

Vinod Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-19-2004

Reported in : (2004)1UPLBEC1008

Judge : R.B. Misra, J.

Acts : Uttar Pradesh Temporary Government Servant (Termination of Service) Rules, 1975 - Rule 3(2); [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 17665 of 1990

Appellant : Vinod Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : Raj Kumar, Adv. and ;S.C.

Advocate for Pet/Ap. : I.M. Tripathi and ;Raj Singh, Adv.

Disposition : Petition dismissed

Judgement :

R. B. Misra, J.

1. Heard Sri Indra Mani Tripathi, learned Counsel for the petitioner and Sri Raj Kumar, learned Standing Counsel, for the State respondents.

2. Restoration application has been filed on behalf of Sri Indra Mani Tripathi, learned Advocate, for recalling the order dated 25.2.2002. Justification given in the restoration application is sufficient, therefore, the restoration application No. 103444 of 2002 is allowed, order dated 25.2.2002 is recalled and the present Writ Petition No. 17665 of 1990 is restored to its original number and is being heard and decided on merits.

3. In this petition prayer has been made to quash the order dated 13.4.1990 (Annexure-2 to the writ petition), where by the petitioner's service was terminated by an order simplicitor.

4. It appears that after retirement of one Sri Jagjit Singh, regular collection peon the petitioner was give appointment absolutely temporary basis as a collection peon on 15.1.1990 by Sub-Divisional Magistrate, Sadabad, and after about three months the petitioner's service was terminated by an order simplicitor.

5. When this termination order was challenged by way of present writ petition, this Court was pleased to pass an interim order dated 19.7.1990 staying the operation of the impugned order dated 13.4.1990, however, despite the stay order the petitioner was never reinstated into service.

6. According to the petitioner, he was appointed against a clear vacancy after retirement of regular collection peon and, as such, the petitioner's appointment could never be held as ad-hoc. According to the petitioner since the petitioner was temporary employee, as such, his service could only be terminated by observing provisions of U.P. Temporary Government Servant (Termination of Service) Rules, 1975 (hereinafter in short called as the Rules, 1975) because as per Rule 3 (2) of 'Rules, 1975' least one month notice was required to be given prior to passing the termination order as a mandatory requirement. Since no notice was given to the petitioner, as such, there is a clear violation of Rule 3 (2) of Rules, 1975 in terminating the service of the petitioner by a non-speaking order, more so, without assigning any reason and without referring any order that the ad-hoc appointment was stopped by the State Government.

7. Counter affidavit has been filed indicating that the petitioner had not worked upto 22nd May, 1990 as his service was terminated on 13th April, 1990 by the order of the Sub-Divisional Magistrate, Seedbed, Mathura. As contended on behalf of respondents that there was no recruitment to the said post, no selection Committee was constituted and names were not invited from the Employment Exchange and the appointment of the petitioner was made absolutely temporarily on ad-hoc basis and the petitioner's appointment was not an outcome of the proper selection. According to the respondents, even if the petitioner's appointment was made on temporary basis, his service could have been terminated in view of the provisions of 'Rules, 1975' by an order simplicitor and even the petitioner could have been punished after disciplinary inquiry, however, the temporary employee shall have no right to the post and such employee cannot claim to set aside the termination order passed simplicitor in view of the decision of the Supreme Court in 1991 (1) SCC 691, State of U.P. v. Kaushal Kishore Shukla. As held by the Supreme Court in Kaushal Kishore Shukla (supra), the temporary Government servant has no right to hold the post and his services are liable to be terminated in accordance to the terms and conditions of appointment and such termination is neither arbitrary nor discriminatory. Following Kaushal Kishore Shukla (supra), the Supreme Court has further held in (1997) 11 SCC 437, State of U.P. v. Krishna Kumar, that when an incumbent is terminated by an order simplicitor in the light of Rules, 1975' the provisions of Article 311(2) of [Constitution of India](#) are not attracted. According to the respondents, since the petitioner was appointed absolutely temporarily on ad-hoc basis, therefore, in terms of the appointment the dispensation of service of petitioner or not renewing his contractual employment without assigning any reason is not a retrenchment or illegal in view of 1997 (11) SCC 521, Escorts Ltd v. Presiding Officer and Anr., decided by considering the verdict of (1994) 2 SCC 323, M. Venugopal v. Divisional Manager, L.I.C. The petitioner was not even having status of temporary employee, therefore, he could not claim observance of 'Rules, 1975'. According to the respondents the conditions of petitioner was worse than a temporary employee as the petitioner was only ad-hoc employee.

8. I have heard learned Counsels for the parties. I find force in the contentions of opposite parties. The petitioner being an ad-hoc employee has no right to the post

and as such is service has rightly been dispensed with by an order simplicitor recording of reason of any kind what to say of referring of restrictions on appointment of employee, as on ad-hoc basis is not necessary to be mentioned in the order simplicitor. I do not find any illegality and impropriety in the said impugned termination order dated 13.4.1990. In these circumstances, this Court is not inclined to invoke its extraordinary discretionary jurisdiction under Article 226 of the Constitution, therefore, the writ petition is dismissed.

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