

KENDRIYA VIDYALAYA SANGATHAN AND ORS.

v.

AJAY KUMAR DAS AND ORS.

APRIL 29, 2002

[S. RAJENDRA BABU AND B.N. AGRAWAL, JJ.]

Service Law:

Appointment—Lower Division Clerks—Appointment orders issued by an officer whose services had been terminated, but was continuing in service on the basis of an interim order of High Court—Inquiry Report brought out irregularities in the recruitment—Vacation of interim order—Termination of services of the appointees by the authorities—Validity of—Held, such order not valid—Such orders being a nullity, observance of principles of natural justice would not arise—Principles of natural justice—Administrative Law.

Appellants issued advertisement for the posts of LDCs. Assistant Commissioner, whose services had been terminated a couple of days before, issued appointment orders since he was continuing in service on the basis of the interim order of the High Court. Assistant Commissioner then challenged the order of his termination. High Court dismissed the petition and also held that the appointment order issued by him were null and void. Inquiry Report regarding recruitment made by the Assistant Commissioner also indicated several irregularities. Thereafter, on the basis of vacation of the interim order, the appointing authority passed an order terminating the services of the respondents. Respondents challenged the order and the tribunal set aside the order on the ground that the respondents were not parties to the writ proceedings and identical order had been issued in the case of persons who had been selected, without observing the principles of natural justice. Aggrieved appellant filed writ petition which was dismissed by the High Court. Hence the present appeals.

Allowing the appeals, the Court

HELD : Respondents were appointed by the Assistant Commissioner when his services had been terminated and his continuation in service itself was under a cloud and in an inquiry serious lapses had been noticed in the

- A** matter of recruitment. It is clear that if after the termination of services of the officer concerned the orders of appointment are issued, such orders are not valid. If such appointment orders are a nullity, the question of observance of principles of natural justice would not arise. Even though the respondents may not have been a party to the proceedings before the High Court, it is clear that if the appointing authority itself did not have power to make appointment by reason of termination of his services, it is futile to contend that the respondents should have been served with notices in that regard. On the pretext that the order of termination of the services of the Assistant Commissioner had not been served upon him, it cannot be contended that the appointments in question would be valid.
- B**
- C** [611-F-H; 612-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3150 of 2002.

- D** From the Judgment and Order dated 7.6.2000 of the Gauhati High Court in W.P. (C) No. 2443 of 2000.

WITH

C.A. Nos. 3151-3152, 3153, 3154, 3155, 3156, 3157 of 2002.

- E** S. Rajappa for the Appellants.

A.R. Barthakur, Suresh C. Gupta, A. Guneshwar Sharma, Sanjay Pal, Kamal Mohan Gupta, Vipul Gupta, Ms. Lalita Kaushik, S.K. Nandy, S.M. Sarkar, B.B. Sinha, R.C. Verma, S.C. Patel, Rakesh K. Khanna, Brahm Dut, and Reetesh Singh and Surya Kant for the Respondents.

- F** Ashim Paul-in-person for the Respondent in C.A. No. 3153/2002.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. : Leave granted in all the SLPs.

- G** The services of one Dr. K.C. Rakesh, Assistant Commissioner of the appellants' Regional Office in Guwahati stood terminated by an order made on December 11, 1997.

- H** An advertisement had been issued on 26.10.1996 for filling up 12 posts of LDCs. Certain tests were held on different dates and letters of appointment were issued on 13/15 December, 1997 by the said Dr. K.C. Rakesh to the

respondents and they were duly appointed. On the order terminating the services of the said Dr. K.C. Rakesh, a writ petition was filed before the High Court of Delhi which came to be ultimately dismissed. An interim order had been made in the said writ petition and the same was vacated by the Delhi High Court by an order made on 4.2.1998. The relevant portion of the said order reads as follows:

“.....taking advantage of the interim order passed by this Court, the petitioner has issued various orders. Whatever orders passed by the petitioner after the termination order issued by the respondents will be treated as null and void and they will have absolutely no legal effect. The respondent will act as if there are not such orders passed by the petitioner after the termination order was passed.”

In addition to that, an enquiry was conducted into certain allegations of irregularities regarding recruitment to teaching and non-teaching posts made by the said Dr. K.C. Rakesh. The Enquiry Report clearly indicated that there were several irregularities in the matter of recruitment. Bearing these aspects in mind and considering the fact that the appointment orders have been issued by the said Dr. K.C. Rakesh, when he had been dismissed, the authorities put an end to the services of the respondents by an order made on 19.2.1998 by adverting to the vacation of the interim order to which we have already referred to. This order was challenged by the respondents before the Central Administrative Tribunal, Guwahati Bench [hereinafter referred to as ‘the Tribunal’]. The Tribunal set aside the order dated 19.2.1998 on the ground that the respondents were not parties to the writ proceedings and identical orders had been issued in the case of persons who had been selected without observing the principles of natural justice. When the matter was carried by way of writ petition to the High Court, the same having been dismissed, the appellants have approached this Court in these appeals by special leave.

The narration of the facts made above, make it clear that the respondents were appointed by the said Dr. K.C. Rakesh, Assistant Commissioner, Guwahati when his services had been terminated and his continuation in service itself was under a cloud and in an inquiry serious lapses had been noticed in the matter of recruitment. It is clear that if after the termination of services of the said Dr. K.C. Rakesh, the orders of appointment are issued, such orders are not valid. If such appointment orders are a nullity, the question of observance of principles of natural justice would not arise. Even though, the respondents may not have been a party to the proceedings before the

- A High Court, it is clear that if the appointing authority itself did not have power to make appointment by reason of termination of his services, it is futile to contend that the respondents should have been served with notices in that regard. Dr. K.C.Rakesh issued appointment orders on his services having been put an end to on December 11, 1997 by issuance of orders of appointment dated December 13/15, 1997. On the pretext that the order of termination of his services had not been served upon him it cannot be contended that the appointments of the respondents would be valid.
- B

- C In the circumstances, we are of the view that neither the High Court nor the Tribunal examined the matter in the right perspective. We, therefore, set aside the orders made by the High Court and the Tribunal and dismiss the original applications filed by the respondents before the Tribunal. These appeals will stand allowed accordingly. No costs.

N.J.

Appeals allowed.