
(2006) 01 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 25396 of 2002

Yogesh Verma

APPELLANT

Vs

District Judge

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2006) 3 AWC 2158

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : Vikas Budhwar, Dileep Kumar and Rajeev Gupta, for the Appellant;
Amit Sthalekar, K.R. Sirohi and S.C., for the Respondent

Judgement

D.P. Singh, J.—Heard learned Counsel for the parties.

2. This petition is directed against a termination order dated 31.5.2002 by which the services of the petitioner from the post of watchman in the subordinate courts at Aligarh have been ceased.

3. On an application moved by the petitioner, he was appointed as watchman by an order dated 18.1.2002 in pursuance whereof he joined at Aligarh on 25.1.2002. The impugned order has been passed on the ground that his services were temporary and for not performing his duties diligently.

4. Learned counsel for the petitioner has urged that the order is stigmatic and, therefore, opportunity was necessary.

5. A perusal of the appointment letter shows that the petitioner was given appointment on purely temporary basis which was terminable without any notice. It is not denied that the said vacancy was neither widely advertised in daily newspapers nor names were sought from the Employment Exchange and merely on an application moved by the petitioner, he was granted appointment. A learned Single Judge of this Court in the case of Sachin Kumar and Ors. v. State of U.P. and Ors. (Writ Petition No. 24665 of 2003 decided on 22.8.2005) has

held"... Where the District Judge does not advertise the vacancy and follow any procedure, muchless a fair and reasonable procedure for selection, having due regard to the eligibility and to follow the rules of reservation, the appointments cannot be sustained. The learned Single Judge has considered that even though the appointment was at the sole discretion of the District Judge but the recruitment procedure should be fair, transparent and reasonable and should conform to the tests of equality, non-arbitrariness as guaranteed to all the citizens under Articles 14 and 16 of the Constitution of India. In yet another cause, in the case of Shiv Murti Chandra Mishra and 5 Ors. v. State of U.P. and 17 Ors. (writ Petition No. 57323 of 2005 decided on 25.8.2005) another learned Single Judge has held that even on the post of watchman the recruitment has to be made through a procedure which is in conformity with Article 14 of the Constitution. In the present case, it is not denied by the counsel for the petitioner that no procedure at all was followed for filling up the vacancy, therefore, it is apparent that the appointment itself was in violation of Articles 14 and 16 of the Constitution. A Division Bench of our Court in the case of Executive Officer, Nagar Palika, Firozabad and Ors. v. Rajendra Singh Yadav 2004 (4) E.S.C. 2190 and in the case of Chief Engineer and Others Vs. Pancham Ram and Others, has held that where the appointment is totally irregular no opportunity is required while dispensing with his service. No doubt, it is mentioned in the impugned order that the working of the petitioner was not upto the mark, but that is not the foundation of the order. The foundation of the order is that the appointment was temporary which was terminable without notice and thus in accordance with the condition of appointment letter, the order has been passed and in this particular case the petitioner was not entitled to any opportunity as the order cannot be termed as stigmatic. It is also well settled that a temporary employee does not have any right to the post and that too one whose appointment itself is hit by the principles enshrined in Articles 14 and 16 of the Constitution. Therefore, the contention of the learned Counsel for the petitioner cannot be accepted.

6. No other point has been urged.

7. For the reasons given above, I do not find that this is a fit case for interference under Article 226 of the Constitution of India. Rejected.