

(2006) 02 AHC CK 0045

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49716 of 2005

Virendra Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-02-2006

Acts Referred:

Constitution of India, 1950 — Article 141
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2006) 02 AHC CK 0045

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : S.K. Mishra, for the Appellant; R.D. Khare and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—The petitioner was appointed as Routine Grade Clerk on 8.8.1978 and was terminated from service vide order dated 23.1.1980 w.e.f. 1.2.1980. The petitioner raised an industrial dispute alleging illegal termination from service, which was referred to Labour Court, Meerut, U.P. and was registered as Adjudication Case No. 15 of 1982. The Labour Court after hearing the parties by award dated 24.1.1985 directed the respondents to reinstate the workman with continuity of service with full wages and consequential benefits to till the date of reinstatement. The award dated 24.1.1985 was enforced by publication on the notice Board dated 26.4.1985.

2. The U.P. Electricity Board, Meerut filed a writ petition No. 12233 of 1985 challenging the validity and correctness of the aforesaid award. The High Court initially granted stay in favour of the writ petitioner on 28.8.2005. On an application moved by the workman the interim order aforesaid was thereafter modified by order dated 16.7.1986 to the extent that the employers were directed to reinstate the petitioner in service but payment of back wages was stayed. Consequently, the workman was reinstated in service and selection grade

was also given to him by the employer by order dated 16.3.2005.

3. The writ petition No. 12233 of 1985 filed by the employers aforesaid challenging the validity and correctness of the award dated 24.1.1985 was quashed by the High Court vide judgment dated 17.3.2005. The petitioner filed petition for Special Leave to appeal beibre Hon"ble Supreme Court which was also dismissed vide order and judgment dated 10.5.2005 confirming the order dated 17.3.2005 passed by this Court. After the dismissal of the appeal of the workman, the employers called for comments from Deputy General Manager, Electricity Supply Division, Meerut who submitted his report dated 2.6.2005. Subsetqaently the services of the workman were terminated.

4. The contention of learned Counsel for the petitioner is that the petitioner joined his services in the year 1978 and he discharged his duties for near about 27 years. The petitioner is now aged about 50 years and on account of some illegality in the appointment, his services are being dispensed with at the belated stage. In this regard a representation has also been made to the Managing Director, Paschimanchal Vidyut Vitran Nigam, Victoria Park, Meerut stating interalia requesting the respondents not to dispense with the services of the petitioner in the aforesaid facts and circumstances and that the petitioner may be permitted to continue in service till he attains the age of superannuation.

5. From the judgment in Writ petition No. 12233 of 1985, it appears that the selection Committee had not been constituted for recruitment and selection of candidates in accordance with procedure laid down in the regulations but the petitioner was appointed for a period of three months as Routine Grade Clerks only to meet the exigency of work. However, the petitioner was allowed to continue even after expiry of period of three months for which he had been engaged as he managed an order dated 30.5.1979 of the Energy Minister for continuance till regular selection is made. In pursuance thereof the petitioner continued in service subject to availability of regularly selected candidates on his clearing of the coming examination with clear understanding that in case he fails therein, his services stand terminated.

6. A departmental examination for selection of regular candidates was held in which the petitioner appeared alongwith other candidates but could not qualify. In the circumstances his services were terminated with effect from 1.2.1980 vide order dated 23.1.1980.

7. The termination gave rise to Adjudication Case No. 15 of 1982 referred u/s 4-K of the U.P. Industrial Disputes Act to the Labour Court, Meerut as stated above. The reference culminated in an award against the employers, which was challenged by them in Writ Petition No. 12233 of 1985.

It is not the case of workman that the Energy Minister was the appointing authority or that the regulation reflects as such. By now it is well settled that no appointment dehorse the rule can he made and such appointees who come through he back door cannot complaint even if they are thrown by the same

door. The Apex Court in the case of Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others, AIR 1994 SC 1954 and B.R. Kapoor v. State of Tamil Nadu : AIR2001SC3435 has consistently taken this view.

That apart, the specific condition provided in both the appointment letters was that the workman had to clear the examination and it is not denied that he did not clear the examination. Thus, the Labour Court only on the ground that even after failing in the examination, the workman was allowed to continue for sometime has treated the condition as having been waived. The finding of the Labour Court that the workman could have been allowed to sit in subsequent examination also cannot be countenanced. There was no condition in the appointment letter that he would be given opportunity to appear in subsequent examinations till he passes, neither such precedent has been disclosed by the workman nor any such right was claimed by him and therefore even if he continues for sometime, it would be immaterial so far as his reinstatement is concerned.

For the reasons given hereinabove, this petition succeeds and is allowed. The award of the Labour Court dated 24.1.1985 is hereby quashed. No order as to cost.

Sd/-D.P. Singh

Dt:-17.3.2005

8. The aforesaid judgment dated 17.3.2005 was affirmed by Hon'ble Supreme Court in Appeal, being SLP No. 10341 of 2005- Virendra Kumar v. U.P. Power Corporation Ltd. which was dismissed on 10.5.2005.

9. The instant writ petition has now been filed with the prayer for a writ of mandamus restraining the respondents not to terminate the services of the petitioner in pursuance of order dated 30.5.1979 and to take into consideration his representation dated 2.6.2005 and to take a decision thereon. It is further prayed that a writ of mandamus may be issued restraining the respondents not to remove the petitioner from the post of Office Assistant (Grade III), Electricity Supply Division, Victoria Park, Meerut, on the ground that the initial appointment of the petitioner dated 30.5.1979 was illegal.

10. The counsel for the petitioner relied upon a decision of this Court in Special Appeal No. 6 of 1992 decided on 8.8.1994 Rajendra Prasad Srivastava v. District Inspector of Schools, Gorakhpur 1994 A CJ 780 wherein in para 3 it has been held that- But where in spite of it, he has been allowed to work for some years thereafter further under the stay order of the Court-He is-Then it is highly unfair to remove such an employee. Para 3 of the above judgment is quoted here as under:-

It is true that the appointment of the appellant was in violation of Regulation 4 of Chapter III and was as such, "illegal, but he has worked in the institution from

1971 to 1978, when his service was terminated. But this order of termination was stayed by this Court, on account of which he continued to work upto the time when his writ petition was dismissed in August, 1991. It will be highly unfair to remove a person from service after about 20 years, on the ground that his initial appointment was illegal. Division Bench of this Court in Committee of Management v. District Inspector of Schools 1990 1 UPLBEC 189 (Supra) has held that it will be unfair and unjust to unsettle the career of an employee who has worked for about eight years. In Smt. Rani Srivastava v. State of U.P. (supra) another division Bench did not permit the appointment of Head mistress to be put to an end after five years, even though there was infirmity in making her appointment. Supreme Court in Dr. M.S. Mudhol v. S.D. Halegkar (supra) has observed that it would be undesirable to disturb a principal after 12 years on the ground that he was not eligible at the time of his appointment, because it would be iniquitous to make him suffer after such a long time.

11. He has also relied upon an interim order passed in Writ Petition No. 8505 of 2006 Naresh Pal Kaushik v. State of U.P. and Ors. in which according to the petitioner similar controversy is involved.

12. Learned counsel for the petitioner does not dispute the fact that initial appointment of the petitioner was not in accordance with the procedure prescribed under the Regulation and was illegal. He also does not dispute the factum of litigation regarding termination of services of the petitioner which was affirmed by Hon"ble Supreme Court. From the undisputed facts it emerges that-

(1) The petitioner was initially appointed only for three months to meet the exigency of work. His appointment was not in accordance with Regulation.

(2) He continued in service on the basis of order of Energy Minister passed on his application for continuing him in service till regularly selected candidates are available.

(3) The petitioner could not pass the examination held subsequently he continued in service for some time till regularly selected candidate joined the post

(4) The petitioner raised industrial dispute No. 15 of 1982 which was decided in favour of the workman only on the ground that even after failure in the examination, the workman was allowed to continue for some time as such the conditions imposed by the employer stand waiver.

(5) The award granted by the Labour Court was in favour of the workman was quashed by the High Court in Writ Petition No. 12233 of 1985.

(6) The judgment of this Court dated 17.3.2005 was confirmed by the Apex Court vide judgment dated 10.5.2005 in SLP No. 10341 of 2005 by dismissing "he appeal of the petitioner Virendra Kumar.

In the aforesaid circumstances it is admitted fact that in so far as the termination order of the petitioner is concerned, which is confirmed by the judgment of

Hon''ble Supreme Court, which is binding, the observations of the Division Bench in case of Rajendra Prasad Srivastava v. DIOS (supra) would neither overrule the judgment of the Apen Court in the case of the petitioner nor in the circumstances the petitioner could get any benefit from it. The observations made in para 3 of the Judgment of Rajendra Prasad Srivastava v. DIOS (supra) are confined to the facts and circumstances of that case whereas the case of the petitioner has been rejected by the Hon''ble Supreme, Court.

13. The petitioner had remained in service on the basis of illegal appointment and by an order of the Energy Minister. He had taken benefit of his illegal appointment for 27 yeas by keeping the matter continuous in litigation. It is settled law that once a controversy has been concluded it would be deemed that all the legal points argued in the petition and dealt with in the judgment. The matter has been concluded by Hon''ble Supreme Court which is binding upon this Court under Article 141 of the Constitution.

14. In the circumstances, the relief prayed by the petitioner by re-agitating the matter by allowing him in service subsequent to the order passed by Hon''ble Supreme Court can not be granted. This writ petition has no force and is dismissed. No orders as to cost.