

**AnaruddIn Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Sep-23-1998

**Reported in :** 1999(1)AWC204

**Judge :** D.K. Seth, J.

**Acts :** Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975; Dying-in-Harness Rules

**Appeal No. :** C.M.W.P. No. 19291 of 1996

**Appellant :** Anaruddin

**Respondent :** State of U.P. and Others

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** A.B. Singh, Adv.

**Judgement :**

**D.K. Seth, J.**

1. The petitioner was appointed in the post of Lekhpal under the Dying-in-Harness Rules. Admittedly, though he possessed the essential qualification but he did not possess the pre-requisite qualification for the post of Lekhpal, viz., the training. In order to be appointed in the post of Lekhpal, a candidate has to undergo training

and requisite examination as provided in the U. P. Land Records Manual in Part-II. A circular was issued on 15.2.1991 to the effect that such untrained candidates appointed under the Dying in Harness Rules should be sent for the same training as are meant for the general candidates with the condition that after the training is over, if he fails in the examination. In that event he would be removed from the service. It is alleged that pursuant to the said circular, he was sent for training but he had failed. By an order dated 2.4.1996, the petitioner's service was dispensed with under the provisions of the U. P. Temporary Government Servants (Termination of Service) Rules, 1975 on the ground that the service of the petitioner was no more required after giving him one month's pay in lieu of notice. This order has since been challenged in this petition.

2. Shri A. B. Singh, learned counsel for the petitioner contends that Part-11 of the U. P. Land Records Manual contains the provisions for maintenance of Lekhpal Schools and the procedure to be followed in respect of such training. Relying on paragraph 226 of Part-11, Chapter XIV, Shri Singh contends that the general candidates selected for training in the Lekhpal School are allowed three chances to succeed in the examination. Since the petitioner has been treated at par with the general candidates for the purpose of training as provided in the Government Order, it should be deemed that he is also entitled to three chances as is available to the general candidates. According to him, the entire contents of the circular has to be reconciled and read together. The different part of the said circular cannot be isolated so as to arrive at different meaning for two different parts. Therefore, the clause providing condition that after the training is over, if the candidate fails he would be removed is to be read along with earlier part where it is provided that he should be sent for the same training for the general candidate. If these two parts are reconciled. In that event, the natural conclusion would be that such candidates would also be eligible to the same advantage as provided in paragraph 226, Chapter XIV of the said manual. He also relies on in support of his contention in a decision in the case of *Surya Nath Pandey v. State of U. P. and others*, 1984 AWC (Suppl) 117. Relying on the said decision, he contends that the examination and the training given to such persons are special, and, therefore, they would be entitled to a special consideration with regard to the Dying-in-Harness Rules. His next contention was that the order of termination does not specify the reason that

his service is being terminated on account of his unsuccess in the examination. He contends that person appointed under the Dying-in-Harness Rules is not subject to the provisions of U. P. Temporary Government Servants (Termination of Service) Rules 1975. On these grounds, he prays that the writ petition should be allowed and the order of termination should be set aside.

3. Mr. V. K. Rai, learned brief holder on behalf of the State Government contends that Part-II of the manual applies to the general candidates who are described as scholar. Therefore, Part-II is not applicable to an employee. The scholar is a person who is selected for a training. The training being prerequisite, it also falls within the definition of prescribed educational qualification. Therefore, unless a person possesses the prescribed qualification he cannot continue in service. He next contends that since a special provision has been carved out and special examination has been provided for the general candidate contained in para 226 of Chapter XIV cannot be attracted with regard to the candidate appointed under the Dying-in-Harness contrary to the Government Order which provides that after the training is over if a person fails in the examination, in that event, he would be removed from service. He relies on the same decision in the case of Surya Nath Pandey (supra) in order to contend that the Government Order dated 24.4.1980 which has been relied on in the said judgment require a special examination. Relying on this observation he contends that if it is a special examination in that event general rule in paragraph 226 cannot be attracted and such special examination should be covered by the Government Order. He relies on paragraphs 6, 7 and 8 of the said judgment in order to contend that an executive authority must be rigorously held to the standard by which it professes its action to be judged and it must scrupulously observe those standards. He also contends that question of giving appointment without undergoing requisite training is dehors the recruitment rules. The Dying-in-Harness Rule, applied to the threshold of the appointment. The provisions contained in Dying-in-Harness Rules does not contain anything that makes it applicable after the appointment is made. Therefore, according him, if the petitioner does not possess the prescribed qualification and a chance is given to him to acquire such qualification and if he is unable to cash in on such chance. In that event, he cannot claim any right to continue. Service of the petitioner was dispensed with under the provisions of the

U. P. Temporary Government Servants (Termination of Service) Rules, 1975 since he was not suitable to be continued in service which fact is well-known to the petitioner which is apparent from the grounds mentioned in the writ petition itself. The said contention has also been supported by the statement made in the counter-affidavit to the extent that the petitioner's service was dispensed on account of his unsuitability due to unsuccess in the training. Therefore, there is nothing illegal in dispensing with the service of the petitioner under the 1975 Rules, therefore the writ petition should be dismissed.

4. I have heard both learned counsel for the petitioner Mr. A. B. Singh and Mr. V. K. Rai, learned brief holder of the State at length.

5. So far as the decision in the case of Surya Nath Pandey (supra) is concerned, the same points out that by virtue of Government Order dated 24.4.1980 such person appointed under the Dying-in-Harness shall be required to appear in the examination held specially for him and on passing the said examination, he would be treated to be trained Lekhpal. However, in the said judgment, the contents of the G. O. dated 24.4.1980 has not been quoted. Neither Mr. Singh nor Mr. Rai has been able to produce the said Government Order dated 24.4.1980. It is, therefore, not possible for this Court, In the absence of the text of the Government Order dated 24.4.1980, to test the said order dated 24.4.1980 in the light of the present circular dated 15.2.1991. In case the special examination is relied on. in that event there are every likelihood of arriving at a conclusion that there are substance in the submission of Mr. V. K. Rai, learned brief holder of the State. Inasmuch as the examination being special, it was something other than what is provided in Part-11. Therefore, the circular dated 15.2.1991 which provides that after the end of the training if the candidate falls he would be removed, has to be stuck to. Since the right has been conferred by virtue of Government Order dated 24.4.1980 which is the Government Order which will govern the condition. But in the absence of any specific materials to ascertain the text of the said order dated 24.4.1980. It is not possible to enter into the said question at this stage. Therefore, the said decision does not help us in order to arrive at the conclusion for our present purpose.

6. It has also not been pointed out that whether the said Government Order dated 24.4.1980 is still in force or has been superseded or not. As it appears from the pleadings made out in the writ petition as well as in the counter-affidavit that the petitioner has been claiming his right on the basis of the order dated 15.2.1991 and the respondents are justifying their action on the basis of the same very circular, therefore, in the facts and circumstances of the case we have no other alternative but fall back on the text of the circular itself.

In the said circular In one sentence, it has been pointed out that if there are any such Lekhpals who were appointed under the Dying-in-Harness Rules and are untrained in that event, they may be given the same training meant for the general candidates of the Lekhpal and be accordingly so sent for such training and after the training is over, if remain unsuccessful in the examination. In that event, they would be removed from service. Since the entire condition is contained in one sentence, therefore, the same cannot be splitted into two parts to give a meaning as has been contended by Mr. V. K. Rai learned brief holder of the State. If it is said that such candidate would be given the same training given for the general candidates, in that event is also includes all the conditions applicable to the general candidate. Since specific standard has been provided that the same training would be given which carved out to be a special condition as special examination as has been held in the case of Surya Nath Pandey (supra). Giving of the training may be aspecial kind of relaxation in regard to the persons appointed in the Dying-in-Harness Rules. They had been given one relaxation in the matter of appointment by giving appointment even without pre-requisite training by reason of their appointment under Dying-in-Harness Rules and thereafter being allowed to the same training meant for the general candidate, in that event, they may be treated at par with the general candidate as scholar if he is unsuccessful at the first chance.

7. In my view. the interpretation which I propose to give is justified on the basis of the sentence as has been provided in the circular itself having regard to the provisions contained in Part II of Chapter XIV of the manual. By reason of such circular as provided that if they would be given three chances if he is unable to succeed in the first examination, in that event he should be treated as the scholar

for the remaining two chances, in that he may not get his salary for the period during which he fulfills the three chances. If he remains unsuccessful even after the third chance, in that event, he may be removed from service.

8. Paragraph 226 of Part-II. Chapter XIV of the manual provides that no candidate should be allowed to appear on more than three examinations unless specially exempted by the Director. Scholars failing to pass in the third attempt shall be removed from the School. Similarly in the present case, scholars failed in the 3rd attempt may be removed from service. Since the candidates under para 226 are treated to be as scholar and person appointed under the Dying-in-Harness Rule is also required to undergo the training meant for the general candidate as a pre-requisite qualification for the post of Lekhpal, such candidate appointed under the Dying-in-Harness Rules is also treated to be as scholar if he failed in the first chance.

9. In that view of the matter, the writ petition succeeds and is allowed to the extent that the impugned order shall be kept in abeyance till the petitioner succeeds in either of the second or third attempt whichever is earlier. In case he fails in the third attempt, the order of removal shall be given effect to. In case he succeeds either in second or third attempt, as the case may be, in that event, he will continue in service and entitle for the salary from the date of passing of the said examination. During the entire period, he will be treated as scholar and is entitled to receive such stipend as is available to the scholar. In view of the above finding, it is not necessary to go into the other points raised by Mr. A. B. Singh as well as Mr. V. K. Rai.

10. It would be open to the petitioner to apply for permission to appear in such examination and if he applies, in that event, the respondents shall allow the petitioner to appear in such examination, that may ensue hereafter.

However, there will be no order as to cost.