

(2002) 10 AHC CK 0202

Allahabad High Court

Case No: C.M.W.P. No. 24222 of 1995

Sheo Prakash Singh

APPELLANT

Vs

Chief Engineer, Minor Irrigation
and Others

RESPONDENT

Date of Decision: Oct. 11, 2002

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21

Citation: (2003) 3 AWC 1925

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: R.C. Srivastava and M.M. Lal, Srivastava, for the Appellant;

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard learned counsel for the parties and perused the record.

2. The petitioner was appointed as Assistant Boring Technician in the vacancy caused due to death of permanent incumbent Shri Brij Lal Singh who was working on the said post.

3. The appointment of the petitioner as appears from Annexure-1 to the writ petition was for a period of three months only on the recommendation made by Shri Ram Yadav, Minister, Gram Vikas Evam Kshetriya Vikas, U. P., dated 31.10.1994. In pursuance of the recommendations, the Chief Engineer, Minor Irrigation, U. P., Lucknow, directed the Executive Engineer, Minor Irrigation, Mirzapur, on 29.3. 1995 and 5.4. 1995 telephonically and in writing to appoint the petitioner. The petitioner was given temporary, time-bound appointment for 3 months and his services were to come to an end on expiry of the aforesaid period of 3 months. However, the services of the petitioner were thereafter extended for one more month by order of the Executive Engineer. Mirzapur, dated 2.8.1995.

4. The petitioner has filed this petition for a relief of mandamus directing the respondents to continue him in service on the post of Assistant Boring Technician till a regular selection is held in which he may also be allowed to participate on the basis of eligibility for appointment on that post. He has further prayed for a direction to the respondents not to interfere in his working on the said post of Assistant Boring Technician.

5. The petitioner submits that inspite of there being regular vacancy, he has not been appointed and the post is kept vacant, and neither any selection has been held nor any regular appointment has been made on the said post of Assistant Boring Technician.

6. At the time of the admission of the writ petition, no interim order was granted to the petitioner by this Court.

7. In the counter-affidavit, it has been stated that the post of Assistant Boring Technician is not a direct recruitment post. There was no vacancy of Assistant Boring Technician but in view of the recommendations and orders passed by the Minister and the Executive Engineer dated 31.10.1994 and 29.4.1995 respectively, the petitioner was initially engaged for a period 90 days only, in anticipation of creation of a post of Assistant Boring Technician. It is submitted that neither the post was created nor there was any vacancy, hence, the petitioner could not be appointed beyond the period for which he was engaged as extended by order dated 2.8.1995. It is further submitted that no appointment can be given under undue influence or under pressure except in accordance with law. Since the engagement of the petitioner, on daily wages, was not extended, he has filed this petition claiming for the relief for continuation in service.

8. It is well-settled that a temporary employee has no right to the post particularly when there is no post and he is only engaged for a specified period. The principles on which a writ of mandamus can be issued are now well-settled, that petitioner while applying for such a writ of mandamus, must not only show that he has a legal right to compel for the performance of such a statutory duty cast upon the respondents but also has equity in his favour. A writ of mandamus may not be issued only on the basis of any illegality and for issuance of such a writ, illegality has to be coupled with equity in favour of the petitioner who must establish his legal right also. By mere engagement for a period of 90 days, which was extended by a further period of 30 days, the petitioner does not acquire any indefeasible right to be appointed on the post. Neither any such indefeasible right has been shown by the petitioner nor he has been able to establish the performance of any statutory duty cast upon the respondents to continue his engagement. On the contrary, his appointment was made under the instruction of a Minister and not in accordance with law.

9. In the counter-affidavit, it has been specifically stated that there is no post of Assistant Boring Technician. It is for the State Government to decide the strength of the post. The engagement for the short period does not create a right of appointment on a post and cannot be enforced by a writ of mandamus.

10. Before parting with the case, the Court records its displeasure in the manner the State Government has acted in engagement of the petitioner on the basis of recommendations of a Minister and the order of the Executive Engineer. Time has come to put a stop to such malpractices. Such type of engagements are being resorted to for appointment in Government service through back door entry as first engagement is made for a limited period and thereafter orders are obtained from the Courts for continuation in service and over period of time, regularisation in service is sought. By this method, qualified, eligible and meritorious candidates suffer in the matter of employment and this breeds frustration and corruption and erosion of ethical values in the society.

11. The State Government is directed to ensure that no such appointment, as in the instant case, are made as it amounts to violation of Articles 14, 16 and 21 of the Constitution of India. Such appointments must be stopped and measures be taken by the State Government to put a stop of such back door appointments.

12. Moreover, since the petitioner is not in service from 1995, he cannot be granted relief as prayed for, due to efflux of times.

13. The writ petition, therefore, fails and is dismissed on merits.

14. No order as to costs.