

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition (S/S) No. 387 of 2018
(Old No. 34117 of 1995)

Jaikishan SharmaPetitioner
Versus
State of Uttar Pradesh & othersRespondents

Mr. Jitendra Chaudhary, Advocate for the petitioner.
Mr. T.S. Bisht, Deputy Advocate General for the State of Uttarakhand.
Mrs. Bina Pande, Standing Counsel alongwith Mr. Sandeep Verma, Brief Holder for the State of Uttarakhand.

Dated: 24th July, 2018

Hon'ble V.K. Bist, J.

Petitioner has challenged the order dated 07.08.1995 by which his services have been terminated. Further prayer has been made for direction to the respondents to regularize the services of the petitioner on the post of Seenchpal with full consequential benefit.

2. It is pointed out by the learned counsel for the petitioner that petitioner's service has already been regularized, therefore prayer no. 2 of the writ petition does not survive and same is rendered as infructuous.

3. Facts in brief, are that in the year 1990, the agricultural land of the petitioner was acquired by the State Government for construction of canal. At that time, Government Orders dated 21.09.1981 & 25.05.1982 were in operation, in which, it was provided that one person of a family whose land has been acquired will be entitled to get job in the concerned department. On 24.09.1990, petitioner moved an application seeking employment in Irrigation Department. On 13.07.1992, the Executive Engineer, Middle Ganga Khand-16, Bulandshahar forwarded and recommended petitioner's case for employment under

then prevailing State Policy to the Superintending Engineer, Middle Ganga Canal Nirman Khand-I, Meerut. Thereafter, on 18.08.1993, petitioner was sent for three months training for the post of Seenchpal in Irrigation Department and, thereafter, a written test was also conducted. The petitioner was declared successful in the test. Certificate in this regard was also issued by the Executive Engineer on 22.12.1993. Three months training and written test is essential for getting appointment as per Rule 15 of the Irrigation Department Patrol Service Rules, 1953. Since there was no vacancy of Seenchpal available in Meerut Division and vacancy of Seenchpal was available in Irrigation Department, Kashipur, District Udhampur Singh Nagar, therefore, the Superintendent Engineer, Irrigation Department, recommended the case of the petitioner for giving appointment to him on the post of Seenchpal, to Kashipur Division of the Irrigation Department. Thereafter, on 30.12.1994, appointment letter was issued in favour of the petitioner by the Executive Engineer, Irrigation Department, Kashipur on the post of Seenchpal in the pay scale of Rs. 950-20-1150 E.B.-25-1500. In pursuance of the said appointment letter, petitioner joined his services and started performing his duties. The appointment of the petitioner is permanent in nature, but, suddenly, on 07.08.1995, without issuing any show cause notice and without providing any opportunity of hearing to the petitioner, the services of the petitioner were terminated by the Executive Engineer, Kashipur on the direction issued by Superintending Engineer, Nainital. Against the said order, present writ petition was filed,

in which stay order was granted in favour of the petitioner by the Allahabad High Court on 28.11.1995.

4. After creation of Uttarakhand High Court, the case has been transferred to Uttarakhand High Court.

5. Learned counsel for the petitioner submitted that after grant of stay, the petitioner has been permitted to work in the department. He has been granted A.C.Ps. from time to time, but, only thing is that no promotion has been granted to the petitioner.

6. Contention of the learned counsel for the petitioner is that appointment of the petitioner was in accordance with the provisions of Irrigation Department Patrol Service Rules, 1953, which is admitted to the respondents in their counter affidavit. In this regard, paragraph no. 7 of the counter affidavit is being reproduced hereinbelow:

“7. That in reply to para 6 of the writ petition it is stated that appointments on the post of seenchpal who were earlier designated as patrol are made according to the provisions. The irrigation department patrol service rules 1953 framed under article 309 of the Constitution of India. According to rule no. 12 of the service rules 3 months training and to pass a practical examination is essential. The appointment is made according to the provisions of rule 15 of the said rules.”

7. Next argument of the learned counsel for the petitioner is that, it is admitted to the respondents that the petitioner was selected in accordance with the provision of the law and in that event the services of the petitioner could not be terminated without issuing

show cause notice to the petitioner and without giving opportunity of hearing.

8. On the other hand, learned Standing Counsel appearing for the State of Uttar Pradesh submitted that the appointment of the petitioner is temporary and termination was simplicitor. There was no need to give opportunity of hearing to the petitioner.

9. Learned Deputy Advocate General appearing for the State of Uttarakhand also submitted that the petitioner was appointed purely on the temporary basis; therefore, there was no need to provide him opportunity of hearing. He submitted that only small part of the land of the petitioner was acquired, therefore, he could not be appointed under the policy of the State Government.

10. I have seen the appointment order. The petitioner was given appointment on the post of Seenchnpal in the pay scale of Rs. 950-20-1150 E.B.-25-1500. In the appointment letter, it was written that the appointment of the petitioner is temporary and can be terminated any time without giving notice. Though, appointment of the petitioner was temporary in nature, but, petitioner was given pay scale. He has also been granted A.C.Ps. from time to time. The respondents in their counter affidavit admitted that the appointment of the petitioner was made according to the provision of Rule 15 of the Rules. Therefore, the argument of the respondents that petitioner was appointed purely on temporary basis, cannot be accepted. In such circumstances, the termination order was passed in violation of principle of natural justice and fair-play

and without affording opportunity of hearing to the petitioner. I have also seen the termination order. In the termination order, it is written that the services of the petitioner are being terminated on the basis of the direction issued by the Superintending Engineer, Nainital vide letter no. 3148/1/Sikham/R-4/ Seenchpal dated 22.05.1995. This letter has been annexed by the respondent in their counter affidavit as Annexure No. 6. In the said letter, the Superintending Engineer simply wrote about one Kishan Singh Negi, Seenchpal. He further wrote that appointment being provided to the new candidate is not justifiable. In the said letter, the Superintending Engineer nowhere written to the Executive Engineer to terminate the services of the petitioner. Therefore, the termination order, which is passed on the basis of the letter of the Superintending Engineer, Nainital is bad in law. The Superintending Engineer had never issued instruction/ direction to the respondent to terminate the services of the petitioner. In view of these facts, the impugned order deserves to be set aside.

11. Consequently, the writ petition is allowed. Order dated 07.08.1995 will stand set-aside.

12. No order as to costs.

(V.K. Bist, J.)
24.07.2018

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