

Santosh Kumar Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Jan-07-1993

Reported in : (1993)IILLJ557All; (1993)1UPLBEC322

Judge : R.A. Sharma, J.

Appeal No. : C.M.W.P. Nos. 14969 and 20223/1992

Appellant : Santosh Kumar

Respondent : State of U.P. and anr.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ashok Bhushan, Adv.

Disposition : Petition dismissed

Judgement :

R.A. Sharma, J.

1. Vide Government Order dated November 7, 1990 Family Court at Agra was established for the period upto February 28, 1991. For that Court 13 posts, including six posts of Class IV employees, were sanctioned and these posts were also to continue upto February 28, 1991. The petitioner appeared in the test for appointment to the post of copyist on ad hoc basis and was selected and

appointed ad hoc copyist in the Family Court at Agra on April 12, 1991. There was also a post of stenographer for the Court and no stenographer having been selected, the petitioner was appointed on ad hoc basis as stenographer vide order dated May 1, 1991 for fixed term upto June 30, 1991, with the condition that the appointment of the petitioner will come to an end automatically on June 30, 1991, if not terminated earlier. It was also stipulated in the appointment letter that the service of the petitioner can be terminated at any time without any prior notice. Service of the petitioner, as stenographer, was extended from time to time. By every order of extension the service of the petitioner was extended for fixed term with the same terms and conditions, as was contained in original appointment order dated May 1, 1991. By the last order, the petitioner was appointed for fixed period upto February 28, 1992. Thereafter the petitioner's services were not extended although he has worked upto March 26, 1992, even though the period of the posts sanctioned for Family Court, Agra, was extended beyond February 28, 1992. The petitioner thereafter filed a Writ Petition No. 14969 of 1992 before this Court for a writ of mandamus directing the respondents to continue him as ad hoc stenographer till regular selection is made for the post. In this writ petition this Court, on April 25, 1992, passed the following interim order:

'In the meantime petitioner will be allowed to continue on ad hoc post till duly selected candidate is available for the said post and he will also be entitled for his salary.'

2. An advertisement was issued on May 23, 1992 inviting applications for regular selection for the post of stenographer. Petitioner, thereafter, filed Writ Petition No. 20223 of 1992, challenging the above advertisement and praying for writ of mandamus directing the respondent not to make any selection and not to interfere with his working as ad hoc stenographer. In that writ petition this Court passed the following interim order, on June 8, 1992:

'Until further orders interview fixed for June 11, 1992 in pursuance of the notice, filed as Annexure SA-1, shall remain stayed.'

As will be clear from the facts stated herein-above, the petitioner was not selected as stenographer and was only selected as copyist but was appointed on fixed term

as stenographer upto February 28, 1992. Thereafter his appointment has not been extended, although he worked upto March 26, 1992. After this Court granted interim order on April 25, 1992, the petitioner was permitted by Judge, Family Court to work as stenographer, in compliance of this Court's order, and he is to continue till duly selected candidate joins. By filing the second writ petition he has blocked the selection of the candidate with the result that the petitioner is to continue on ad hoc basis, without there being any appointment after February 28, 1992 in his favour for working as Stenographer in the Family Court at Agra.

3. Petitioner's appointment was for fixed term initially upto June 30, 1991 and thereafter his term was extended upto July 31, 1991. Period of his appointment was again extended upto September 30, 1991 and it continued upto February 28, 1992 with the condition that his appointment will come to an end on the last date of term automatically. When appointments made on fixed term it comes to an end automatically by efflux of time and the appointee has thereafter no right to continue to work on the post. In this connection reference may be made to the decision in Director, Institute of Management Development U.P. v. Smt. Pushpa Srivas-tava wherein the Supreme Court has laid down as follows 1993-I-LLJ-190 at 193-194):

'The appointment was purely ad hoc and on a contractual basis for a limited period. Therefore, by expiry of the period of six months, the right to remain in the post comes to an end.'.....'To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year, whether she is entitled to regularisation? The answer should be in the negative.'

4. For the reasons given above the petitioner has no right to continue as stenographer in the Family Court, as his term has already come to an end.

5. Learned counsel for the petitioner has, however, argued that it is not open to the respondents to make ad hoc appointment of any other person in place of the

petitioner. Submission is that one ad hoc appointee cannot be replaced by another ad hoc appointee. As proposition of law there may not be any difficulty in accepting the submission of the learned counsel. But in the instant case the position is different. As mentioned herein before, the petitioner was selected as copyist only and not as stenographer. No stenographer having been selected or sent to the Family Court on deputation, as make-shift arrangement, the petitioner was appointed for fixed term, although he was not selected for the post of stenographer. Learned judge of Family Court was fully justified to invite applications for regular selection. Regular selection can also be made even when vacancies are temporary. It is always open to any authority to replace ad hoc appointee by duly selected candidate. In the instant case it is exactly that learned Judge, Family Court, was doing when he invited applications for selection of a stenographer for his Court. Instant case is not a case of replacing one ad hoc appointee by another ad hoc appointee. It is a case where ad hoc appointee is sought to be replaced by duly selected candidate. That apart, it is always open to an employer to remove ad hoc appointee, if his work and conduct is not satisfactory. In the instant case, it has been stated in para 7 of the counter-affidavit in Writ Petition No. 14969 of 1992 that the work and conduct of the petitioner was not satisfactory and his period of service was extended not because his work was satisfactory, but because some body has to work till arrangements are made. In various paragraphs of the counter-affidavit respondents have high-lighted the unfair conduct of the petitioner. It is true that one ad hoc appointee cannot be replaced by another ad hoc appointee. But if work and conduct of the ad hoc appointee is not satisfactory, he can always be replaced by another person. In special Appeal No. 216 of 1992, Sri Rajesh Kumar Awasthi v. Divisional Forest Officer, decided on November 24, 1992, the appellant therein was not permitted to work after May, 1990 on account of his work and conduct not being satisfactory. This order was upheld by a Division Bench of this Court in the above Special Appeal, relevant extract from which is reproduced below:

'As is clear from the letter dated June 30, 1990 the appellant was not permitted to work after May, 1990 on account of his work and conduct not being good and satisfactory. Ad hoc or casual employees do not have any right to the post. Unsatisfactory work and conduct is relevant ground for terminating the

employment of these employees.'

6. Both the writ petitions lack merit and are accordingly dismissed with costs. The interim orders dated April 25, 1992 and June 8, 1992 are discharged.

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