

Anil Kumar Azad and Others Vs. State of U.P. and Others

Anil Kumar Azad and Others Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/460133

Court : Allahabad

Decided On : Jan-10-2001

Reported in : 2001(1)AWC702; [2001(89)FLR583]; (2001)1UPLBEC884

Judge : O.P. Garg, J.

Appeal No. : C.M.W.P. No. 20060 of 1999

Appellant : Anil Kumar Azad and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C., B.D. Madhyan, Adv.

Advocate for Pet/Ap. : Ashok Khare and ;V.D. Chauhan, Adv.

Judgement :

O. P. Garg, J.

1. The petitioners, who are three in number, were appointed in Krishi Utpadan Mandi Samiti Chhibramau in district Kannauj. Petitioner No. 1-Anil Kumar Azad who happens to be a scheduled caste was appointed as Mandi Assistant on 14.6.1996 and he joined on the said post on 17.6.1996. Ram Kishore, petitioner No. 2 belonging to the backward class was appointed as Mandi Sahayak by order dated 14.5.1997. He joined on the same date. Ahsan Ali, petitioner No. 3 was appointed as Mandi Abhirakshak on 8.9.1997. Pursuant to the decision taken by the State

Government on 12.2.1999 and the resolution adopted by the Mandi Parishad on 9.3.1999, the services of all the three petitioners were terminated by separate orders dated 15.3.1999, copies whereof are Annexures-6A, 6B, 7A and 7B. They were paid one month's salary in lieu of police besides the requisite amount of compensation.

2. The petitioners have alleged that their past antecedents have been neat and their work and conduct have been quite satisfactory. Therefore, there was hardly any occasion to terminate their services as their appointments were made till the regularly selected candidates were available to replace them. The validity of the Government Order dated 12.2.1999 on the basis of which the resolution was adopted by the Mandi Parishad and the termination orders were passed by the Mandi Samiti has been challenged on a variety of grounds.

3. The stand taken in the counter-affidavit filed on behalf of the respondents is that the petitioners were appointed in temporary capacity and on a fixed remuneration as a stop-gap arrangement on a clear understanding that their services were liable to be terminated at any time without notice and since the petitioners had no right to the posts on which they were appointed, they cannot complain against the orders by which their ad hoc appointments have been brought to an end.

4. Counter and rejoinder affidavits have been exchanged. Heard Sri Ashok Khare, senior advocate, assisted by Sri V. D. Chauhan for the petitioners and Sri B. D. Madhyan, appearing on behalf of the respondent Nos. 2 to 4 as well as learned standing counsel for respondent No. 1. State of U. P.

5. At the outset, it may be mentioned that hundreds of persons were appointed in the various Mandi Samitis all over the State of U. P. during the relevant period on ad hoc basis in temporary capacity and for fixed period liable to be extended from time to time. In some cases, the salary was to be paid in the regular pay scales while in others, consolidated amount of remuneration was made payable. One thing common in all the appointments, however, was that the services of the persons so appointed were terminable at any time without notice. The appointees, therefore, had no right on any particular post.

6. It appears that there arose a difficulty in absorbing the employees so appointed and in spite of the fact that the departmental authorities were chalking out a scheme for absorbing them on different posts or to confer regular appointment in a phased manner, the State Government, on the reference made by the Director, Rajya Krishi Mandi Utpadan Parishad, passed an order on 12.2.1999 taking the policy decision that the services of all such employees be terminated. Pursuant to the orders passed by the State Government, the Mandi Parishad adopted a resolution on 9.3.1999, which was circulated to the Mandi Samitis for compliance. The services of the employees who were appointed during the relevant period were terminated on different dates. The orders passed by the State Government, the resolution adopted by the Mandi Parishad and the termination orders passed by the Mandi Samitis concerned gave rise to a spate of petitions before this Court as well as its Lucknow Bench. One such petition No. 40563 of 1999 was filed by Mukesh Chandra, which was decided by this Court (Hon'ble Mr. V. M. Sahai, J) on 27.10.1999 : 2000 (1) ESC 558 (Alld). In paragraph 36 of that decision, the following directions were issued :

'For the reasons stated above, this petition succeeds and is allowed. The order dated 11.6.1999 passed by respondent No. 3. Annexure-4 to the writ petition is quashed with following directions :

(1) The petitioner shall be reinstated and shall be permitted to continue as clerk till regular selections are held ;

(2) The respondents shall hold regular selection for the vacancies within six months from today. The petitioner shall be permitted to participate in it. If he has become overage, he shall be granted age relaxation.

(3) The petitioner was appointed by the Additional Director on the recommendation of the Deputy Director. He worked as a clerk from the date of his appointment till the date of his termination. He was paid Rs. 1,400 per month only. He shall be paid the difference in the emoluments paid and the salary payable to a clerk within three months from today ;

(4) The appropriate authority under the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, U. P. Agriculture Produce Markets Board (Officers and Staff Punishment) Regulations, 1984 and the U. P. Agriculture Produce Market Committees (Centralised) Service Regulations, 1984 or the State Government, as the case may be, shall initiate action against both the recommending and appointing authority departmentally and by initiating criminal proceedings ;

(5) It would be open to the respondents to recover the amount spent on salary in excess of 10% from the appointing authorities and if recommending authorities are involved, then proportionately from both ;

(6) A copy of this judgment shall be sent by the office within a week to the Chief Secretary, State of Uttar Pradesh to ensure that the directions are complied.'

Another Writ Petition No. 955 of 2000 filed by Vinai Kumar Shukla came to be decided by this Court (Hon'ble Mr. S. R. Singh, J) on 24.2.2000. It was allowed in terms of the directions (aforesaid) issued in Mukesh Chandra's case (supra). As many as 102 writ petitions (leading of which was Writ No. 1346 of 1999-Mukesh Kumar v. U. P. Rajya Krishi Utpadan Mandi Parishad and others) were decided by a common judgment dated 11.8.2000 by the Lucknow Bench of this Court (Hon'ble Mr. Bhanwar Singh, J) in which the following direction was issued :

'Having regard to the discussions made above, I am inclined to hold that written and verbal termination orders of the petitioners issued by the authorities at the dictation of the Government as contained in letter dated 12.2.1999 are arbitrary, unreasonable and discriminatory and, therefore, all such termination orders along with their irrational impugned letter of source dated 12.2.1999 are hereby quashed. A writ of certiorari is issued accordingly. Further, a writ of mandamus is also issued commanding the opposite parties to allow the petitioners to resume their duty with immediate effect. They shall be deemed to have continued in service and as such, they shall be relegated to their original position. However, they will not get their back wages. The U. P. agricultural Produce Market Board shall within six months resolve and formulate a policy to deal with the terms of their service by giving due consideration to its earlier resolution regarding regularisation of their services. The Board will also take step to

ensure that such an oddsituation to the embarrassment ofthe competent authorities doesnot arise in future.'

Another case Rqjneesh Varshney and others v. State of U. P. and others, Writ Petition No. 537 of 1999 (SB), filed before Lucknow Bench) was decided by a Division Bench (Hon'ble Mr. Ashish Kumar Trivedi. J. and Hon'ble Mr. R. D. Mathur. J) on 5.9.2000. The decision dated 11.8.2000 of the learned single Judge in Mukesh Kumar's case (supra) was approved. Fifty six more writ petitions (of which leading case was Writ Petition No. 25376 of 1999-Manoj Kumar and others v. U. P. Rajya Krishi Utpadan Mandi Parishad and others), were decided by this Court (Hon'ble Yatinder Singh, J) on 10.10.2000 in terms of Mukesh Kumar's case (supra).

7. In the conspectus of series of aforesaid decisions, Sri Ashok Khare, learned senior advocate urged that the case of the present petitioners is squarely covered and the benefit extended to the petitioners in the writ petitions, aforesaid, has, of necessity, to be made available to the present petitioners also.

8. This submission has been repelled by Sri B. D. Madhyan who argued that the decisions, aforesaid, are clearly against law laid down in Arvind Kumar v. Director Rajya Krishi Utpadan Mandi Parishad Lucknow and others. 1999 (2) AWC 1638, Qmar Vishal Siddhiqui v. Director Krishi Utpadan Mandi Parishad U. P. Lucknow and others. (1999) 2 UPLBEC 998 : Employees Union of Mandi Assistants through its Secretary Ravindra Kumar and others v. Director U. P. Krishi Utpadan Mandi Parishad and others, decided on 20.11.1997 ; Special appeal arising out of the aforesaid writ petition (Special Appeal No. 8 of 1998 decided on 12.1.1998) ; and Mohan Pandey v. The Director/Addl. Director of Rajya Krishi Utpadan Mandi Parishad U. P. and others, in Civil Misc. Writ Petition No. 26272 of 1998 decided on 6.8.1998 as well as in the decisions of the Division Benches of this Court in the case of Raja Ram Maurya v. U. P. Rajya Krishi Utpadan Mandi Samiti and others, 1998 (1) UPLBEC 690, and another Division Bench decision dated 13.11.2000 in Writ Petition No. 1093 of 1999-Ansrtuman Mishra v. State of U. P. and others.

9. So far as the cases of Arvind Kumar (supra) : Qmar Vishal Siddiqui (supra) ; Employees Union of Mandi Assistants through its Secretary Ravindra Kumar and

others (supra) and Mohan Pandey (supra) are concerned, they are the decisions of the Hon'ble single Judges and were rendered prior to the decision in the case of Mukesh Kumar (supra). Since Mukesh Kumar (supra) has been approved by subsequent Division Bench in the case of Rajneesh Varshney (supra), all the above decisions rendered by Hon'ble single Judges are of no assistance and the reliance on them is misplaced. The decision dated 12.1.1998 in Special Appeal No. 8 of 1998, Employees Union of Mandi Assistants (supra) though has not disturbed the decision of the learned single Judge, a direction was issued that the affected employees shall make a representation to the authorities concerned. This decision also does not appear to be of much help in view of the discussion which is now to follow.

10. A short and swift reference may also be made to the decision in the cases of Mithlesh Kumar Pandey v. State of U. P. and others, in Civil Misc. Writ Petition No. 41671 of 1996 decided on 5.3.1997 ; Arvind Kumar Agarwal v. State of U. P. and others, in Civil Misc. Writ Petition No. 17521 of 1990 decided on 28.10.1997 ; Girish Kumar Mishra v. District Inspector of Schools Shahjahanpur and another, 1999 (1) ESC 47 (Alld) ; Ashwani Kumar and others v. State of Bihar and others, AIR 1997 SC 1628 ; Dr. Sharan Kumar Singh Chauhan v. State of U. P. and others, 2000 All LJ 1268 and Himanshu Kumar Vidyarthi and others v. State of Bihar and others, AIR 1997 SC 3657. All these decisions are not directly on the point. Mithlesh Kumar Pandey (supra) deals with the matter of transfer. Other decisions laid down certain principles of law in an entirely different set of facts. There can be no quarrel about the principles of law laid down in the said cases, but certainly they are not res integra.

11. The two crucial cases of the Division Benches are those of Anshuman Misra (supra) and Raja Ram Maurya (supra) rendered by Presiding Judge Hon'ble S. H. A. Raja, J. in which a view contrary to the view taken in the decisions relied upon by Sri Ashok Khare has been taken on the ground that the appointments de hors the regulation were bad in law. Anshuman Misra (supra) was decided by placing emphatic reliance on the observations made in paragraphs 30 and 31 of Raja Ram Maurya (supra), which are quoted below :

'30. In the present cases before us, the petitioners have no lien on the posts of Assistant Engineer. They were asked to work as Assistant Engineers as a stop-gap arrangement which de-hors the rules. The return from the back door from which they entered, cannot be subjected to judicial scrutiny. Since the order of their promotion as stop-gap arrangement to the posts of Assistant Engineer was made in violation of the Service Regulations, the illegality committed in passing the order of promotion has only been corrected by means of the impugned orders. In such a situation the petitioners were not required to be given an opportunity of being heard for correcting such a mistake or illegality.

31. The action of the Director of Mandi Parishad who has passed the impugned orders cannot be faulted because he was bound to follow the direction of the State Government as contained in Section 26M of the Act. The State Government has the power to issue such directions under the Uttar Pradesh State Control Over Public Corruption Act, 1975 also.'

12. In Anshuman Mishra's case (supra), it was further observed that the Division Bench decision in Rajneesh Varshney's case (supra) was per incurium, as it did not take notice of the earlier decision in Raja Ram Maurya's case (supra). I have given thoughtful consideration to the matter and find it difficult to persuade myself to agree with Sri Madhyan. Anshuman Mishra's case (supra) is primarily based on the observations made in paragraphs 30 and 31 (abovequoted) in Raja Ram Maurya's case (supra). The facts in Raja Ram Maurya's case (supra) are altogether different and the observations made in that case do not squarely apply to the facts of the present case as well as the cases which have been decided in favour of the employees whose services were terminated. In Raja Ram Maurya's case [supra], the Mandi Parishad had taken a decision to promote the Junior Engineers as Assistant Engineers without obtaining previous approval regarding sanction of posts. Since the Junior Engineers themselves were working on ad hoc basis, their appointment as Assistant Engineers on promotion would have certainly been against the public policy because their appointment on promotional post would have been substantive and such a backdoor entry would have been injurious to the cause of public and against the Regulations. 1965 as well as 1984. The contention of Sri Madhyan, learned counsel for the Mandi Parishad is correct

that the appointment on the substantive post without taking recourse to the prescribed procedure as laid in the two Regulations, referred to above, is illegal and it was on the basis of the same rationale that the Court upheld in the case of Raja Ram Maurya's case (supra) that the Government could lay down a policy and issue directions to the Board if illegal appointments are proposed to be made by the Mandi Parishad or Mandi Samitis. In the instant case, as well as the decisions, which have been made in favour of the employees of the Mandi Samiti, neither the Mandi Parishad nor the Mandi Samitis has made any regular appointment. Raja Ram Maurya's case was considered and distinguished in Mukesh Kumar's case (supra), decided on 11.8.2000 in the following terms :

'.....Hence, in these cases, neither the Mandi Parishad nor the Mandi Samitis has made any regular appointment and as conceded on behalf of Mandi Parishad and also mentioned above, never before or after the cut off period, regular appointments have been made. The Government could have certainly issued some directions by evolving a policy and suggested ways and means to deal with the appointment of ad hoc employees. Section 26F clearly postulates that the Board will make all appointments of officers and servants in accordance with the terms and conditions as may be provided for in regulations made by the Board.'

I am in full agreement with the observations made above and find that the various observations made in Raja Ram Maurya's case (supra) are to be confined to the facts of that case only and whatever has been averred, canvassed and determined in that case is not applicable on all fours to the facts of the present case. Mukesh Kumar's case has been specifically approved by a Division Bench in Rajneesh Varshney's case (supra) which was decided on 5.9.2000. Sri B. D. Madhyan appearing on behalf of the Mandi Parishad and others frankly conceded that the State Government had taken a decision on 22.9.2000 not to file a special appeal against the decision in Mukesh Kumar's case (supra). Similar decision was taken by Mandi Parishad on 9.10.2000. The petitioners covered by Mukesh Kumar's case (supra) have been permitted to join on their respective posts. It is, thus, clear that the State Government as well as the Mandi Parishad have treated the decision in Mukesh Kumar's case (supra) as final and have implemented the same. Therefore, there does not appear to be any occasion for this Court to take a

view different from that, which has been taken in the case of Mukesh Kumar's (supra). The petitioners are obviously entitled to the benefit of the decision in the said case.

13. The writ petition is allowed and the impugned orders dated 15.3.1999 terminating the services of the petitioners are hereby quashed on the basis of the reasonings adopted in Mukesh Kumar's case (supra), which squarely applies to the case of the present petitioners. The petitioners shall be deemed to have continued in service and as such, they shall be relegated to their original position. The petitioners, however, shall not be entitled to back wages. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com