

Chief Project Officer and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Mar-09-2000

Reported in : (2000)IIILLJ960All; (2000)3UPLBEC2735

Judge : Dev Kant Trivedi, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 11A

Appeal No. : W.P. Nos. 439, 7130, 8079/1992 and 10019/1993

Appellant : Chief Project Officer and ors.

Respondent : State of U.P. and ors.

Judgement :

ORDER

Dev Kant Trivedi, J.

1. In Writ Petition No. 439 of 1992, the Chief Project Officer, World Bank and Assistant Engineer, World Bank, the petitioners have prayed for a writ of certiorari for quashing the award dated July 20, 1991 passed by the Presiding Officer, Labour Court (I), U.P., Kanpur.

2. In Writ Petition No. 7130 of 1992, the petitioner Abdullah who is opposite party No. 3 in Writ Petition No. 439(S/S) of 1992, has prayed for a writ in the nature of certiorari quashing the position assigned to him at Sl.No. 25 in the seniority list and

also for a writ of mandamus to absorb the petitioner in the U.P. Co-operative Bank Ltd.

3. In yet another Writ Petition No. 10019 of 1993, the aforesaid Abdullah petitioner has prayed for a writ of mandamus commanding the U.P. Co-operative Bank to adjust him on a vacant post and to pay him salary as admissible to Class III employees.

4. In yet another Writ Petition No. 8079 of 1992, Surya Pal Sirigh has prayed for a writ of mandamus for regularisation of his services in U.P. Co-operative Bank Ltd. in Cadre III and for his posting as a regular employee.

5. All these writ petitions were heard together.

6. World Bank started a project for the construction of rural godowns for Primary Co-operative Societies in the State of U.P. and U.P. Co-operative Bank Ltd. was entrusted the implementation of the said scheme. For the implementation of the said scheme of the World Bank, a purely temporary unit known as World Bank Rural Godown Project Division was setup under the charge of Chief Project Officer with head office at Lucknow. Though the World Bank Rural Godown Project continued to remain in existence for some more time, but there was no scheme for taking up any more new godowns for construction and, therefore, the overall strength of the project was reduced and it was decided to wind up the project by the end of June 1992. Opposite party No. 3 Abdullah was appointed as a Clerk-cum-Typist on 5th November, 1981 in the World Bank Rural Godown Project Gonda on temporary basis. Since the work and conduct of the opposite party No. 3 Abdullah was not satisfactory during his service period, warnings were issued to him and he was transferred from Gonda to Pauri and thereafter from Pauri to Unnao, when the opposite party No. 3 was given a cheque book by Assistant Accounts Officer on July 11, 1983 and also a rubber stamp of the Assistant Engineer. On July 18, 1983 Sri Sunil Kumar Srivastava, Assistant Accounts Officer asked for the cheque book from the opposite party No. 3, but the same was not returned. On an enquiry, it was revealed that the Cheques No. 016168 and 016170 out of the said cheque book were encashed on July 14, 1983 and a sum of Rs. 8312/- and another sum of Rs. 8393/- were withdrawn under the forged

signatures of one B.P. Singh, Assistant-Engineer and the rubber stamp of the Assistant Engineer which was in the custody of the opposite party No. 3 was used in the preparation of the two forged cheques. The matter was reported to the Police Station Naubasta on July 19, 1983 and a departmental enquiry was also started. Opposite party No. 3 declined to accept the chargesheet on July 19, 1983 and, therefore, he was dismissed from service with effect from July 20, 1983. The order was sent by registered post which was returned back as refused. An industrial dispute was raised. By means of the award dated July 20, 1991 it was held that the termination of the service of the opposite party No. 3 was illegal. This award has been challenged by the petitioners in Writ Petition No. 439(S/S) of 1992 on the ground that the World Bank Rural Godown Project ceased to exist and, therefore, the industrial dispute could not have been raised as the U.P. Industrial Disputes Act was not applicable to the petitioners and also on the ground that the service of the opposite party No. 3 was contractual and dismissal of contractual service could not have been challenged before the Industrial Tribunal and so also on the ground that it was a discharge simpliciter. Opposite party No. 3 Abdullah in his counter affidavit stated that it was the duty of Sri S. K; Srivastava, Assistant Accounts Officer to maintain the cheque book and that it was also pleaded by the opposite party No. 3 that he was not the custodian of cheque book and the seal. According to the opposite party No. 3 the alleged order of dismissal was passed without following any procedure and at any rate even if it was a termination simpliciter the same was bad in law as none below him in the seniority list was terminated from service. It is alleged by the opposite party No. 3 that a final report was filed in the case and the same was accepted on February 20, 1996 by Metropolitan Magistrate Anwarganj, Kanpur and that in passing the dismissal order no opportunity was made available to him. A supplementary affidavit was also filed by the opposite party No. 3 wherein it was alleged that the World Bank Project was closed on September 30, 1992 prior to the said date the opposite party No. 3 was reinstated by the Labour Court and the petitioner was permitted to join on January 31, 1992.

7. A letter was issued by the Chief Project Officer on September 30, 1998 itself to the effect that the employees of the World Bank Project will not remain the employees of the project from September 30, 1992 and their absorption was under

consideration. The opposite party No. 3 was posted in the recovery cell of the World Bank Project being run by U.P. Co-operative Bank under the interim order dated January 20, 1992 of this Court. It was pleaded that since the employees of the world Bank Project were not covered by the Staff-Rules of U. P. Co-operative Bank, the opposite party No. 3 was a workman and, therefore, the findings recorded in this respect by the Labour Court, Kanpur were wholly justified and cannot be assailed on any ground whatsoever.

8. In the rejoinder affidavit filed on behalf of the petitioners, it was specifically averred that the World Bank Project had come to an end with effect from September 30, 1992. It was further pleaded that the opposite party No. 3 committed embezzlement and the report was lodged with the police and that charge of misconduct was framed and the chargesheet was issued to the opposite-party No. 3 on July 19, 1983 but the opposite party No. 3 refused to accept the same. It was further pleaded that conduct of the opposite party No. 3 was unsatisfactory and the services were rightly terminated as per the terms and conditions of the contract of service and the appointment letter issued to him.

9. An application for abatement of the writ petition was moved on behalf of the opposite party No. 3 claiming that since the World Bank Project had come to an end, the said Project had met with the legal death and since U.P. Co-operative Bank Lucknow was not impleaded as a party, the writ petition was liable to be dismissed.

10. It may be seen that it is the admitted case of the parties that the opposite party No. 3 was appointed by means of appointment order dated November 5, 1981 contained in Annexure-3 in the World Bank Rural Godown Project on a temporary post of Clerk-cum-typist on ad hoc basis on a consolidated salary of Rs. 500/- per month. The appointment letter specifically provided that the post is purely temporary and the services of the employee could be terminated without showing any cause. It was also mentioned in the appointment letter that the U.P. Co-operative Bank Staff Service Rules were not applicable. There is also no dispute that the services of the opposite party No. 3 were terminated by the Chief Project Officer of the aforesaid World Bank Rural Godown Project by means of order

dated July 20, 1983 contained in Annexure-5. Thus, the opposite party No. 3 worked in the said World Bank Project from November 5, 1981 to July 20, 1983. It is evident from the very nature of the World Bank Scheme that the post on which the opposite party No. 3 was appointed, was not a permanent post, rather it was only a temporary post and the said post could not have been made permanent as the project itself was for a particular and limited purpose and, therefore, the appointment of the opposite party No. 3 was made on ad hoc basis. The opposite party No. 3 was merely an ad hoc employee on a temporary post in a Project which itself was of temporary nature. The opposite party No. 3 was removed from the service by an order which did not contain any stigma, nor the said order had indicated any reason for termination of the services of the opposite party No. 3.

11. No doubt, there is no dispute that ultimately the said Project was closed down on September 30, 1992 which goes to prove that the Project was temporary in nature and was constituted for a specific work to be completed in the stipulated period. The opposite party No. 3, therefore, could not have acquired the status, in the Project of a permanent nature.

12. The termination order was challenged by the opposite party No. 3 before the Labour Court on the ground that he was not given any opportunity of showing any cause before termination of service. The petitioners contested the claim before the Labour Court alleging, inter alia, that the services of the opposite party No. 3 were on a temporary post in a Project for a specified work and that he was appointed only on ad hoc basis and that the opposite party No. 3 could not have claimed anything beyond the terms of this contract as he was bound by the same. The petitioners also challenged the claim of the opposite party No. 3 before the Labour Court on the ground that the conduct and the work of the opposite party No. 3 had not been satisfactory and that during the course of his employment he was entrusted with a cheque book and the rubber stamp and on demand being made he refused to return the same and on the enquiry from the Bank it revealed that two of the cheques of the said cheque book were misused by forging the signatures of the Assistant Engineer and a sum of Rs. 8,312/- and Rs. 8,393/- were withdrawn on the basis of the said forged cheque book and, therefore, a report was lodged at the police station on July 19, 1983 and a chargesheet was

also served on the opposite party No. 3 who refused to receive the same and, therefore, the opposite party No. 3 was dismissed from service on July 20, 1983. The Labour Court came to the conclusion that the petitioners failed to establish the charges against the opposite party No. 3 and that the provisions regarding retrenchment and notice were not complied with and, therefore, the Labour Court quashed the order of termination and reinstated the petitioner in the service by means of his order dated July 20, 1991 which has been assailed in the present writ petition.

13. The controversy between the parties has to be looked into in the light of the peculiar circumstances of this case as the World Bank Project was in itself of a temporary nature and there was little occasion for the Chief Project Officer to make appointment on a long term basis. Since the Project itself was temporary for a particular purpose, namely, the construction of godown in villages, the Project could not have continued for a long time and by the very nature of the scheme undertaken by the World Bank, appointments had to be made on an ad hoc basis. These terms were made known by the petitioners to its employees. In the appointment letter Annexure-3, it was specifically mentioned that the Staff Service Rules of U.P. Co-operative Bank will not be applicable. It was also clearly stated that the post is temporary in nature and it was also specifically stated in the appointment letter that the opposite party Mo. 3 was being appointed on ad hoc basis with a further rider that his services could have been terminated without assigning any reasons. The nature of the employment of the opposite party No. 3 was apparently of ad hoc nature. The petitioners in terms of the appointment order had a right to terminate the services of the opposite party No. 3 without assigning any reason. In the present case, the termination order is apparently an innocuous order terminating the employment of the opposite party No. 3 in terms of the appointment order and the order in question was termination simpliciter without attaching any stigma to the opposite party No. 3. The case of the petitioners is that the opposite party No. 3 was habitual late comer. The case of the petitioners was also that the opposite party No. 3 used to misbehave with his superiors. The case of the petitioners also is that the opposite party No. 3 committed breach of trust reposed in him, inasmuch as, he failed to return the cheque book entrusted to him and subsequently it transpired that two cheques of the said cheque book were

forged and were also encashed causing loss to the petitioners. The petitioners case also is to the effect that they had thereafter chargesheeted and had tried to deliver the charge sheet to the opposite party No. 3 who declined to receive it and in the circumstances they were left with no option but to pass the impugned order of termination of service simpliciter. The case of the opposite party No. 3, however, is that he was only a Clerk and there was no occasion for entrustment of any cheque book to him and that his conduct was good. Be that as it may, there is little reason to disbelieve the petitioners when they claimed that they had to lodge a report with the police for embezzlement and that they had every reason to believe that the opposite party No. 3 in connivance with some others got the two cheques fabricated and encashed. Thus, the petitioners had a good and valid reason to dispense with the services of the opposite party No. 3.

14. Since the nature of the employment was purely temporary and since the appointment was made on ad hoc basis, a specific power was reserved to the petitioner that the services can be terminated without assigning any reason, the petitioners had a right to terminate the services of the opposite party No. 3 by means of a simpliciter order of termination as they had sufficient reason to discontinue the employment of the opposite party No. 3.

15. Since the Project as such was of a temporary nature and the employment was on a temporary post as on ad hoc basis, it was not necessary for the petitioners to hold a full-fledged disciplinary enquiry particularly when the opposite party No. 3 declined to receive the chargesheet as such and the petitioners had lodged a report and were put to financial loss. Even though the petitioners were put to financial loss, the petitioners did not attach any stigma to the opposite party No. 3 and exercised their power of terminating the services without assigning any reason and in doing so they have committed no illegality whatsoever.

16. The Labour Court has taken a hyper technical view of the matter and it did not take into consideration the fact that the Project in which the opposite party No. 3 was employed, was of temporary nature and, therefore, the employment could not have continued for a long time. The Labour Court also did not take into consideration the fact that it was not possible for the petitioners to hold an enquiry

particularly when the opposite party No. 3 had declined to receive the chargesheet. The Labour Court also did not take into consideration that the impugned order before me was passed in terms of the contract and the petitioners had a right to dispense with the services of the opposite party No. 3 without assigning any reason.

17. The Labour Court did not consider the matter in its correct perspective and, therefore, the said impugned order cannot be upheld.

18. It has been held by the Hon'ble Supreme Court in Ganganagar Zila Dughd Utpadak Sahkari Sangh Ltd. v. Priyanka Joshi AIR 1999 SC 2363 : 1999 (6) SCC 214 that when there is a reason for terminating the services during the probationary period and the order terminating the services is worked in an innocuous manner, such an order cannot be regarded as by way of punishment. In the present case, though the opposite party No. 3 was not on probation, but looking into the nature of the employment of the opposite party No. 3 which was a temporary post on an ad hoc basis, there was no necessity for holding an enquiry if the employer thought it fit to take recourse to the powers reserved by it in the appointment order itself particularly when the petitioner had a reason to dispense with the services of the opposite party No. 3. Since no departmental enquiry was held and since the petitioner had a right reserved to it in the appointment order itself, it cannot be said that: the order is by way of punishment. The order of termination of service was discharge simpliciter for a valid reason and, therefore, the finding of the Labour Court that the order suffers from an illegality, does not seem to be correct.

19. The order of the Labour Court therefore suffers from patent illegality and has to be quashed.

20. The question of abatement of the writ petition does not arise as the World Bank Project has admittedly come to an end.

21. The Writ Petition No. 439(SS) of 1992 is allowed and the impugned award dated July 20, 1991 passed by the Labour Court and the consequent notification dated September 19, 1991 publishing the award in Adjudication Case No. 270 of

1984 by the Labour Court are hereby quashed. The order of termination of services of the opposite party No. 3 suffers from no illegality and is hereby affirmed.

22. The amount of money deposited in this Court in terms of the interim order dated January 20, 1992 will be refunded to the authority which deposited the same. The opposite party No. 3 was taken into service from January 31, 1992 as the interim relief staying the order of reinstatement was declined by this Court, any salary paid to him for the period from January 31, 1992 onwards will not be required to be refunded by the opposite party No. 3.

23. In the connected Writ Petition No. 7130 of 1998 filed by Abdullah, petitioner of this writ petition, he had claimed that he be given seniority with effect from November 5, 1981 and he be absorbed in the service of U.P. Co-operative Bank Limited. Since the order of reinstatement passed by the Labour Court has been quashed, neither the question of granting any seniority, nor the question of absorption of the petitioner in the U.P. Co-operative Bank Ltd. arises. The Writ Petition No. 7130 of 1992 is consequently dismissed and the interim order dated October 14, 1992 is vacated.

24. In Writ Petition No. 10019 of 1993, the petitioner Abdullah claimed a writ of mandamus commanding the adjustment in U.P. Co-operative Bank on the vacant post and for payment of salary. Since the order of reinstatement of the petitioner, (Opposite party No. 3 of Writ Petition No. 439 of 1992) passed by the Labour Court in the World Bank Project has been quashed, the opposite party No. 3 cannot claim any relief for his adjustment in the service of the U.P. Co-operative Bank; hence the said writ petition deserves dismissal and is accordingly dismissed.

25. In Writ Petition No. 8079 of 1992, Surya Pal Singh v. State of U.P. and Ors., the petitioner had prayed for a mandamus to regularise his services in Cadre III of U.P. Co-operative Bank Limited, Lucknow. In their short counter affidavit filed on behalf of the U.P. Co-operative Bank, it was stated that on account of the order dated October 14, 1992 passed by a Division Bench of this Court in Writ Petition No. 7130 of 1992 the question of the petitioner's absorption could not be

considered as one post was directed to be kept unfilled and, therefore, Surya Pal Singh could not be absorbed in the Bank.

26. There was no other defence taken by the opposite party, U.P. Co-operative Bank Limited.

27. Since the Writ Petition No. 7130 of 1992 has been dismissed and the stay order dated October 14, 1992 passed in the said writ petition has been vacated, the petitioner Surya Pal Singh is entitled to claim regularisation in the services of the U.P. Co-operative Bank Ltd. The Writ Petition No. 8079 (SS) of 1992 is accordingly allowed and it is directed that the opposite party No. 2 Bank will consider the regularisation of the services of Sri Surya Pal Singh in accordance with the relevant rules within a period of three months from the date of production of a certified copy of this order before, the U.P. Co-operative Bank Ltd.

28. No order is made as to costs in any of the four writ petitions.

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