

State of U. P. Through Director of Medical and Health Services, Govt. of Uttar Pradesh, Lucknow  
and Others

Vs

Sant Lal

Civil Appeal No. 589 of 1978

(P. B. Sawant, Smt. M. S. Fathima Beevi JJ)

04.12.1990

ORDER

1. The respondent was appointed as a male social worker in a temporary capacity on February 1, 1962, by the Joint Director, Health Services, U.P. Government. His services were later, on February 27, 1976, terminated by the District Magistrate under Rule 3(1) of the U.P. Temporary Government Servants (Termination of Services) Rules, 1975 (hereinafter referred to as the 'Rules'). The respondent challenged the termination of service before the U.P. State Services Tribunal on the only ground that the termination of the services by the District Magistrate was unlawful since his appointing authority was the Joint Director, Medical Health Services. On behalf of the appellant-State Government it was pointed out to the Tribunal that on April 30, 1969, the Governor had issued an order to the effect that District Magistrate would be the appointing authority for the post of Health Assistants (which included the post of the respondent), in the Family Planning Department. This contention of the State Government was upheld by the Tribunal. Against the said order, respondent preferred a writ petition in the High Court which set aside the decision of the Tribunal holding that since the Joint Director, Medical Health Services was the authority who had appointed the respondent he alone had the power to terminate his services. This decision of the High Court given on March 1, 1977. Pursuant to this decision, the State Government reinstated the respondent by an order of June 9, 1977 w.e.f. March 1, 1977. The result is that today when this appeal has come up for hearing before us, the respondent has put in service of more than 28 years, and probably he is nearer the age of his superannuation.

2. Mr Prithvi Raj, learned counsel appearing for the State contended that it was necessary that we set at rest the legal controversy, namely, whether in view of the order of the Governor issued on April 30, 1969, it is the District Magistrate who would be the authority to terminate the services of the concerned employees though they were appointed earlier by the Joint Director, Medical Services. Since the respondent has put in a long service of 28 years and more, we feel that even if the point is decided in favour of the State Government, it would be too late to permit the government to terminate his services. No useful purpose will, therefore, be served in going into the exercise of deciding the point. Besides, an occasion to decide the said point may not arise even in future. We, therefore, refrain from expressing any opinion on the point and direct the State Government to continue the respondent in service. We have no doubt that taking into consideration the long service of the respondent and also taking into consideration the fact, that even when his services were sought to be terminated in February 1976, he had put in no less than 14 years of service, though according to the State Government, in a temporary capacity, the State Government

would now take steps to regularise his services and given him all the benefits including that of promotion to which he is entitled.

3. In the circumstances, the appeal is dismissed with no order as to costs. The civil miscellaneous petitions also stand dismissed in view of the above.

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