

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

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Court : Allahabad

Decided On : Nov-26-1998

Reported in : 1998(4)AWC6; (1999)1UPLBEC188

Judge : S.R. Singh, J.

Acts : Uttar Pradesh Registration Department (District Establishment) Ministerial Service Rules, 1978 - Rule 22; Registration Department (District Establishment) Ministerial Service (First Amendment) Rules, 1991; Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1975 - Rules 7 and 22; Subordinate Offices Ministerial Staff (Direct Recruitment) (Amendment) Rules, 1985

Appeal No. : C.M.W.P. Nos. 17836-37 and 17884 of 1991

Appellant : Pramod Kumar Yadav

Respondent : State of U.P. and Others

Advocate for Def. : S.C. and ;S.N. Upadhayay, Adv.

Advocate for Pet/Ap. : Mahendra Pratap, ;R.P. Tiwari, ;M.D. Singh and ;P.K. Yadav, Adv.

Judgement :

S.R. Singh, J.

1. These writ petitions are knit together in that common question of law and facts are involved and with the consent of the parties counsel they were heard together for convenient disposal by a common judgment. Writ Petition No. 17836, Pramod Kumar Yadav v. State of U. P. and others, shall be the leading file.

2. Stated briefly the facts are that the petitioners Pramod Kumar Yadav, Gyansendra Kumar Shukla and Prashant Kumar were appointed Registration Clerk in the office of Sub-Registrar, Jhansi in accordance with the provisions contained in the U. P. Registration Department (District Establishment) Ministerial Service Rules, 1978 as it stood prior to its amendment by Registration Department (District Establishment) Ministerial Service (First Amendment) Rules, 1991. Their services were terminated by identically worded separate orders dated June 15, 1991. These writ petitions were filed challenging the orders of termination. The petitions came to be dismissed along with a bunch of other writ petitions filed by ad hoc/daily rated Registration Clerks in view of the order passed by the Division Bench in Civil Misc. Writ Petition No. 582 of 1991, Hasnain Ahmad v. State of U. P. and others, which was taken to be the leading case among the bunch of the writ petitions filed by ad hoc/daily rated Registration Clerks. The matter was taken upto the Supreme Court. The Supreme Court dismissed the Special Leave Petition but a Review Petition was filed and it was pointed out on behalf of the petitioners that they were appointed on regular basis and their case was not covered by the judgment rendered by the Division Bench in the case of Hasnain Ahmad (supra). The Supreme Court vide its judgment and order dated 26.9.97 allowed the appeal and set aside the order of the High Court dismissing the writ petition and remitted the matter back to this Court for consideration. That is how the matter has again came up for disposal.

3. I have heard Sri M. D. Singh, learned counsel appearing for the petitioners and Sri S. N. Upadhyay representing the respondents.

4. Learned counsel appearing for the petitioner submitted that the impugned order is vitiated, inter alia, for the reasons ; firstly, that it has been passed in breach of audi alteram partem principles of natural justice ; and secondly, that it is arbitrary and lacks reasons. In opposition, the counsel appearing for the respondents urged

that the State Government issued a telex dated 8.2.1991 restraining all the District Registrars from making any kind of appointments even then the District Registrar made the appointments of the petitioners and that too without following the procedure and hence their services were rightly terminated. In rejoinder, it was urged for the petitioners that the I. G. Registration, it seems from the supplementary counter-affidavit, erroneously assumed that the procedure prescribed by law was not followed in making the appointments.

5. I have given my anxious consideration to the submissions made across the bar. The telex dated 8.2.1991 referred to in para 8 of the supplementary counter-affidavit dated 23rd day of August, 1994 filed after the conclusion of the arguments has not been brought on record. In the absence of the telex dated 8.2.1991 being brought on record, it cannot be said with any amount of certainty that the alleged ban was intended to cover appointments on the post in question, the process of selection to which posts had already commenced. The question whether the appointments were made in the teeth of the ban is a question of fact. Without giving an opportunity of showing cause, the services of the petitioners ought not to have been terminated on the unilateral assumption that the appointments were made in the teeth of the ban order. *Basudeo Tiwary v. Sido Kanhu University and others*, JT 1998 (6) SC 464, is an authority on the point. In that case, while reiterating the principle of natural justice as enunciated in *Delhi Transport Corporation v. D. T. C. Mazdoor Congress*, JT 1990 (3) SC 725 ; *Mohinder Singh Gill and another v. Chief Election Commissioner and others*, AIR 1978 SC 851 and *S. L. Kapoor v. Jagmohan and others*, AIR 1981 SC 136, the Apex Court held as under :

'In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, status, rules or regulations etc., a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry the person whose appointment is under enquiry will have to be issued to him. If notice

is not given to him then it is like playing Hamlet without the prince of Denmark, that is, if the employee concerned whose rights are affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as notice by this Court in D.T.C. Mazdoor Sabha's case. In such an event, we have to hold that in the provision there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, status, rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice.'

6. Shrawan Kumar Jha and others v. State of Bihar and others, 1991 Supp. (1) SCO 330; was a case where appointments of certain Assistant Teachers made by the District Superintendent of Education, Dhanbad, were cancelled vide order dated 28.5.1988. The order was upheld by the High Court. In Supreme Court it was argued for the respondents therein in support of the order of cancellation, that the appointments had been cancelled because the District Superintendent of Education had no authority to make the appointments. On behalf of the appellants therein it was contended that the order of cancellation passed in breach of natural justice was void. The Supreme Court held as under :

'In the facts and circumstances of the case we are of the view that the appellant should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well-settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice.'

7. In Shridhar v. Nagar Palika, Jaunpur and others, AIR 1990 SC 307, the appointment of the appellant therein on the post of Tax Inspector in the Municipal Board, Jaunpur, was cancelled by the Divisional Commissioner, Varanasi, on the ground that the post ought to have been filled by promotion of one Hari Mohan, senior most Tax Collector working in the Municipal Board, Jaunpur. The High Court affirmed the order of the Commissioner on the finding that the appellant's appointment was made in violation of the Government order dated 10.4.1950. The Supreme Court held as under :

'The High Court committed serious error in upholding the order of the Commissioner dated 13.2.80 in setting aside the appellant's appointment without giving any opportunity to him. It is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the Commissioner's Order had been passed without affording any opportunity of hearing to the appellant, therefore, the order was illegal and void. The High Court committed serious error in upholding the Commissioner's Order setting aside the appellant's appointment. In this view, Orders of the High Court and the Commissioner are not sustainable in law.'

8. Upon consideration of the authorities, aforesaid, I am of the considered view that the order impugned herein having been passed in breach of principles of natural justice cannot be sustained.

9. The second question is as to whether the appointments were made by following the procedure prescribed by law. In this connection, it would be apt and proper to quote the submissions made on behalf of the parties before the Hon'ble Supreme Court and the observations/directions made in the judgment dated 27.9.1995 remitting the matter back to this Court as under :

'It has been urged on behalf of the appellant that his case differs from other cases dealt with by the High Court inasmuch as he had been selected for regular appointment by a duly constituted Selection Committee in accordance with the rules and the High Court has not considered this aspect of the matter. In the counter-affidavit that has been filed on behalf of the respondents before this Court, it has not been disputed that the Selection Committee was duly constituted by the District Registrar, district Jhansi, on February 24, 1991 but it is asserted that while doing so the District Registrar, district Jhansi, did not comply with the mandatory provisions of Rule 22 of the Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1975 which had been replaced by the Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 as amended upto date and thus

there was defect in, the procedure of the said selection and the selection was void. This questions has not been gone into by the High Court while dismissing the writ petition of the appellant. It is a question which should have been considered by the High Court before dismissing the writ petition of the appellant.'

10. The decisions aforesaid, particularly Basudeo Tiwari, squarely meet the argument advanced in justification of the impugned orders on the ground that the procedure laid down in Rule 22 of the relevant service Rules was not followed.

11. On merits, there is no substance in the submission that the procedure laid down in Rule 22 was not followed. In order to appreciate the submission, it would be apt to quote Rule 22 as under :

'Rule 22.--That the appointing authority shall determine the number of vacancies to be filled during the course of the year as also the vacancies to be reserved under Rule 7. The vacancies shall be notified to employment exchange. The appointing authority may also invite application directly from persons who have their names registered in the employment exchange. For this purpose, appointing authority shall ensure advertisement in a local daily newspaper besides pasting a notice on the Notice Board. All such applications shall be placed before Selection Committee.'

12. The District Registrar was admittedly the appointing authority prior to 20.3.1991 with effect from which date the rules were amended and I. G. Registration was made 'appointing authority. From the averments made in the counter-affidavit filed by Dewaki Nandan Dwivedi, the then Sub-Registrar. Jhansi, and the observations made by the Apex Court in its judgment dated 27.9.1995, it would be abundantly clear that the petitioners were selected for regular appointment by a duly constituted Selection Committee in accordance with the Rules. The only controversy that was to be decided by this Court as per direction given by the Apex Court in its judgment dated 27.9.1995 was whether the provisions under Rule 22 of the Rules aforesaid were followed. Sri M. D. Singh counsel for the petitioner submitted that after determining the vacancies, the appointing authority notified them to the Employment Exchange as required by Rule 22 of the Rules as it then stood. This fact has not been disputed by Sri S. N.

Upadhyay, learned counsel appearing for the respondent, Concededly the vacancies were notified to the Employment Exchange as visualized by the first part of Rule 22 of the Rules. The second part of Rule 22, in my opinion, gives a discretion to the appointing authority to invite applications from the persons whose names are entered in the Employment Exchange by advertising the vacancies in newspapers. Failure to issue advertisement in the newspaper as required by the second part of Rule 22, in the circumstances of the present case, would not vitiate the appointments which were made by the appointing authority on the recommendation made by a duly constituted Selection Committee after notifying the vacancies to the Employment Exchange.

13. In view of the foregoing discussion, the petitions succeed and are allowed. Impugned orders are quashed. Petitioners shall be entitled to fullback salary and continuity in service. Respondents are directed to accordingly.

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