

State of Uttar Pradesh and Another

Vs

Shri Nand Kishore Tandon

Civil Appeal No. 14 of 1972

(Syed M. Fazal Ali, P. N. Bhagwati, H. R. Khanna JJ)

14.11.1975

JUDGMENT

FAZAL ALI, J. -

1. In this appeal by social leave, the state of Uttar Pradesh urged before this Court that the judgment of the High Court is illegal and erroneous inasmuch as it is against the ratio laid down by this Court in *Panchayat Raj v. Babu Singh* ((1972) 2 SCR 400 : (1972) 1 SCC 227).

2. The facts of the appeal lie within a narrow compass. The respondent was appointed as Enquiry Inspector in the Food and Civil Supplies Department sometime in the Year 1945. He was appointed in a substantive capacity to a temporary post. Subsequently the post became permanent but there was no declaration by the Government confirming the respondent. By order dated August 29, 1967, the District Magistrate, Gonda served a notice on the respondent terminating his service and directed payment of one month's salary in lieu of one month's notice for termination of service. The order was passed on the basis that the respondent was merely a temporary employee. The respondent filed a writ petition before the High Court which was heard by a single judge who, relying on a Division Bench decision of that Court held that as the respondent had been appointed in a substantive capacity to a temporary post and since the post was subsequently made permanent, the respondent must be treated to be a permanent employee and therefore the order of the District Magistrate terminating the services of the respondent as a temporary employee was bad. The High Court accordingly quashed that order. The appellant then went up in special appeal to a Division Bench of the Allahabad High Court which was also dismissed. Hence this appeal by special leave.

3. Learned counsel, Mr. Dikshit, appearing for the State, has relied on the decision of this Court in *Panchayat Raj v. Babu Singh* (supra) for the proposition that the mere fact that a person who is appointed in a substantive capacity to a temporary post does not become permanent if the post is declared to be permanent. We find that the present case is on all fours with the facts decided by this Court in *Panchayat Raj v. Babu Singh* where this Court held as follows :

A temporary government servant does not become a permanent government servant unless he gets that capacity either under some rule or he is declared or appointed by the government as a permanent government servant. Our attention has not been invited to any rule under which respondent in these appeals can be considered as having been appointed either permanently or in a substantive capacity to permanent posts. All along they continued to be temporary government servants whether the posts held by them were temporary posts or permanent posts.

In view of this decision it is clear that the decision of the Allahabad High Court was illegal and erroneous. In fact the decision of this Court referred to above was given in an appeal against the very Division Bench judgment of the Allahabad High Court which was relied upon by the High Court in this case.

4. Mr. A. K. Sen appearing for the respondent submitted that the respondent had raised a number of points relating to the merits of the case which were not at all considered by the High Court which decided the case only on a point of law. In these circumstances, it was submitted that the case should be remanded to the High Court for disposal of the other points taken by the respondent. We think that the contention of learned counsel for the respondent is well founded because in his petition before the High Court the respondent had raised some points relating to the merits of the case which were not decided by the High Court.

5. We, therefore, allow this appeal and remand the writ petition to the High Court for disposal in accordance with law. There will be no order as to costs.

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