied with the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of service or the relevant rules or it may decide to punitive action against the temporary Government servant."

12. In view of the above, the termination order being simpliciter and not punitive in nature, we are of the view that the Tribunal fell in error by holding the order of termination to be order of punishment. The order passed by the Tribunal is, therefore, set aside.

13. For the reasons stated above, the writ petition is allowed. No order as to costs.