

State of U. P. and Another

Vs

Brij Nath Misra

Civil Appeal No. 2709 of 1997

(K. Ramaswamy, G. B. Pattanaik JJ)

27.03.1997

ORDER

1. Leave granted.

2. This appeal by special leave arises from the judgment of the Allahabad High Court, Lucknow Bench, made on 6-8-1993 in Writ Petition No. 1126 of 1991.

3. The admitted position is that the respondent was appointed as an Ayurvedic Medical Officer on ad hoc basis by proceedings dated 11-10- 1983 in the pay scale of Rs. 850-1720. He remained unauthorisedly absent from duty for 5 years. Thereafter, on an application made by him on 14-4-1989, he was informed by the Government Order No. 5133 dated 8-9-1989 that he was permitted to resume duty on his furnishing fitness certificate with a condition that his unauthorised absence from duty was treated as a break in service. On so furnishing the certificate, he resumed duty. Subsequently, the Selection Committee was constituted under Rule 4(3) of the U.P. Regularisation of Ad Hoc Appointments (On Posts within the Purview of the Public Service Commission) Rules, 1979 (for short "the Rules"). Subsequently, the Rules came to be amended. Rule 4 postulates that any person who was directly appointed on ad hoc basis before 1-1-1977 and is continuing in service as such on the date of the commencement of the Rules, which came into force on 14-5-1979, would be regularised subject to the conditions mentioned thereunder. Rule 8 provides that "the services of a person, appointed on ad hoc basis who is not found suitable or whose case is not covered by Rule 4(i) shall be terminated forthwith and, on such termination, he shall be entitled to receive one month's pay". The case of the respondent was placed before the Committee on 22-1-1991 and he was found to be unfit for regularisation. Accordingly, his appointment came to be terminated. It was challenged in the High Court in the above writ petition and the High Court has stated that the appointment dated 8-9-1989 was a fresh appointment and, therefore, the termination was bad in law. Thus, this appeal by special leave.

4. The question is whether the view taken by the High Court is correct. It is seen that the Order dated 8-9-1989 clearly mentions that the respondent was permitted to resume duty subject to production of medical fitness certificate, his unauthorised absence from duty resulted in break in service. Thus, it could be seen that the Order dated 8-9-1989 is not an order of fresh appointment but a permission granted to the respondent to resume duty as Ayurvedic Medical Officer. In furtherance thereof, on production of the a medical certificate, he did join duty. On his so joining duty, his right to the post dated back and flowed from his initial appointment, namely, 13-10-1983. In other words, his ad hoc appointment got revived subject to treating. the period of unauthorised absence from duty as break in service. Though there is break in service, it cannot be considered to be a fresh appointment as was held by this Court in Dayal Saran Sanan v. Union of India ((1980) 3

SCC 25 : 1980 SCC (L&S) 287) and Shiv Shanker v. Union of India ((1985) 2 SCC 30 : 1985 SCC (L&S) 387).

5. In view of the fact that the Committee duly constituted under the Rules had considered the case of the respondent and found him not fit to be regularised, the order of termination is governed by Rule 8 of the Rules. As a consequence, the question of conducting an enquiry or giving an opportunity to the respondent before termination of the service does not arise. The view of the High Court, therefore, is clearly illegal.

6. The appeal is accordingly allowed and the writ petition stands dismissed but, in the circumstances, without costs.