

Pramod Kumar Agarwal Vs. State of U.P. and Others

Pramod Kumar Agarwal Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/452676

Court : Allahabad

Decided On : May-29-1997

Reported in : 1998(1)AWC259

Judge : Amarbir Singh Gill, J.

Acts : Uttar Pradesh Regularisation of Ad Hoc Appointments (On Posts within the Purview of Public Service commission) Rules, 1979 - Rule 8

Appeal No. : Writ Petition No. 4918 of 1981

Appellant : Pramod Kumar Agarwal

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Abdul Mateon, Adv.

Judgement :

Amarbir Singh Gill, J.

1. The petitioner has challenged order dated 29.9.1981 (Annexure 4) and seeks a writ in the nature of certiorari for quashing the same.
2. The petitioner was appointed as Marketing Inspector in the Food and Civil Supplies Department on purely temporary capacity on 5.4.1973, vide his

appointment letter, Annexure 1. In the year 1981, he was posted at Kichcha. He had proceeded on leave with effect from 29.7.81 and was still on leave when his services were terminated in terms of his appointment by an order dated 30.7.81, as he was not found fit for regularisation. The petitioner approached the Commissioner. Food and Civil Supplies by way of representation, who, vide his order dated 11.9.1981, cancelled the termination order and the petitioner was posted at Chook Lab, Haldwani. Subsequent thereto, the earlier order of cancellation of termination was set aside by the Commissioner and Secretary. Food and Civil Supplies, Government of U. P. and he was ordered to be appointed on the post of clerk by the impugned order. The petitioner challenges this order on the ground that the petitioner could not have been reverted to the post of clerk, since he was never appointed as clerk and that the Marketing Inspectors Junior to the petitioner have been retained in service. He was not given any hearing or opportunity before passing the impugned order.

3. The case of the opposite parties is that the petitioner was appointed on purely temporary basis as Marketing Inspector and was liable to be terminated on one month's notice. The post of Marketing Inspector falls within the purview of U. P. Public Service Commission. The petitioner was never selected by the Commission. The case of the petitioner was considered under the U. P. Regularisation of Ad hoc Appointments (on Posts within the Purview of Public Service Commission) Rules, 1979 and the selection committee, after considering the character roll and service record of the petitioner, did not find him suitable and accordingly under the provisions of Rule 8 of the Regularisation Rules, 1979 temporary service of the petitioner in the department was terminated on 30.7.81. It is also claimed that after coming to know of the termination order, the petitioner absconded from duty and during absence from duty, he filed a representation on which the report of Regional Food Controller, Garhwal was obtained and the order of termination was recalled. But, however, when correct facts regarding termination of service on the basis of the report of the selection committee came to the knowledge of the competent authority, the earlier order of cancellation of termination order was revoked but in accordance with the prevailing policy of the Government, the petitioner was adjusted/appointed on the available post of clerk. It was denied if it was a case of reversion in any manner. The opposite parties also

referred to the service record of the petitioner which contains adverse entries which were communicated to the petitioner and on the basis of the record, the petitioner was not found suitable by the selection committee. The mere fact that the order of termination was revoked by mistake is no ground to hold that the petitioner was reinstated because at the time of recalling of the order, only the report of Regional Food Controller was considered and when the true facts relating to the petitioner's record were known to the Government, the earlier order was revoked.

4. Learned counsel for the petitioner and the standing counsel have been heard.

5. The facts disclosed above would indicate that the service of the petitioner was purely on temporary basis and the petitioner's order of termination on the basis of unsuitability could not be challenged in any manner. The impugned order mentions that Commissioner and Secretary, Food and Civil Supplies sets aside the order dated 22.9.81 passed by the Food Commissioner because the termination was on account of his not being found suitable for regularisation in accordance with the provisions contained in the notification issued vide G. O. No. 19/8/75(1)-K2, dated 14.5.79 and has ordered to appoint Sri P. K. Agarwal (petitioner) on the post of clerk and he will be entitled to the benefit of his ad hoc service rendered on the post of Marketing Inspector for the post of clerk. A perusal of the impugned order thus mentions fresh appointment of the petitioner as clerk. It nowhere mentions reversion to the post of clerk. The earlier appointment of Marketing Inspector stood terminated by an earlier order dated 30.7.81 which finds reference in Annexure 3, although in between the impugned order and termination order, the order Annexure 3, dated 19.9.81 was passed by the Food Commissioner cancelling the order dated 30.7.81 but the same order was set aside by the impugned order thereby affirming the termination order dated 30.7.81. The petitioner has not challenged the order dated 30.7.81 of the termination of service in this writ petition. He has challenged the order so far as his appointment on the post of clerk, which, according to the petitioner, amounts to reversion to a post on which he was never appointed. Reversion can only be from an officiating post and to the substantive rank of an employee. The contention of the learned counsel that the petitioner could not be reverted to the post of clerk could be accepted, if by the impugned

order the petitioner was reverted to the post of clerk. It also does not amount to reduction in rank because reduction in rank or demotion includes putting an employee in lower scale or to a post in lower scale of pay. It can be by way of reducing to lower stage of pay in the same scale or a transfer without consent from higher post to lower post, i.e., to a position lower in dignity or scale in the same service but the impugned order mentions fresh appointment on the post of clerk. The reduction in rank presupposes an element of punishment. The impugned order does not carry any such intention to punish. Admittedly, the services of the petitioner being not found suitable for regularisation were terminated against which the petitioner had no remedy being temporary hand and having no right to the post and his services were terminated in terms of his appointment. Even a case of reduction in rank can be considered only if the employee has any right to hold the post from which he is either removed or reduced in rank. Admittedly, a temporary employee has no right to the post. The opposite parties in the counter-affidavit have clearly indicated that the appointment of the petitioner on the post of clerk was in accordance with the policy of the Government in respect of the employees who are not found fit for regularisation and who can be adjusted against available posts. In the rejoinder-affidavit, the petitioner has not denied specifically if there was no policy of the Government.

6. It was also contended that benefits of the petitioner's earlier service have been given to the petitioner for seniority purposes. It appears that the benefit of the earlier service with the Government as temporary hand has been extended to the petitioner to his new post in accordance with the same policy under which he has been adjusted against the available post of clerk.

7. In view of the above, the impugned order is neither an order of reversion nor reduction in rank rather it being order by which the petitioner has been given fresh appointment on the post of clerk, services of the petitioner as Marketing Inspector having been terminated earlier, which the petitioner has not in any manner challenged in this petition.

8. The contention of the learned counsel that other persons Junior to the petitioner were retained finds specific answer in the counter-affidavit that the names

mentioned in the writ petition are of those persons who were found suitable for regularisation by the selection committee and on the basis of which their services have been regularised and retained. There can be no grievance of the petitioner against the Marketing Inspectors whose services have been regularised on the basis of their own service record.

9. It was lastly contended that the petitioner is still working as Marketing Inspector, as after the impugned order the petitioner was allowed to work in the same capacity on the basis of an interim order of this Court dated 1.10.81 when the operation of the impugned order dated 29.9.81 was stayed. As indicated above, the petitioner lg to get the benefit of his service rendered as Marketing Inspector for the benefit of seniority on the new post. The petitioner can look forward to further promotions on the basis of his service record and criteria of eligibility.

10. There is no merit in this petition and the same is dismissed.