

Dhirendra Kumar Gupta Vs. U.P. Public Services Tribunal and ors.

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Court : Allahabad

Decided On : Dec-12-2000

Reported in : (2001)1UPLBEC873

Judge : D.S. Sinha and ;Dev Kant Trivedi, JJ.

Acts : Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975

Appeal No. : Civil Misc. Writ Petition No. 34163 of 1998

Appellant : Dhirendra Kumar Gupta

Respondent : U.P. Public Services Tribunal and ors.

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

Advocate for Pet/Ap. : Mahesh Gautam and ;Vijay Gautam, Adv.

Disposition : Petition dismissed

Judgement :

D.S. Sinha, J.

1. Heard Sri Mahesh Gautam, the learned Counsel appearing for the petitioner, and Sri V.N. Agarwal, the learned Standing Counsel of the State of U.P. representing the respondents.

2. Dhirendra Kumar Gautam, an erstwhile Jail Warden, invokes the jurisdiction of this Court under Article 226 of the Constitution of India for impugning the two orders and judgment dated 15th July, 1998 and 24th July, 1998 passed by the U.P. Public Services Tribunal, Lucknow, copies whereof are Annexures '6' and '8' to the petition.

3. By the order and judgment dated 15th July, 1998 the Tribunal has rejected the claim petition of the petitioner and the order and judgment dated 23rd July, 1998 purports to reject the petition of the petitioner seeking review of the order and judgment dated 15th July, 1998. The prayer for quashing the orders dated 20th February, 1987 and 1st July, 1991, giving rise to the claim petition, has also been made. The order dated 20th February, 1987, a copy whereof is Annexure T to the petition, is the order terminating the services of the petitioner and the order dated 1st July, 1991 is the order passed by the appellate authority rejecting the appeal of the petitioner.

4. Before the Tribunal the petitioner urged that he was a confirmed employee and his services could not be dispensed with without giving him opportunity. Same submission has been repeated before this Court also.

5. The Tribunal has categorically found that the petitioner was not a confirmed employee. Indeed, he was an ad hoc employee. This finding of the Tribunal is based on the documentary evidence in the shape of the appointment order dated 29th August, 1984. A copy of this appointment order is available on record before this Court as Annexure '11' to the petition. The order clearly and unequivocally, without reservation of any kind, declared that the services of the petitioner were wholly temporary, liable to be terminated at any time without any notice. Neither before the Tribunal nor before this Court has any such cogent material been produced which may show that the petitioner acquired the status of a permanent employee. Thus, there is no escape from the conclusion that the petitioner was appointed temporarily on ad-hoc basis, and his services were liable to be terminated at any time without notice.

6. Next attack on the order of termination before the Tribunal was and before this Court is on the ground that the order is punitive in nature. Learned Counsel

appearing for the petitioner argues that' the impugned order being the one of punishment could not be passed without giving opportunity to the petitioner.

7. It is settled that no order of punishment can be passed against an employee without giving an opportunity. But. in the instant case the question that arises for consideration is whether the impugned order was infact passed as a measure of punishment or was it an order discharging the petitioner from service simpliciter without stigmatising him

8. After examining the material before it thoroughly, the Tribunal has recorded a finding of fact that the impugned order of termination was not passed by way of punishment. It was rather an order passed in terms of the conditions of the appointment and in accordance with the provisions of U.P. Temporry Government Servants (Termination of Service) Rules, 1975 which, indisputably, were applicable to the petitioner. Thus the impugned order of termination cannot be faulted on the ground that it was passed without giving any opportunity to the petitioner. The Tribunal did not commit any error much less error apparent on the face of record, in upholding the order of termination.

9. Lastly, the impugned order of termination was and is sought to be assailed on the ground that the employees junior to the petitioner were retained and this was in violation of the settled principle 'first come last go.' To meet this assertion, the contesting respondents have taken stand to the effect that while the work and conduct of the employees retained was satisfactory the work and conduct of the petitioner was not found suitable. This stand has been upheld by the Tribunal. Nothing has been pointed out before this Court to show that the work and conduct of the other employees who were retained in service and were allegedly juniors to the petitioner was not suitable. Therefore, as a matter of fact, it cannot be held that in retaining the services of other employees and dispensing with the services of the petitioner any illegality or irregularity was committed. Otherwise also, reliance upon the principle 'first come last go is misplaced in as much as this principle is not applicable in the case of termination of services of temporary employee in terms of the conditions of the appointment and in accordance with the provisions of Rules regulating the termination of services of temporary employee.

10. All told, in the opinion of the Court, the petition is devoid of substance and liable to be dismissed summarily.

11. Accordingly, the petition is dismissed summarily.

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