

Devendra Kumar Gaur Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Sep-02-2003

Reported in : 2003(4)AWC3074; (2004)1UPLBEC105

Judge : Vineet Saran, J.

Acts : Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975; Purview of Public Service Commission (Second Amendment) Rules, 1989; [Constitution of India](#) - Article 311

Appeal No. : C.M.W.P. No. 23430 of 1990

Appellant : Devendra Kumar Gaur

Respondent : State of U.P. and anr.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : R.B. Singhal, Adv.

Disposition : Writ petition dismissed

Judgement :

Vineet Saran, J.

1. This writ petition has been filed with a prayer for quashing the order of the respondent No. 2 dated 6.9.1990, whereby the services of the petitioner have

been terminated. A further prayer has been made for a direction to the respondents to regularize the ad hoc appointment of the petitioner and treat him as a regular employee of the Rural Engineering Service Department.

2. The brief facts relevant for the adjudication of this case are that the petitioner was appointed as a junior clerk on ad hoc basis by letter dated 31.7.1987 issued by the respondent No. 2, Superintending Engineer, Rural Engineering Service, Agra Circle, Agra. It was categorically specified in the said appointment letter that the appointment of the petitioner was purely temporary and could be terminated without any notice ; and also that the petitioner Devendra Kumar Gaur shall not be entitled to any claim for appointment on regular basis. On the basis of the said appointment letter, the petitioner continued to work as a junior clerk and thereafter on 6.9.1990, the respondent No. 2 passed the impugned order under the U.P. Temporary Government Servants (Termination of Service) Rules, 1975, terminating the ad hoc/temporary services of the petitioner as Junior Clerk. One month's notice was thus, given stating that the services of the petitioner were no longer required and that on the completion of one month's period his services would come to an end.

3. I have heard Sri R. B. Singhal, learned counsel for the petitioner, as well as learned standing counsel appearing for the respondents and perused the record. Sri Singhal, learned counsel for the petitioner, has challenged the said order of termination mainly on the ground that the petitioner was entitled to regularization as he had already worked for more than three years ; and for more than two years since the date of the coming into force of the U.P. Regularization of Ad Hoc appointments (On Posts Within the Purview of Public Service Commission) (Second Amendment) Rules, 1989. According to the aforesaid rules, which came into force on 7.8.1989, it was provided that persons appointed on ad hoc basis on or before 1.10.1986, and continuing in service as such on the date of the commencement of the said rules (i.e., 7.8.1989), shall be regularized. Admittedly the petitioner was not in service on 1.10.1986 and had been appointed as a junior clerk on ad hoc / temporary basis only on 31.7.1987. Sri Singhal has submitted that the cut off date i.e., 1.10.1986, is wholly arbitrary and imaginary and has been artificially fixed without there being any valid basis for the same. The learned

counsel for the petitioner has further submitted, that on the strength of the interim order granted by this Court in this writ petition, the petitioner had continued in service till 3.5.1998, on which date he expired. It has thus, been contended that in any case, the petitioner having served for nearly eleven years continuously, he would be entitled to regularization of service and all other consequential benefits under the law.

4. Learned standing counsel appearing for the respondents has contended that the termination of the services of the petitioner is a termination simplicitor, and that the respondents were fully empowered to pass such order under U.P. Temporary Government Servants (Termination of Service) Rules, 1975. It was further been submitted that after coming into force of the U.P. Regularization of Ad Hoc Appointments (On Posts Within the Purview of Public Service Commission) (Second Amendment) Rules, 1989, with effect from 7.8.1989, the State Government had issued instructions on 16.8.1990 (a copy of which has been filed as Annexure-C.A.-I to the counter-affidavit) whereby it was provided that the services of all those employees, who were not to be regularized under the aforesaid Regularization Rules, should be dispensed with immediate effect. The learned standing counsel has placed reliance on two decisions of the Apex Court rendered in *State of U.P. v. Kaushal Kumar Shukla*, 1991 (1) VPLBEC 152 and *Triveni Shanker Saxena v. State of U.P. and Ors.*, AIR 1992 SC 496, in support of his contention that the services of a temporary Government servant could be terminated at any time, and such temporary Government servant would not be entitled to the protection of Article 311 of the [Constitution of India](#).

5. Having heard learned counsel for the parties and on perusal of record I am of the view that the petitioner is not entitled to the relief claimed for. Admittedly the petitioner was appointed merely on ad hoc/ temporary basis and had no lien on any substantive post. The benefit of the regularization rules cannot be accorded to the petitioner as he was not in continuous service from 1.10.1986 till the date of the commencement of the Second Amendment Rules, 1989, i.e.. on 7.8.1989. The said cut off date cannot be said to be arbitrary as the same has been fixed by the State Government for the regularization of ad hoc appointments made by it, which can best be considered and fixed by the State Government and it is not for the

courts of law to interfere in such discretion having been exercised by the State Government. In any case, the said rules have not been challenged in this writ petition. The order of termination simplicitor of the petitioner has been passed without casting any stigma on him. It is not disputed that the petitioner was appointed purely on ad hoc/temporary basis. The Rules of 1975 were thus, applicable in this case. In such circumstances I do not find any illegality in the order of termination. The writ petition thus, deserves to be dismissed. However, since after the termination of his services, the petitioner had worked on the strength of the interim order granted by this Court, it is made clear that the respondents shall not proceed to recover the salary which has been paid to him on the basis of the petitioner having worked under the interim orders of this Court.

6. In the end Sri Singhal, learned counsel for the petitioner submitted that the petitioner having expired while he was in service in the year 1998, the widow and minor children of the petitioner Devendra Kumar Gaur are in a financial crisis. He has thus, prayed that considering the fact that the petitioner had served for nearly 11 years from 1987 to 1998 and there had never been any complaint regarding the work and conduct of the petitioner, the family of the petitioner may be paid family pension to which they would be entitled.

7. In the aforesaid circumstances, it is directed that In case if Smt. Suman Gaur, widow of Devendra Kumar Gaur files an application for payment of family pension before respondent No. 2, the Superintending Engineer, Rural Engineering Service, Agra Circle, Agra, the same shall be considered and decided sympathetically in accordance with law by a speaking order, within a period of three months from the filing of the same.

8. Subject to the aforesaid observations, this writ petition is dismissed. However, there shall be no order as to cost.