
(2013) 04 AHC CK 0180

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 56474 of 2010

Vijay Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 04 AHC CK 0180

Hon'ble Judges : V.K.Shukla, J

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Petitioner in the present writ petition in question is questioning the validity of the order dated 06.08.2010 passed by District Panchayat Raj Officer, Shahjahanpur proceeding to dispense with the service of the petitioner by exercising and invoking authority vested under U.P. Temporary Government Servant (Termination of Services) Rules 1975.

Petitioner was appointed on post of Safai Karmi in the Panchayat Raj Department on 18.02.2009 and pursuant to the same he joined on 21.02.2009. Petitioner submits that his service has been disengaged whereas various incumbents junior to him namely Purushottam Kumar, Sharvan Kumar, Mahendra Pratap, Vipin Kumar, Jai Singh and Radhey Shyam are still working and their services have not been terminated. Petitioner has stated that in all 8 incumbents have been appointed including petitioner and 7 incumbents have been retained and petitioner has been sought to be disengaged.

On presentation of the writ petition in questin this Court on 15.09.2010 invited counter affidavit and thereafter counter affidavit has been filed and therein in paragraphs 5,6,7 and 8 stated as follow:

"5. That the coitnents of paragraph 3 of the writ petition are not admitted as stated, hence denied. However, in reply thereto, it is respectfully submitted that the order dated 06.08.2010 has been passed by the answering respondent after receiving the recommendation/inspection report dated 08.07.2010 submitted by

the Assistant Development Officer, (Panchayat) Block Khutar, District Shahjanpur, under the provisions of Uttar Pradesh Temporary Government Servants (Termination of Service) Rules 1975.

6. That the contents of paragraph 4 and 5 of the writ petition need no reply.

7. That the contents of paragraph 6 of the writ petition are incorrect, hence not admitted and as such denied. However, in reply thereto, it is respectfully submitted that services of the petitioner were not several complaints against him regarding indiscipline, characterlessness by the Pradhan, Gram Panchayat, Pipraiya Bhagwantpur, and Purshottam Kumar SafaiKarmchari, Mandanpur.

8. That the averments made in paragraph 7 of the writ petition are totally incorrect, hence denied. However in reply thereto, it is respectfully submitted that it is absolutely incorrect to say that all of a sudden, an order of termination has been passed against him. In this regard, it is respectfully submitted that after giving one month notice, order of termination has been passed by the answering respondent."

To the said counter affidavit rejoinder affidavit has been filed and thereafter present writ petition has been taken up for final hearing and disposal with the consent of the parties.

Sri V.K. Srivastava Advocate submitted that in the present case service of the petitioner has been arbitrarily disengaged without providing any opportunity of hearing to him and it is clearly reflected that same is punitive and stigmatic in nature and accordingly writ petition deserves to be allowed.

Countering the said submission learned Standing counsel on the other hand contended that service of the petitioner has been disengaged as per the term and condition of the engagement and order in question is not at all punitive and stigmatic in nature and as such writ petition in question liable to be dismissed.

Record in question reflects that eight incumbents which is inclusive of the name of petitioner had been appointed as Safai Karmi by the Department of Panchayati Raj through District Panchayat Raj Officer Shajahanpur. Petitioner has been performing and discharging duty and thereafter order was passed on 06.08.2010 dispensing with the service of the petitioner by exercising and invoking the authority U.P. Temporary Government Servant (Termination of Services) Rules 1975 by mentioning that service of the petitioner are no more required.

Counter affidavit in question clearly reflects that Assistant Development Officer, (Panchayat), Block Khutar, District Shahjahanpur has submitted report on 08.07.2010 and based on the same said report action has been taken on 06.08.2010. The report dated 08.07.2010 has live link with the passing of the order on 06.08.2010 and this fact has been admitted in the counter affidavit that after receiving the recommendation/inspection report dated 08.07.2010 submitted by Assistant Development Officer, (Panchayat), Block Khutar, District Shahjahanpur by exercising and invoking the provision U.P. Temporary

Government Servants (Termination of Service) Rules 1975 services has been dispensed with. Thus, this much is admitted fact that based on said report action has been taken.

This Court has the occasion to peruse annexureCA1 and therein it has been mentioned that petitioner is care less in performing and discharging duty and is indisciplined and his character is doubtful. Assistant Development Officer, (Panchayat), Block Khutar, District Shahjahanpur has proceeded to mention that person like petitioner who are indisciplined and characterless, his services should be terminated and based on the said report action has been taken. Once it was being mentioned that petitioner was indisciplined and characterless and based on the same action has been taken, though it is not mentioned in the impugned order, then opportunity of hearing ought to have been afforded to the petitioner before proceeding to pass such an order so that petitioner could have satisfied the authorities that opinion formed was on totally wrong premises.

Under U.P. Temporary Government Servants (Termination of Service) Rules 1975 services of an incumbent who has been temporarily appointed can be dispensed with in consonance with the terms and condition contained in appointment letter but once action is being taken based on adverse report reflecting upon the character of an incumbent, and the same on its face value is punitive stigmata in nature then before proceeding to dispense with the service of an employee in consonance with provision as contained under U.P. Temporary Government Servants (Termination of Service) Rules 1975 opportunity of hearing is must.

Here in the present case no opportunity of hearing has been provided to the petitioner and on the recommendation made against the petitioner that he is indisciplined and characterless, straight away order of dispensation of service has been passed by mentioning that service of the petitioner are no longer required.

In view of this order dated 06.08.2010 passed by District Panchayat Raj Officer, Shahjahanpur is not at all being approved of and same is hereby quashed and set aside. Looking into the nature of engagement of the petitioner that his engagement is purely temporary employee and petitioner has not at all functioned for all these period, he will not be entitled for any remuneration but he shall be reinstated forthwith and all other benefits shall be admissible to him and it would be open to the respondents to proceed in accordance with law.

With the above direction present writ petition is allowed.