

Subhash Singh Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Jul-22-1997

Reported in : 1998(1)AWC39

Judge : D.K. Seth, J.

Acts : Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975 - Rule 2; [Constitution of India](#) - Articles 14 and 21

Appeal No. : C.M.W.P. No. 8147 of 1994

Appellant : Subhash Singh

Respondent : State of U.P. and Another

Advocate for Def. : S.C. and ;Sabhajit Yadav, Adv.

Advocate for Pet/Ap. : Ashok Kumar Srivastava and ;R.H. Srivastava, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner's services was terminated by an order dated 6.12.1993, Annexure 2 to the writ petition, on the ground that his services were no longer required under the provisions of U. P. Temporary Government Servant (Termination of Service) Rules, 1975. Learned counsel for the petitioner has challenged the said order on

the ground that the said order has been issued by way of camouflage with ulterior design. After the respondents had failed to get the petitioner's removed, pursuant to a disciplinary proceeding in which he was found not guilty and was exonerated without any adverse effect. The said order was passed on 24.10.1993, Annexure 1 to the writ petition. It appears that there is 42 days gap between the order by which the petitioner was exonerated in a disciplinary proceeding and the order of termination and it pre-supposes the nexus with the order by which the petitioner was exonerated. Learned counsel for the petitioner also alleges that the petitioner was not a temporary Government servant within the meaning of the definition 'temporary service' as contained in Rule 2 of the said Rules. Inasmuch as according to him the petitioner was neither on officiating basis nor rendering substantive service on a temporary post. On the contrary he was serving on temporary basis against a substantive post. According to him, he was not officiating on a permanent post. On the other hand, he was appointed temporarily on substantive basis. Therefore, according to him, he does not come within the purview of the said Rule.

2. Sri Sabhajit Yadav, learned standing counsel, on the other hand, contends that there is no distinction between temporary service or 'officiating service' on permanent basis. It is two different coinage with the same nomenclature. According to him, the petitioner was in temporary service, therefore, his services were rightly terminated under the said Rules.

3. In the counter-affidavit, a case has been made out that the petitioner had suffered petty punishment and there were two adverse entries and, therefore, he was unfit for being retained in service. Admittedly, the petitioner was recruited in 1988 and that his services were terminated in 1993, namely, after five years. The petitioner services could be terminated immediately after the petty offence or the two adverse entries. Instead he was allowed to continue for long five years. The respondents considered the situation and decided not to retain him in service on account of his unsuitability. But the order of termination does not put any stigma on the petitioner. The said Rules postulates termination of temporary service without any reason. The only embargo imposed is that of giving one month's notice or notice pay in lieu thereof. In the present case since notice has been

given, the distinction sought to be made by the learned counsel does not appear to be of any substance.

4. Learned counsel for the petitioner relied upon a decision in the case of *Triveni Shanker Saxena v. State of U. P. and others*, (1992) 1 UPLBEC 41, but the said decision does not help him inasmuch as in the said decision, it was held that if the services of temporary employee without casting any stigma is dispensed with, having no panel consequences, in that event nothing more is required for dispensing with his services except payment of one month's salary in lieu of notice or one month's notice. Thus, it appears that the said decision goes against the petitioner's case. But simply because the termination was affected after 18 years of the said case, compensation was paid without interfering with the order of termination.

5. Learned counsel for the petitioner next relied upon a decision in the case of *Om Prakash Goel v. State of U. P. and others*, 1991 (2) UPLBEC 967, wherein it has been held that the termination of service of a temporary employee on the ground that his service was no longer required on the face of fact that the juniors were retained itself shows discrimination, so far as the petitioner is concerned. In the present case, the petitioner has not disclosed as to who are the juniors, who have been retained in service except mentioning that some of the juniors to the petitioner have been retained in service and thereby acted-contrary to Article 14 of the Constitution.

6. In the facts and circumstances of the case, therefore, following the ratio and principles laid down in the case of *Triveni Shanker Saxena* (supra), I do not find any reason to interfere with the order except directing for payment of compensation to the petitioner which I assessed at Rs. 20,000 which is to be paid within a period of four months from the date a certified copy of this order is produced before the concerned respondents.

7. Let a copy of this order be given to the learned counsel for the petitioner on payment of usual charges within a week.

