
(2002) 10 AHC CK 0185
In the Allahabad High Court
Case No : C.M.W.P. No. 42802 of 2001

Vijay Kumar Jain

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Constitution of India, 1950 — Article 309
Uttar Pradesh Rules for Recruitment of Ministerial Staff of the Subordinate Offices
Rules, 1950 — Rule 269

Citation : (2002) 5 AWC 4194

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : M.K. Gupta and K.R. Sirohi, for the Appellant; S. Agarwal, A.K. Chaudhary, A.P. Sahi, R.K. Singh and V.K. Gupta and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—By means of this writ petition, Petitioner has sought for quashing the order dated 20.11.2001 passed by the District Judge, Aligarh, terminating Petitioner's temporary services as Reader of newly created court of Additional District and Sessions Judge (Fast Track Court No. 2), Aligarh. Petitioner has further prayed for calling for the record and quashing appointment of Respondent No. 4 in pursuance of circular letter, of this Court dated 25.7.2001.

2. The facts of the case, in brief, are that Petitioner retired as Munsarim-cum-Reader from the judgeship of Aligarh. In pursuance of the recommendations of eleventh Finance Commission, Fast Track Courts have been established temporarily for five years, to clear the back-log of sessions trial court cases pending all over the country. By notification dated 23.3.2001, 182 Fast Track Courts were sanctioned for the State of Uttar Pradesh to be made by Additional District and Sessions Judges. In this case, we are concerned with the staff attached to such temporarily created Fast Track Courts. By the same notification, sanction was given for 182 temporary posts of Readers, 182 posts of

Stenographers, 182 posts of Peons and 36 posts of Drivers. The notification in para 2 made it specifically clear that each post shall be filled by retired officials who shall be paid the salary after reducing their pension. The posts are to be sanctioned every year upto 26.2.2005 and, thereafter, they shall be treated to have caused automatically. The Courts shall be treated to be sanctioned on the basis of one time temporary addition. In pursuance of the aforesaid notification, five temporary Fast Track Courts were sanctioned for the district of Aligarh. On 26.7.2001, the Registrar General issued a circular letter No. 24/J.R. (J) with reference to court's endorsement No. 114/D.R. (S)/2001 dated 15.5.2001 issuing guidelines for ensuring expeditious disposal of cases and also for keeping these Courts confined to disposal of sessions triable cases, criminal revisions and criminal appeals. The earlier endorsement made it clear that sufficient work shall be transferred to these Courts, including the cases of under-trial prisoners who are languishing in jails. Since the statistics sanctioned by the District Courts revealed that Fast Track Courts for the purpose for which they were established is not being achieved due to non-availability of retired civil court employees, those retired employees who were employed were not in a position to cope up with the work and they were not able to own the responsibility of the record and some other difficulties were posed, the following directions were given:

(i) Fast Track Courts should be manned by the senior experienced Additional Sessions Judges so as to fulfill the object for which these courts have been established.

(ii) Where it is not manned by the senior experienced Additional District Judge, District Judge will make over the cases to respective court keeping in view the object of the Fast Track Courts and also to ensure proper administration of justice.

(iii) Where the retired employees are not available or they are otherwise incapable to perform the duties assigned to them, District Judge may proceed to make ad hoc appointments for specified period and any make internal arrangement by providing experienced personnel to these Fast Track Courts and these ad hoc appointees may be posted in other courts so as to make these courts more effective and functional.

(iv) The District Judges should also provide additional hands to Fast Track courts from out of the existing strength where number of courts are already lying vacant in the district.

(v) Necessary infrastructure facilities should be provided to these Courts from the existing stock.

3. The District Judge, Aligarh by his order dated 26.5.2001 constituted a Committee of three Additional Sessions Judges led by Sri S.V.S. Rathor, Additional District and Sessions Judge I, for consideration of the applications, received from the retired hands for temporary appointments of five posts of Readers, five posts of Stenographers and five posts of Peons which were to be

filled up only from the retired persons. The committee vide its report dated 31.5.2001 informed the District Judge that all the retired persons/applicants were called for interview. Written examinations were not proposed, as the employees were retired hands. After taking interview, they reported that only two persons had applied for appointment as Stenographers and since by that time, only two Fast Track Courts had been created, the said two persons were recommended for appointment. For class III posts, 13 applications were received out of which one did not turn up for interview. The Committee screened the records of 12 persons and found that only two employees, namely, Petitioner and one Govind Pal Singh were suitable. The report recommended that they be appointed for six months' probation during which their utility, efficiency and conduct may be considered by the Presiding Officer every month. In pursuance of the said report, which was accepted by the District Judge, Petitioner was issued appointment letter as Reader of the Fast Track Court No. 2 on temporary basis upto 28.2.2002 which can be terminated at any time without issuing notice. By the same order, the Petitioner was made entitled to pay scale of Rs. 4,500-125-7,000 after deducting the pension, interim relief and dearness allowance. The Petitioner assumed charge and started working. On 31.10.2001, the Senior Administrative Officer, Aligarh, submitted a report to the District Judge stating that the retired persons were appointed to the two functioning Fast Track Courts. Looking into the advanced age and physical capacity of retired persons, the High Court by Circular No. 24/J.R.(1) dated 25.7.2001, authorised the District Judge to appoint ad hoc employees. The two retired Stenographers were appointed on temporary basis. However, since under General Rules (Civil) and Circulars issued by the High Court, the Presiding Officers are required to work only in Hindi, the said two Stenographers have been attached to Administrative Office and thus in accordance with the aforesaid circular, dated 25.7.2001, all the five posts of Stenographers and five posts of Class III employees are required to be filled up by ad hoc appointments. He recommended that in case the District Judge finds it proper, ad hoc appointments will be made for all the five Fast Track Courts keeping in view the physical capacity of all these employees. The District Judge by his note dated 31.5.2001 constituted a committee of Sri Rajbir Singh, Additional District Judge as Chairman and Sri S. A. Khan and Sri S. K. Singh, Additional District and Sessions Judges, Fast Track Courts, to consider the suitability of the candidates who had applied for the posts of Stenographers and five posts of Readers and submitted its report. In other words, the report was accepted by the District Judge and he decided to fill up all the five posts of Stenographers and five posts of Readers by ad hoc appointments. He directed a notice dated 31.10.2001 for appointment to these ten posts to be pasted on the notice board of the civil and criminal courts inviting applications.

4. In this case, the record of the applications received and the appointment file was summoned and has been produced before the Court. A total number of 39 applications were received for the aforesaid ad hoc appointment. Almost all the applications open with the paragraph that the applicants have come to know that

there are ad hoc vacancies for which they are applying. The committee vide its report dated 20.11.2001 reported that after going through the certificates and taking interview of the candidates, they have found five persons, including Respondent No. 4, suitable for the post of Clerk and three persons suitable for the post of Stenographers for ad hoc appointment. The report was approved on the same day by the District Judge, Aligarh. On 22.10.2001, one of the members of the committee Sri S. K. Singh, Additional District Judge, Fast Track Court No. 1, reported that the retired Reader attached to his Court is aged and since he does not keep good health, the work is affected and the number of cases desired by Court are not being disposed of and requested that instead of retired hands, some other hands be posted in his Court. In the same day, the District Judge had accepted the report of the committee. The Petitioner and Govind Pal Singh, both retired hands, were selected and appointed as Readers for Fast Track Court Nos. 2 and 1 respectively and were issued letters terminating their services on the ground that their services are no longer required. They were served with the letters on 21.11.2001. It is significant to note that the report of the Selection Committee, its acceptance and termination of Petitioner's services were all accomplished on the same day, i.e., 21.11.2001, and that on the same date, appointment letters were issued to the five Readers and three Stenographers recommended to be appointed by the Committee on ad hoc basis. Subsequently, it appears that Risal Singh, a Stenographer appointed for Fast Track Court No. 3 requested to be relieved and that the same Committee was appointed which recommended appointment of three more persons as Stenographers out of six who had applied on ad hoc basis.

5. In the back-drop of the aforesaid facts, counsel for Petitioner has submitted that notification dated 23.3.2001 authorised engagement of only retired hands subject to adjustment of their pension on temporary basis. The Committee found the Petitioner suitable and recommended his appointments. Sri S. M. Haseeb, Presiding Officer of Fast Track Court No. 2, gave a certificate of satisfactory work to the Petitioner on 1.12.2001. There was nothing on record to show that Petitioner was unfit or that his efficiency had fallen below the standard. His services were terminated only to accommodate fresh hands who were appointed on ad hoc basis without there being wide advertisement, in purported compliance of circular dated 25.7.2001. According to him, the District Judge had used the contents of the circular letter to make ad hoc appointment of his own choice and that Petitioner's services were terminated with mala fide intentions. He also submits that the Supreme Court in Subedar Singh v. District Judge, Mirzapur 2001 (1) AWC 287 (SC): (2000) 1 SCC 37, has held that the District Judge cannot make appointment de hors rules and has held against any ad hoc arrangement to be made by District Judge in making appointment in their Judgships.

6. Sri K. R. Sirohi, appearing for the Respondents has defended the order. He submits that the District Judge was perfectly justified in making ad hoc appointments. The Petitioner is about 62 years of age and has retired from

service in the year 1998. His health is such that he is not capable of coping with the work and his appointment was proving to be detrimental to the work of the Fast Track Court. The appointments were made in accordance with the circular letter dated 25.7.2001 and that since the appointees were new hands, some of them were given appointments on regular sides and experienced hands were brought in to assist Fast Track Courts in discharging its functions.

7. The record does not justify the stand taken by the District Judge, Aligarh. The Committee set up by him in its report dated 31.5.2001, had found the Petitioner and Govind Pal Singh, both retired hands, suitable for temporary appointment in accordance with the notification by which the Fast Track Courts were created. There is nothing on the record to show that the Petitioner's efficiency fell below standard or that he lacked competence and integrity. Although it has been stated in the counter-affidavit that complaints were received against him in spite of repeated orders, the counsel for the Petitioner could not produce any material on the record to show any complaint against the Petitioner. He was also unable to contradict the certificate given by Sri S. M. Haseeb, Additional District Judge, Fast Track Court No. 2, certifying that Petitioner's work has been satisfactory and integrity above board. In the circumstances, there was absolutely nothing on the record to justify termination of his services. The proceedings for ad hoc appointment of five Stenographers and five Readers appear to have been initiated on the report of the Senior Administrative Officer given without ascertaining the facts. He completely mis-interpreted the object and purpose of the circular letter dated 25.7.2001. The Registrar General had communicated the decision of this Court to all District Judges to employ retired employees and where they are not available or are otherwise incapable to perform the duties assigned to them, District Judges were authorised to make ad hoc appointments and to make internal arrangement for providing experienced personnel to Fast Track Courts and posting the ad hoc appointees in other Courts. Para (iv) of the circular letter put a note of caution to the District Judges to the effect that where the Courts are already lying vacant in the district, additional hands to Fast Track Courts may be provided out of the existing strength. The object and purpose of the circular letter was thus, firstly, to find out the capable retired hands, and if they are not available, the additional hands be provided from the existing strength if the Courts are lying vacant and in case these two sources were not found to fulfill the requirement, ad hoc appointments were required to be made for a specified period. This circular could not have been used to dispense with the services of the retired hands even if they were efficient and capable and to engage ad hoc employees and, thereafter, send them to regular side by bringing staff from the existing strength. This Court takes judicial notice of the fact that a number of courts of civil Judges (Senior and Junior Divisions) are vacant to every district, and there is surplus staff which can be easily accommodated in Fast Track Courts.

8. The District Judge, however, accepted the report of the Senior Administrative Officer mechanically and proceeded to form a committee to make ad hoc

appointments. There is absolutely nothing on the record to show that the efficiency and competence of the retired hands had gone down. The two retired Stenographers were sent to the Administrative Office and the two retired Readers, including the Petitioner, were terminated to give way to ad hoc employees. The Senior Administrative Officer is significantly silent about his report about the surplus staff in the strength of his judgship. It appears that the whole purpose was to bring in ad hoc employees for the judgship. The vacancies were not notified in any newspaper and it was not given wide circulation for inviting meritorious persons. All the applicants disclosed that they had come to know about ad hoc vacancies from reliable sources suggesting that the appointments were being offered by private placement.

9. Appointments to the ministerial establishment of civil courts subordinate to the High Court are governed by a set of Rules called the Subordinate Civil Courts Ministerial Establishment Rules, 1947, framed by the Governor in exercise of the powers under Clause (b) of (1) and Clause (b) of (2) of Section 241 of the Government of India Act. The appointment is to be made by the District Judge. These Rules were replaced by recruitment of Subordinate Civil Courts Ministerial Rules, 1950, made under Article 309 of the Constitution of India in supersession of the Rules of 1947. The selection of candidates is made on the basis of competitive test. In *Subedar Singh v. District Judge, Mirzapur* 2001 (1) AWC 287 (SC) : (2000) 1 SCC 37, the Supreme Court has frowned upon ad hoc appointments made by the District Judge in purported exercise under Rule 269 of the General Rules (Civil) for recruitment/engagement of copyists in case of exigency of work, in spite of directions of respective Administrative Judge against such appointments. It was held that these appointments were illegal and were not according to recruitment rules. It appears that the warning has gone unheeded and that ad hoc appointments are being resorted to illegally with purposes other than efficiency and competency of the staff. It may be noticed here that, in the present case, the District Judge did not seek permission of the Administrative Judge or Hon"ble Chief Justice and did not even care to inform the Registrar General about the ad hoc appointments made in the judgship. The ad hoc appointments, as such, made without the need of such persons to be sent on the regular side are held to be illegal and violative of the circular letter dated 25.7.2001.

10. In the facts and circumstances, it has become necessary to clarify that the District Judges shall not resort to ad hoc appointments unless the retired hands are not available. In case the retired hands have been engaged, they shall not be dispensed with unless there are reports and complaints against their efficiency, competence and integrity which are verified by the District Judge after giving opportunity to the person concerned. In such a case, if there is any requirement of additional hands, it shall be taken from the existing strength of the judgship from amongst the Courts which are lying vacant. It is only if the two sources are not sufficient and it is absolutely necessary to make appointment, the District Judge may make appointment after seeking prior approval of Hon"ble the Chief

Justice. In no other case, ad hoc appointment should be made. In case the High Court grants permission for such appointment, the appointment should be made after wide advertisement, having regard, to eligibility and after applying reservation Rules to such ad hoc appointments.

11. The writ petition is, consequently, allowed. The impugned order dated 20.11.2001, passed by the District Judge, Aligarh terminating Petitioner's services is set aside. The Petitioner is directed to be reinstated in service with all consequential benefits as Reader of Fast Track Court. In the facts and circumstances, there shall be no order as to costs.