
(1975) 07 AHC CK 0028
In the Allahabad High Court
Case No : Civil Revision No. 145 of 1975

U.P.Rajya Sadak Parivahan Nigam

APPELLANT

Vs

Nand Lal Yadav

RESPONDENT

Date of Decision : 25-07-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 311

Citation : (1975) 07 AHC CK 0028

Hon'ble Judges : M.P.Saxena, J

Final Decision : Dismissed

Judgement

M.P. Saxena, J.

This is a defendants" revision application under Section 115, C.P.C. against the judgment and order, dated October 3, 1974 passed by the learned VI Additional District and Sessions Judge, Allahabad.

Briefly stated the facts giving rise to this revision application are that the opposite party was appointed as a conductor in the Roadways Department on February 10, 1973 when there was general strike in that Department. According to the opposite party, an assurance was given to him that all persons who offered their services in the strike period will be absorbed as permanent employees and he too will get a chance to be absorbed. At first he was employed for a fixed term February 20, 1973 to March 31, 1973. Thereafter he ceased to work and was again employed on May 1, 1973 till further orders. All of a sudden his service were terminated on October 12, 1973 without giving any notice or offering one month"s pay in lieu of the notice. The order of termination was based on merits. The plaintiff opposite party, therefore, filed a suit for declaration that he continues to be in the service of the defendant revisionist No. 1 and his services were illegally terminated. He also moved an application for temporary injunction restraining the defendant revisionist from dispensing with his services.

The case of the revisionist was that the plaintiffopposite party was a purely

temporary servant and his services could be terminated without any notice. He was not a civil servant nor any rules were framed regarding the service of such employees. Article 311 of the Constitution of India was not applicable to his case.

After going through the entire material on the record the learned Munsif granted the interim injunction as prayed.

The defendants filed an appeal against the said order which was dismissed by the learned VI Additional District and Sessions Judge, Allahabad mainly on the ground that as temporary employee the defendant (Opposite party) was entitled to one month's notice or one month's pay in lieu thereof.

The defendants have now come up in revision against that order and several points of interest have been pressed before me. In the first place it is argued that the opposite party was employed for a fixed term from May 1, 1973 to June 12, 1973 and his services automatically came to an end on the latter date and he was not entitled to any notice or salary in lieu thereof. I am reluctant to subscribe to this view and a reference may be made to the Annexure filed by the revisionist. Annexure I shows that the opposite party was appointed as a conductor in the pay scale of Rs. 803140 per month plus D.A. with effect from March 20, 1973 upto March 31, 1973. It was clearly specified that his services were purely temporary and liable to be terminated at any time without notice. Other terms and conditions were to be governed by G.O. No. 3014D|XXX125V| 59, dated September 6, 1960 and also under the rules and regulations framed by the corporation. There is not much to discuss about this Annexure because the services of the opposite party and admittedly come to an end on March 31, 1973. There is no controversy before this Court regarding that.

Annexure II shows that on May 9, 1973 the services of the opposite party were again availed of on the same terms and conditions with effect from May 1, 1973. It was specified in this order that his services were purely temporary and could be terminated at any time subject to the G.O. mentioned above. The opposite party started working under this order but all of a sudden on October 12, 1973 an order was passed that he was to remain in service till that date only, i.e., upto October 12, 1973. However, it was further stated that this termination would be subject to other terms and conditions. Another letter (Annexure IV) was issued on the same date, i.e., October 12, 1973 saying that he was employed upto October 12, 1973 and he should deem his services to have come to an end with effect from that date. These annexures go to show that on May 8, 1973 the opposite party was appointed with effect from May 1, 1973 but the period of service was not mentioned. It was on October 12, 1973 that it was mentioned that he was to work upto that date but it is strange that on the same date his services were brought to an end and letter (Annexure IV) was issued. If the terms was fixed by means of an earlier order (dated May 8, 1973) there could be enough scope for argument that he was employed for a fixed term. If notice of termination was given on the same day when his services were brought to an end it could not be said that he was a fixed term employee. Hence the first

contention carries no force.

Alternatively it is argued that the opposite party was a temporary servant of the Corporation and his services could be brought to an end any moment. In this connection reference was made to clause (V) of G.O. No. 3104D|XXX135V|59, dated September 6, 1960 which is applicable to temporary employees of U.P. Roadways also;

"Clause V their services are liable to termination on one month's notice on either side or one month's pay in lieu thereof."

The learned counsel for the revisionist has alluded to a number of cases to show that services of a temporary servant can be terminated any moment and hp can follow his remedy for recovery of one month's pay. I am unable to subscribe to this view because position of such an employee was considered in the case of Senior Superintendent of Police, R. M. S., Cochin v. K. V. Gopinath A.I,R 1972 S.C. 1487. In para 7 it was observed that termination forthwith is to be by way of payment of the sum mentioned. Payment is a condition of the termination of service forthwith. It is true that the opposite party is not a Government servant within the meaning of that term, but is an employee of a Corporation. However, certain terms and conditions of service are prescribed for such employees and according to them the services of such an employees can be terminated by giving one month's notice or one month's pay in lieu thereof. It makes it clear that the termination forthwith is to be by payment of one month's pay to the employee. In the instant case the letter dated October 12, 1973, by means of which it was stated that the opposite party shall remain in service upto October 12, 1973, nowhere mentions that he will be entitled to one month's pay in lieu of notice. There is also nothing on the record to show that at any stage the revisionist offered or even expressed their willingness to pay one month's salary to the opposite party. It will not be out of place to mention that all through the opposite party pressed that he was neither given notice nor any salary in lieu of it was offered to him, yet the applicant did not come forward to say that they were always willing to give one month's pay. Hence even on this principle the termination of defendants services cannot be held to be according to the rules.

Lastly, it is argued that it is a case in which the opposite party could be compensated for by money and injunction should not have been granted. I think the discretion has been properly exercised by both the Courts below. No illegality or material irregularity has been committed in exercising the jurisdiction.

The revision application has no force. It is accordingly dismissed. Costs easy.

Revision dismissed.