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Court : Allahabad

Decided On : Jul-08-2003

Reported in : (2003)3UPLBEC2276

Judge : D.R. Chaudhary, J.

Acts : [Constitution of India](#) - Articles 14 and 16

Appeal No. : Civil Misc. Writ Petition No. 30604 of 1990

Appellant : Jawahar Lal

Respondent : Project Officer, Intensive Sheep and Wool Development Project

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Prabhakar Vardhan, ;V.N. Srivastava, ;A.K. Sharma and ;S.K. Srivastava, Advs.

Disposition : Petition allowed

Judgement :

D.R. Chaudhary, J.

1. The petitioner has challenged the order dated 31.8.1990 cancelling his appointment as Class IV employee and has prayed for issuance of writ of certiorari quashing the same and to direct the Respondents not to interfere in the petitioner's right to continue on the post and to pay salary.

2. It is contended that the petitioner, after having been selected by the Selection Committee, was appointed as Class IV employee vide appointment order dated 11.7.1990 (Annexure-I to the writ petition) passed by the Project Officer, Intensive Sheep and Wool Development Project, Mirzapur (the respondent) in the pay scale of 750/- to 940/- vide order dated 13.7.1990 the Appointing Authority required the petitioner to join and accordingly the petitioner joined as Class IV employee on 13.7.1990 (Annexure-2 to the writ petition); the appointment was made against the substantive vacancy after having followed the procedure laid down under the Rules; juniors to the petitioner have been retained in service and the post for which the petitioner was appointed is still lying vacant; the order impugned has been passed by the authority junior to the Appointing Authority; further the impugned order is violative of Articles 14 and 16 of the Constitution and is also without jurisdiction.

3. The claim of the petitioner has been disputed by filing counter affidavit. It is stated in the counter affidavit that the Selection Committee was not properly constituted; the result sheet was not signed by all the members of the Committee; the appointment letter was issued after one year from the date of selection; the impugned order has been passed on the dictate of the Director, Animal Husbandry, U.P., Lucknow; the order impugned is perfectly justified and suffers from no illegality or infirmity; the petitioner is not entitled to the relief prayed for. However, the assertions contained in Para 8 of the writ petition that the impugned order has been passed by the authority who is not competent to pass the order being junior to the Appointing Authority has not been disputed by the Respondents.

4. The petitioner has filed the rejoinder affidavit reiterating the assertions contained in the writ petition and disputing the averments contained in the counter affidavit. It is further asserted that the interview was taken by all the members of

the Committee but the result was signed by only one member i.e., Project Officer; the petitioner cannot be punished for the wrongs of others as such issuance of the appointment letter after a gap of about one year cannot render the appointment of the petitioner illegal; the Director, Animal Husbandry who is the Head of Department has no authority to terminate the services of the petitioner; impugned order has been passed without assigning any reason or on the ground pleaded by the Respondents in the counter affidavit.

5. Heard Sri Prabhakar Vardhan, learned Counsel for the petitioner, learned Standing Counsel for the respondent and perused the record.

6. Admittedly the appointment of the petitioner was made against the substantive vacancy on the recommendation of the Selection Committee however with recital in the appointment letter that the appointment is 'temporary'. The petitioner pursuant to the appointment letter joined the post of Class IV employee on 13.7.1990.

7. I have perused the impugned order which states that the appointment of the petitioner is cancelled on the dictate of the Director, Animal Husbandry, U.P. Lucknow. No reason whatsoever has been given in the impugned order. However, Respondent has tried to develop the case by filing counter affidavit wherein they have pleaded that the appointment of the petitioner was made after expiry of period of one year from the date the selection list was prepared, however, no specific date on which the selection list was drawn/approved has been mentioned and as such the averments of the learned Standing Counsel, in this regard, cannot be accepted. The other ground taken by the Respondents in the counter affidavit is that the appointment was made during the period of ban on appointments enforced by the Government vide order dated 7.2.1990 (CA-1). Admittedly the selection was made somewhere in 1989 i.e., before the date of the Government Order was issued imposing ban on appointments, It is admitted case of the Respondent that the vacancies of the Class IV employees are existing in the department but no reason has been given as to why the petitioner was not given appointment. within the prescribed period of one year. It is further contended by learned Standing Counsel that the Director, Animal Husbandry, being Head of the

Department, had issued direction to cancel the appointment of the petitioner and as such no illegality or infirmity in the impugned order can be alleged. This argument of learned Standing Counsel is taken to be rejected.

8. The next question arises is whether the order impugned is passed by the authority junior in rank to the Appointing Authority and as such is not sustainable? It is contended by the petitioner that Dr. N.P. Singh, District Live Stock Officer who has passed the impugned order is below in the rank to the Appointing Authority. On the other hand learned Standing Counsel submits that Dr. N.P. Singh who was posted as District Live Stock Officer was looking after the work of the Project Officer who is Appointing Authority of the petitioner. He has, however, not supported his averments by filing the relevant materials and as such the submission in the absence of the cogent material cannot be accepted. It is settled in law that the appointment of the Government employee cannot be terminated by the authority other than the Appointing Authority. The Apex Court in *Om Prakash Gupta Swadheen v. State of U.P.*, AIR 1975 SC 1265, has interpreted the word Appointing Authority to mean the authority which appointed the Government employee. Admittedly in the present case the order impugned has been passed by the authority who is not the Appointing Authority of the petitioner. The similar view has been taken by this Court in *Ramakant Gupta v. State of U.P.*, 1988 LCD 411, Division Bench of Lucknow Bench of this Court.

9. Further this Court vide order dated 21.11.1990 has stayed the operation of the impugned order and this interim order, as it appears from record, has not been vacated till date and as such the petitioner is still working as Class IV employee and has completed about 13 years in service and during this period the petitioner must have incurred many more liabilities towards his family including education of children, their marriage and also towards the parents and as such in the given facts and circumstances in my considered view it will not be justified to uproot the petitioner at this stage which is bound to endanger the right of life of the family members including the children and old parents.

10. In view of whatever has been discussed above, the writ petition deserves to be allowed and is allowed. The impugned order dated 13.8.1990(Annexure-3 to the

writ petition) is quashed. The petitioner shall be entitled to all consequential benefits.

11. No cost.

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