
(2004) 01 AHC CK 0205
In the Allahabad High Court
Case No : Writ petition No. 3558 (S/B) of 1989

Zila Parishad

APPELLANT

Vs

Krishna Murari Dixit and Another

RESPONDENT

Date of Decision : 14-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zila Parishad Service Rules, 1970 — Rule 28

Citation : (2004) 3 UPLBEC 2879 : (2004) 2 UPLBEC 1087

Hon'ble Judges : K.S. Rakhra, J; Jagdish Bhalla, J

Bench : Division Bench

Advocate : U.K. Srivastava, for the Appellant; A.K. Bajpai, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rakhra, J.—This is a writ petition under Article 226 of the Constitution of India challenging the judgment and order dated 16.1.1989 passed by the U.P. Public Services Tribunal-III, Lucknow allowing the claim petition of the opposite party No. 1 and setting aside the order of termination of his services.

2. We have heard the learned Counsel for the parties.

3. The opposite party No. 1 was appointed as a temporary Tax Collector in Zila Parishad, Shahjahanpur, vide order dated 18.1.1975 copy of which is Annexure No. 2 to the writ petition. The appointment was purely temporary and was against a temporary post. His services have been terminated by an innocuous order dated 23.2.1981 a copy of which is Annexure No. 3 to the writ petition. The order says that the services of the opposite party No. 1 are no more required and, therefore, they are terminated after giving one month's notice. The opposite party No. 1 challenged the order of termination before the U.P. Public Service Tribunal on the ground that he was a permanent and confirmed employee of the petitioner. He was appointed on probation with effect from 1.4.1979 and that the period of probation was one year. On expiry of the period

of probation he become permanent employee and, therefore, his services could not be terminated by a simple notice as mentioned above.

4. Before the Tribunal, it was admitted by the petitioner, that although the temporary appointment was given to the petitioner in they year 1975, he was appointed on probation for one year with effect from 1.4.1979. The contention of the learned Counsel for the petitioner before the Tribunal was that the opposite party No. 1 could not be deemed to have been automatically confirmed on the post after expiry of one year period and that the period of probation which could be extended under Rules, by one year shall be deemed to have been extended. Since the services were terminated on 23.2.1981 i.e. before the expiry of deemed extension of probation for one year, the services could be terminated in the manner they have been done by giving one month's notice.

5. The Tribunal was of the opinion that after expiry of one year probation period prescribed under Rule 28 of the U.P. Zila Parishad Service Rule, 1970, the probation could be extended only by a written order because the Rule provided that the Appointing Authority may in special cases, extend the probation for a total period not exceeding one year. It was further of the opinion that the termination order, passed almost 11 months after expiry of period of probation was bad as it was not passed within a reasonable time after expiry of one year probation.

6. The learned Counsel for the petitioner has argued that this finding of the Tribunal is not in conformity with the law laid down by the Apex Court

7. In the case of High Court of High Court of Madhya Pradesh thru. Registrar and Others Vs. Satya Narayan Jhavar, , the Apex Court discussed the entire case law on the subject and held that where there is a provision in the Rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend the probation, the inference in such cases would be that the officer concerned is deemed to have been confirmed upon expiry of maximum period of probation, in case before its expiry the order of termination has not been passed.

8. In the case before us, the order of termination has been passed before expiry of maximum period to which the probation could be extended. In the aforesaid case, it was further held that where the service Rules or the letter of appointment prescribed the period of probation and there is also power to extend the same, conferred on any authority without prescribing any maximum period of probation and the employee continues beyond the prescribed or extended period, he could not be deemed to be confirmed. In such cases, there is no bar against termination at any point of time after expiry of period of probation. Thus, in the case before us, there was no question of opposite party No. 1 being confirmed on his post simply because he continued in service after expiry of one year of probation prescribed under the Rules.

9. It is also relevant to point out here that the petitioner has filed a written

statement before the Tribunal in which they took the stand that the petitioner was a temporary employee and was never appointed on probation. His services were terminated as he failed to achieve the target of tax collection fixed for the year and as such the services of opposite party No. 1 were terminated. When the opposite party No. 1 brought on record the appointment order dated 12.7.1979, the petitioner shifted his stand. Further, the opposite party No. 1 in his counter affidavit has annexed copies of certain documents as Annexures A-3 to A-6, which belies the fact that tax collection of the opposite party No. 1 was less than the quota fixed. On the contrary, in these documents, the authorities have mentioned that the opposite party No. 1 and other temporary tax collection were more successful than the permanent Tax Collector.

10. We would like to mention certain happenings, which happened during the pendency of this writ petition. In July, 1991 an application was filed by the petitioner praying therein that the opposite party No. 1 has initiated execution proceeding in pursuance of the judgment and order dated 16.1.1989 passed by the U.P. Public Service Tribunal. On 29.8.1991, when this application came up for hearing alongwith the writ petition, the Counsel for the petitioner, Sri U.K. Srivastava gave an undertaking that the petitioner would reinstate the opposite parties No. 1 on duty within one week and deposit all arrears of salary for which he is entitled. Thereafter, an application for extension for complying the order dated 29.8.1991 with regard to deposit of salary was filed. In the affidavit filed in support of this application, it was indicated that the opposite party No. 1 has been reinstated on the post in question and has been allowed to resume his duties.

11. The submission of learned Counsel for the petitioner that in view of the decision of the Apex Court in High Court of M. P. (supra) the view of Tribunal was erroneous. Be that it may, it is well settled that writ jurisdiction is equity jurisdiction. In a writ petition, the petition has not only to show violation of law, but he must also to show that equity is in favour of the petitioner. Unless both these considerations are in the petitioner's favour, no writ can be issued in his favour. At this juncture we would like to refer the decision of the Supreme Court in the State of U.P. v. Rafique Uddin 1987 SCC 400. In this case, the Supreme Court found the appointment of several candidates of 1970 examinations (Munsif examinations) illegal being contrary to the Rules. However, considering the facts that the candidates have continued in service around twelve years and some of them even had been promoted on higher posts, the Apex Court refrained from striking their appointments.

12. In the case before us, the opposite party No. 1 was reinstated wayback in the year 1991 and at that time, his age as indicated in the affidavit was 45 years. As such, he would either have retired by now or would be at the verge of retirement. It seems that after reinstating the opposite party No. 1 and depositing arrears of salary, the petitioner lost the hope of getting success and as such did not make any efforts for getting the matter expedited, as a

consequence whereof, the opposite party No. 1 continued in service. In these circumstances, the equity is in favour of the opposite party No. 1 and as such, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution.

13. Accordingly, the writ petition is dismissed.

14. Costs easy.