

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

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Court : Allahabad

Decided On : Dec-05-2003

Reported in : 2004(1)AWC696; (2004)1UPLBEC609

Judge : M. Katju and ;Umeshwar Pandey, JJ.

Appeal No. : C.M.W.P. No. 53533 of 2003

Appellant : Ram Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.F.A. Naqvi and ;Arshad Rizvi, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

M. Katju and Umeshwar Pandey, JJ.

1. By means of this petition, the petitioner has prayed for a mandamus directing the respondents not to interfere in his working as Assistant Engineer in Rural Engineering Service's, Maharajganj Division, Maharajganj.

2. Heard learned counsel for the parties.

3. It is alleged in para 3 of the writ petition that the petitioner was selected by the U.P. Public Service Commission in 1986 on the post of Junior Engineer in the Rural Engineering Service. It is alleged that the petitioner possesses the requisite qualification for appointment/promotion as Assistant Engineer. However, there is nothing to show that the petitioner has been regularly selected as Assistant Engineer in accordance with the relevant rules. On the other hand, in paras 6 and 9 of the writ petition, it is alleged that the petitioner is working and discharging the duties of Assistant Engineer, as there was shortage of Assistant Engineers. This itself implies that the petitioner was never regularly selected and appointed as permanent Assistant Engineer,

4. It is settled law that a temporary or officiating appointee has no right to the post vide *State of U. P. v. Kaushal Kishore*, 1991 (1) AWC 651 (SC) : (1991) 1 SCC 691 ; *Triveni Shankar Saxena v. State of U. P.*, AIR 1992 SC 496, etc. In *Triveni Shanker Saxena's* case, the termination order was passed after 18 years of service, but yet it was upheld on the ground that the petitioner had never been confirmed and had remained as a temporary appointee. Similarly, in *Radha Tiwari v. State of U. P.*, 2003 (3) AWC 2219 : 2003 ALJ 1277 (vide para 18) a Division Bench of this Court, after referring to several earlier decisions upheld the termination of service of the petitioner (who was a temporary appointee) 13 years after her appointment. It may be noticed that in that case the petitioner had been selected by the U. P. Public Service Commission, whereas the petitioner in the present case had not been selected by the Commission. Since the petitioner was only officiating as Assistant Engineer, in our opinion he can validly be reverted as Junior Engineer, without giving opportunity of hearing. In *Dr. (Mrs.) Chanchal Goyal v. State of Rajasthan*, JT 2003 (5) SC 144, the Supreme Court upheld a termination order passed after 28 years service of a temporary employee. The order dated 30.12.2002 (Annexure-1 to the writ petition) shows that the petitioner was appointed on purely temporary basis as Assistant Engineer, and it was stated therein that his temporary appointment could be cancelled at any time. Hence, in our opinion it was a reversion simpliciter and there was no illegality.

5. Learned counsel for the petitioner, submitted that in several similar writ petitions (mentioned in our order dated 4.12.2003) interim orders have been passed by this

Court. It is well settled that an interim order is not a precedent vide S.C. Shukla v. G.B. Singh, 1989 AWC 958 (FB), vide para 7. In Empire Industries Ltd. v. Union of India, AIR 1980 SC 679, the Supreme Court observed :

'An argument is being built up now-a-days that once an interim order has been passed by this Court on certain factors specially in fiscal matters, in subsequent matter on more or less similar fact, there should not be a different order passed nor should there be any variation with that kind of interim order passed. It is submitted at the Bar that such variance creates discrimination. This is an unfortunate approach. Every bench hearing a matter on the facts and circumstances of each case should have the right to grant interim orders on such terms as it considers fit and proper and if it had granted interim order at one stage, it should have the right to vary or alter such interim orders.'

6. Thus, there is no force in this petition. Petition is, therefore, dismissed.

7. We are informed that the petitions mentioned in our order dated 4.12.2003 are tied up with the bench presided over by Hon'ble A. K. Yog, J. These petitions are released from our bench and may be put up before that bench on 10.12.2003, which is the date fixed in such cases (as we are informed).

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