

**HIGH COUR OF UTTARAKHAND, AT NAINITAL**

**Writ Petition No.6491 (S/S) of 2001  
2350/ 1994**

Anil Bhatt S/o Sri Indra Mani Bhatt ..... Petitioner  
Versus  
State of Uttarakhand & Ors. .... Respondents

**Date :- 31<sup>st</sup> August, 2009**

Mr. Ravi Babulkar, Advocate vice Mr. Tumul Nailwal, Advocate for the petitioner.

Mr. Ashish Joshi, Brief Holder for the State.

**Hon'ble J. C. S. Rawat, J.**

By means of this writ petition under Article 226 of the Constitution of India, the petitioner has sought a writ in the nature of certiorari quashing the impugned termination order of his services dated 18.05.1992 (Annexure-1 to the writ petition) passed by the Divisional Officer of Ayurvedic and Unani, Uttarkashi; and a writ of mandamus directing the respondents to continue the petitioner in service and pay him regular salary.

The said termination order has been challenged on the ground that the petitioner was appointed on 22.12.1990 by respondent No. 4 pursuant to the directions of the respondent No. 2 contained in the letter of petitioner's mother dated 22.11.1990; the respondent No. 2 directed respondent No. 4 to appoint the petitioner in Class-IV post; when the widow of deceased made repeated representations, the respondent No. 4 appointed the petitioner on daily wages on 22.12.1990; the services of the petitioner could not be terminated while treating him as an ad-hoc employee because the petitioner was appointed under

the Dying in Harness Rules; the services of the petitioner were terminated at the behest of State Government as some of the appointments were made by the Director; because the authority was of the opinion that the Director had made the illegal appointment in the State so a general order was issued terminating the services of the employees so appointed; as such, the termination order is illegal and arbitrary.

The writ petition has been contested by the respondents and it was alleged in the counter affidavit that initially the petitioner was appointed on daily wage basis in Class-IV post by the respondent No.4; thereafter he was appointed as Class-III employee on daily wage basis in the department; the termination order is a simplicitor one and there is no stigma on the said order; the petitioner was never appointed under the Dying in Harness Rules and his initial appointment cannot be treated as of permanent nature; the father of the petitioner (Sri Indra Mani Bhatt) died on 20.07.1970 and the petitioner was only one year old at that time; the petitioner was engaged in the year 1992 as a daily-wager and his appointment was never made under the Die-in-Harness Rules, as such, his case is not covered under the Dying in Harness Rules.

It has also been alleged in the petition that the petitioner is a workman and he was employed in an industry having for more than 240 days in a year preceding the year of his termination, as such the a notice should have been given to the petitioner before passing the termination order. Learned counsel for the respondent states that the petitioner should have preferred his claim before the Labour Authorities. The learned counsel for the petitioner has stated at bar that

he is not pressing the said plea, he is relying the claim of the petitioner under the Dying in Harness Rules alone.

I have heard the learned counsel for the parties and perused the record.

Learned counsel for the petitioner contended that the factual matrix clearly shows that the petitioner was appointed under the Dying in Harness Rules; the mother of the petitioner has submitted a representation to the respondent No.2 on 10.08.1989 and thereafter an order was passed on 22.11.1990 (Annexure-4 to the writ petition) that the petitioner should be appointed as Class-IV employee; it was directed to the Divisional Officer of Ayurvedic & Unani, Tehri Garhwal that the petitioner was not made and when a representation was submitted again to respondent No.2, the respondent No. 2 sought explanation of the respondent No.4 (Annexure-6 to the writ petition); thereafter the petitioner was given an appointment on 22.12.1990 (Annexure-5 to the petition); though the appointment letter contains that the petitioner had been appointed on daily wages but this appointment would be treated as the appointment made under the Dying in Harness Rules. He further contended that thereafter the petitioner was promoted to Class-III post vide order dated 09.01.1992 (Annexure-10 to the writ petition); the petitioner will be deemed to have been appointed on a permanent post and as such his service could not be terminated by the impugned order.

Learned counsel for the respondent refuted the contention and contended that petitioner was appointed by the respondent No.4 as daily wager which is evident from perusal of the appointment letter (Annexure-5 to the writ petition). The petitioner was appointed as

Class-III post on daily wage basis vide order dated 09.01.1992 (Annexure- 10 to the writ petition). Both

appointment letters clearly indicate that the petitioner had been appointed on daily wages basis and it does not contain that the petitioner was appointed under the Dying in Harness Rules. The petitioner's services was purely on daily wage basis and his appointment has not been made in accordance with the scheme of the Constitution, and as such his services can be terminated without any notice.

For the sake of convenience, the appointment orders dated 22.12.1990 (Annexure-5 to the petition) and dated 09.01.1992 (Annexure-10 to the writ are quoted below: -

“i= la[;k & ih0 40@1099  
22-12-1990

vkns'k

**Jh vfuy izlkj HkV~V iq= Jh bUnze.kh HkV~V] xzke&  
ceMxkWo] iks0 vks0 & >udksjh  
tuin fVgjh x<oky] dks 25 :0 izfrfnu ds fglkc  
ls prqFkZ Js.kh in ij jktdh; vk;qosZfnd fpfdRIky;  
eqfudhjsrh ftyk fVgjh x<oky esa  
fu;qDr fd;k tkrk gSA os rRdky eqfudhjsrh es  
dk;ZHkkj xzg.k djsA rFkk lwpuk HkstsA ”**

“  
1992

vkns'k

Jh vfuy izlkn HkV~V iq= Jh bUnze.kh HkV~V] xzke&  
ceMxkWo] iks0 vks0 & >udksyh tuin fVgjh  
x<+oky] dks {ks=h; vk;qosZfnd @ ;wukuh  
dk;kZy; mRrjdk'kh esa dk;Z dh vf/kdrk dks ns[krs gw,  
nSfud osru Hkksxh r`rh; Js.kh deZpkjh ds :lk  
esa rhu ekg ds fy, fu;qDr fd;k tkrk gS A”

Perusal of aforesaid appointment letters clearly reveal that the petitioner had been appointed on daily wages. There is no whisper in the appointment orders of the petitioner that he was appointed under the Dying in Harness Rules. The letter by which the Director has directed to appoint him under the Dying in Harness Rules is of no avail. The appointing authority has only appointed the petitioner on daily wages and if the petitioner was not satisfied with the employment either he should have jointed on protest or he should not have jointed on the post and he would have further claimed his appointment under the Dying in Harness Rules. Once he has opted to remain in service on daily wage basis subsequently he cannot claim that he should have been appointed under the Dying in Harness Rules. It is also pertinent to mention here that the appointment letters which have been extracted above did not disclose that he was appointed on Class-III/IV post under the Dying in Harness Rules. The petitioner is not entitled to the benefit of appointment under Dying in Harness Rules because he was appointed as a daily wager in the department.

In view of the above, I do not find any force in this petitioner and is liable to be dismissed. Therefore, the petition is dismissed accordingly. No order as to costs.

**(J.C.S. Rawat, J.)**

Dated: 31.08.2009

LSR / Ravi