

(2006) 08 AHC CK 0071
In the Allahabad High Court

Udai Pratap Singh

APPELLANT

Vs

State of Uttar Pradesh, Basic Shiksha Adhikari and Regional
Deputy Director of Education

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Citation : (2006) 7 AWC 7712

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri H.N. Singh, learned Counsel for the petitioner and learned Standing Counsel for the respondents.

2. The grievance of the petitioner is that he was untrained but engaged as Assistant Teacher in primary School managed by Zila Parishad, Mirzapur since 1963 and onwards but was not permitted to sign the attendance register from 1st July, 1970 by the Head Master of Primary School, Dadhiram, District Mirzapur only on the ground that he is an untrained teacher. It is also submitted that though he has discharged his duties till 1974 but neither he was allowed to sign on the attendance register nor his salary has been paid. Relying on the judgment dated 16th January, 1988 passed by this Court In Writ Petition No. 31621 of 1990 (Durga Prasad Chaturvedi v. District Basic Shiksha Adhikari, Mirzapur), it is contended that the petitioner is also entitled for the same benefit as allowed by this Court in the aforesaid case.

3. Having heard Sri H.N. Singh, learned Counsel for the petitioner and perusing the record, I do not find any force in the aforesaid submissions. In support of the contention that the petitioner was working as Assistant Teacher, he has filed a certificate issued by the Head Master of the Primary School, Dadhiram (Annexure-1 to the writ petition) which shows that the petitioner was never appointed on regular basis but he was engaged from time to time on temporary

and tenure basis and the period of his appointment as mentioned in the certificate filed as Annexure-1 to the writ petition, is as follows:

First Appointment Letter 12.11.1953 to 30.05.1964 Second Appointment Letter 01.08.1964 to 01.05.1965 Third Appointment Letter 01.07.1965 to 31.05.1966 Fourth Appointment Letter 11.07.1966 to 31.05.1967 Fifth Appointment Letter 01.08.1967 to 31.05.1968 Sixth Appointment Letter 01.07.1968 to 31.05.1969

4. The aforesaid chart clearly shows that the petitioner's last appointment was made from July 1969 to 30th May, 1970 and by efflux of time the aforesaid engagement came to an end. There is nothing on record to show that he was further appointed on and after 30th May, 1970. That being so, there is no question of termination of service of the petitioner by the respondents in any manner and the contention of the learned Counsel for the petitioner that he was terminated wrongly cannot be accepted.

5. In Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, the Hon'ble Apex Court held that the appointment made for a fixed tenure comes to an end on the expiry of the period of appointment provided in the letter of appointment and the incumbent need not be terminated as the termination of employment comes automatically by efflux of time.

6. Taking a similar view a Constitution Bench of the Apex Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, of the judgment observed as under:

If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

7. This Court has also taken same view recently in Writ Petition No. 25849 of 2006 (Sarvesh Kumar Singh v. The State of U.P. and Ors.) decided on 11.5.2006 and in Writ Petition No. 28632 of 2006 (Dr. Amar Nath Tiwari v. State of U.P. and Ors.) decided on 23.5.2006. Since there is nothing on record to show that the petitioner was appointed for any period subsequent to 30th May, 1970, the contention that he was wrongly terminated is unsustainable and therefore, rejected.

8. The learned Counsel for the petitioner however, heavily relied on a judgment of this Court in Durga Prasad Chaturvedi (Supra) but a careful perusal thereof would show that it has no application to the facts of the case in hand. In the aforesaid case the petitioner Durga Prasad Chaturvedi was continuing in service when on 1st July, 1971 he was restrained from signing the attendance register on the ground that he is untrained. However, he was paid salary for the period between 1st July, 1970 to 30th September, 1974. Thereafter it appears that he was absent and after about 16 years he was terminated vide order dated 17.10.1990 on account of his absence. This Court found that the termination on account of absence is a penal and such an order which could not have been

passed without giving opportunity and holding inquiry against the petitioner and in these circumstances, the termination order dated 17th October, 1990 was quashed. These facts are apparent from the following extract of the judgment:

The facts have been found by the respondents in the earlier enquiry in the year 1985 that the petitioner was attending the institution regularly for the period between 1.7.1970 to 30.9.1974. In respect of subsequent period the petitioner has explained the circumstances. The conduct of the respondents for passing aforesaid period in year 1985 itself supports that the petitioner was not given proper opportunity for attending the place of work or the training. Apparently, the termination has been effected applying the deeming clause on the allegation that the petitioner remained absent from duty for a long period and in such circumstances the petitioner ought to have been given proper opportunity and the respondents ought to have decided the matter in accordance with law after proper enquiry. In the absence of aforesaid, the impugned order cannot stand.

9. Therefore, Durga Prasad Chaturvedi was not a tenure appointee and he was continuing in service when his services were terminated by a written order on 17.10.1990. The case in hand is entirely different and therefore, the aforesaid judgment does not help the petitioner. He was appointed on tenure basis. His service automatically came to an end by efflux of time and therefore, there was no question of any termination. The alleged oral termination is nothing but at the best may be sent to be an information to the petitioner that by efflux of time he stands disengaged.

10. In view of the aforesaid discussion there is no merit in the writ petition and it is accordingly dismissed without any order as to costs.