

(2006) 05 AHC CK 0261

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 54038 of 1999

Sri Krishan Dass Goel

APPELLANT

Vs

State of Uttar Pradesh and
Collector and Director of Pension

RESPONDENT

Date of Decision: May 8, 2006

Acts Referred:

- Constitution of India, 1950 - Article 309, 311, 311(1), 311(2)
- Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975 - Rule 4(2)

Citation: (2006) 6 AWC 5951

Hon'ble Judges: V.C. Misra, J

Bench: Single Bench

Advocate: D.B. Kauser and Rollie Kauser, for the Appellant; Ravi Ranjan and Archana Srivastava and S.C., for the Respondent

Final Decision: Allowed

Judgement

V.C. Misra, J.

Heard Sri D.B. Kauser and Ms. Rollie Kauser, learned Counsel for the petitioner and Sri Ravi Ranjan, learned Standing Counsel for the State respondents at length. Counter and rejoinder affidavits have been exchanged in this case.

2. This writ petition has been filed for quashing the impugned orders dated August 23/26, 1982 and dated 24.3.1999 (Annexures No. III & VI respectively to the writ petition) passed by Government Treasurer, Saharanpur and Director, Directorate of Pension, U.P., Lucknow respectively and for directing respondents No. 2 & 3 to re-fix the pay of the petitioner and revise all entitlements of pensionary benefits admissible to him alongwith interest @ 12% per annum and further for a direction commanding the respondents to reckon petitioner's service from 6.8.1962 to 31.8.1982 as Government service.

3. The facts of the case of the petitioner in brief are that he was appointed as Extra Money Tester in sub-treasury Mawana, Meerut on 6th August 1962 by the Government Treasurer on the approval of the Collector of the district dated 2.8.1962. As per the appointment letter dated 4th August, 1962 (Annexure No. 1 to the writ petition) the appointment was on purely temporary basis. The petitioner continued to serve in the aforesaid capacity uninterruptedly without a day's break right up to 31st August, 1982 and was granted and paid regular salary with annual increments and revised pay scales from time to time and the deductions like General Provident Fund (G.P.F.), subscription of Group Insurance Scheme were also regularly made from his salary. The contention of the petitioner is that vide Telex dated 26th August, 1982 (Annexure No. II to the writ petition) sent by Joint Secretary, Finance (Services-3), U.P. Government, Lucknow to the Commissioner, Meerut Division, Meerut copy of which was sent to the District Magistrate, Meerut-respondent No. 2, it was mentioned therein that if Sarvsri Ram Nath Sharma, Sri Krishan Goel (petitioner) and Mahendra Kumar Mittal have put in twenty year's service as Money Tester, they may be absorbed in the treasury/sub treasury and the remaining Money Testers may be adjusted on first come first go basis but in contravention of the said Telex message the Government Treasurer without seeking any prior approval of the District Magistrate/Collector, Meerut terminated the services of the petitioner abruptly with effect from the afternoon of 31st August, 1982 vide letter dated 23/26 August, 1982 without serving one month's notice or by paying a sum, equivalent to the amount of his one month pay alongwith allowances in lieu of the same. By the said letter the petitioner was asked to handover complete charge in the afternoon of 31.8.1982 and inform his address in the office so that he could be absorbed as and when any vacancy occurred in any of the districts of Saharanpur, Meerut, Ghaziabad. Subsequently, as per order dated 10.3.1983 (Annexure No. 4 to the writ petition) of the District Magistrate, Meerut, the petitioner was reinstated on ad hoc basis w.e.f. 10.3.1983 apparently in compliance of the aforesaid Telex message dated 26.8.1982, which was subsequently affirmed by the Senior Treasury Officer, Meerut vide letter dated 3.2.1999 (Annexure No. 5 to the writ petition) sent to the Director, Pension Directorate, U.P., Lucknow. It has been stated in the writ petition that during the course of his service the petitioner was granted promotion as Tahvildar Deputy Cashier and thereafter as Cashier. The petitioner was also promoted and appointed on the post of Chief Cashier and finally retired after attaining the superannuation age on 31.7.1998.

4. It has been further stated in the writ petition that vide letter dated 27th June, 1998 the Senior Treasury Officer, Meerut had forwarded the papers relating to the petitioner's pension to respondent No. 3- Director, Directorate of Pension, Lucknow to sanction pension on the basis of qualifying service w.e.f. 6.8.1962 to 31.7.1998 and also sent a letter dated 20.4.1999 (Annexure No. 7 to the writ petition) in relation to petitioner's pension matter. It has been further contended that vide order dated 24.3.1999 (Annexure No. 6 to the writ petition) respondent No. 3

slashed the petitioner's superannuation pension to Rs. 1,275/-, and reduced pension after commutation to Rs. 796/-, on the commuted value of pension Rs. 60,124/-. The petitioner being aggrieved filed writ petition No. 29463 of 1999 which was disposed of by this Court vide order dated 22.7.1999 with the direction that the District Magistrate/Collector, Meerut shall look into the matter and pass appropriate speaking order after obtaining the report of the concerned Accounts Officer or the Treasury Officer in the matter as to under what circumstances the pension which had already been determined was reduced. In pursuance of the order of this Court dated 22.7.1999 the petitioner made a representation, which was rejected by respondent No. 2- District Magistrate, Meerut vide its order dated 28.8.1999 (Annexure No. 10 to the writ petition) on the ground that no decision regarding fixation of final pension could be taken at its level and the same had to be finally decided by the Director, Directorate of Pension, U.P., Lucknow. However, it was mentioned therein that in term of para 4 of Government Order No, S-3-2005/Das/907/76 the aforesaid interruption in service in the case of the petitioner was liable to be ignored/condoned with a view to afford benefit of service rendered prior to the said interruption of service, lasting from 1.9.1982 to 10.3.1983.

5. Since no counter affidavit was filed within time granted, this Court vide its order dated 25.7.2001 directed the State Government to consider the claim of the petitioner for condonation of his interruption of service and appropriate decision be taken within a period of three months. The petitioner in compliance of the order of this Court dated 27.2.2003 submitted his representation dated 17.6.2003 to the Principal Secretary (Finance) State of U.P. alongwith list of documents in support of his claim. The plea for condonation of break in service from 1.9.1982 to 10.3.1983 and treating the applicant as Government servant from 6.8.1962 to 31.8.1982 was rejected vide order-dated 19.7.2003. The petitioner thereafter in view of the decision of the Supreme Court rendered in the case of [State of Uttar Pradesh and Another Vs. Audh Narain Singh and Another](#), sought for necessary amendments in the writ petition, which were allowed and were duly incorporated.

6. The main grounds raised by the petitioner in the amendment application are that the post of Money Tester held by the petitioner since 6.8.1962 to 31.8.1982 happened to be Government Service in terms of the judgment of the Hon'ble apex Court rendered in State of U.P. and Anr. v. Audh Narain Singh and Ors. (Supra) on the basis of which the State Government had issued a Government Order No. 2528/X-18/1957 dated 21.8.1964 (Annexure No. AA/1 to the Amendment Application dated 3.11.2003); that the petitioner was entitled for arrears of pay and allowance on the post of Money Tester to be recognized as duty period w.e.f. 1.9.1982 to 10.3.1983; that the petitioner's basic pay on the promotional post of "Tahvildar" Rs. 430-685 required refixation above the level of Rs. 477/- which he was drawing on 31.3.1982 and that he was entitled for arrears of pay/allowances on the officiating post of Tahvildar from 11.3.1983 to 7.9.1986 in the pre-revised/revised scales of pay with interest at the rate of 18% in terms of the decisions laid down by the apex Court

in the cases of [State of Kerala and Others Vs. M. Padmanabhan Nair,](#) Dr. Uma Agarwal v. State of U.P. 1999 S.C.C. (L&S) 742 and Vijai L. Mehrotra v. State of U.P. and Ors. (2002 S.C.C. (L& S) 278); that the benefit of superannuation pension, commutation of pension @ 40%, retirement gratuity warrants redetermination by treating the entire period from 6.8.1982 to 31.7.1998 as qualifying service" under the State Government of Uttar Pradesh.

7. The respondents have filed their counter and supplementary counter affidavit to the above said amendments made in the writ petition. In the counter affidavit the main ground of defence taken by the respondents was that the petitioner was given a temporary appointment on the post of Extra Money Tester on six monthly basis under Rule 135 of the Resource Manual though he continued without any break from 4.8.1962 to 31.8.1982. In support of their contention they have filed order-dated 24.3.1982 passed by the Senior Treasury Officer, Meerut (Annexure No. C.A. -1 to the counter affidavit) wherein the order of the Collector, Meerut dated 4.3.1982 has been referred whereby sanction for the continuance of the five posts of extra money tester was accorded till 31.8.1982. It has been stated that adhoc services are not pensionable unless it is followed by a substantive appointment and since the petitioner was substantively appointed on the post of Money Tester w.e.f. 8.9.1986, therefore, he was given the benefit of this adhoc appointment while commuting pension and his pensionable services were counted w.e.f. 11.3.1983 to 31.7.1998. In the supplementary affidavit filed by the respondents in compliance of the order of this Court dated 27.2.2003 read with order dated 25.7.2001, it has been submitted that the representation of the petitioner was considered and after giving full opportunity to him his representation was rejected by the Principal Secretary (Finance) vide its order dated 19.7.2003, in accordance with law. Since he was engaged on contractual basis, therefore, he was not entitled to pensionary benefit as per Section 361 of the Civil Service Regulations (hereinafter referred to as the C.S.R.) wherein it has been laid down that service of an officer does not qualify for pension unless it conforms to the following three conditions, i.e., first, the service must be under Government, secondly, the employment must be substantive and permanent and thirdly, the service must be paid by Government and since the petitioner did not fulfill the above said conditions his earlier services i.e., 6.8.1982 to 31.8.1982 were not be taken into consideration for the purposes of commutation of pension and such break of service also could not be condoned.

8. The petitioner while denying the averments made in the counter affidavit and supplementary counter affidavit has reiterated his stand and filed documents in support of his averments made in the writ petition placing photostat copy of the service book, copy of the G.O. No. S-2528/X-151/1957 dated 21.8.1964 which was issued declaring the "Tahvildar" employed by Government Treasurers are Government Servants and on that basis, the money testers, stamp vendors and peons employed by Government Treasurers in Cash Section shall also be considered as Government Servants on the basis of the judgment of the Hon"ble Supreme

Court in the case of Audh Narain (Supra).

9. Learned Counsel for the petitioner has submitted that the petitioner had all along been holder of civil post under the State within the meaning of Article 311(1) of the Constitution of India and for showing that the petitioner was holding civil post he contended that the petitioner's service book and other documents related to him clearly show that he was appointed on the post of Extra Money Tester on temporary but in time scale of pay Rs. 50-2-60-3-90; that successively under the orders of the District Collector, Meerut he was provided the revised pay scales of Rs. 80-140, Rs. 185-265 and Rs. 330-495; that during his service period options were obtained by the concerned authority from him and he used to give his options for revised pay scales and other benefits; that withdrawal of annual increments in relevant pay scales were granted since August, 1963 onwards; that annual verification of services as a Government servant from 6th August, 1982 to 31st August, 1982 were made from the bill book of District Treasury, Meerut; that last pay certificate was issued in favour of the petitioner as per paragraph No. 102 of Financial Hand- Book, Volume -V by virtue of his status as Government servant and lastly, petitioner's disengagement from service from September, 1982 was neither intended nor permitted by the State Government nor sought by Collector Meerut on the alleged ground of non-availability of work of Money Tester as said by the concerned Government Treasurer rather that the petitioner's disengagement from service was solely owing to non-receipt of the six-monthly sanction from State Government.

10. Learned Counsel for the petitioner has further submitted that the State Government in exercise of its sovereign power, in the interest of administration, exigencies of service and in the administrative necessity, had been making temporary additions to the feeder-cadre by way of additional extra Money Testers from time to time and the post of Cashiers and Tahvildars were filled up by promotion amongst them. He also submitted that there was a Master and servant relationship between the District Collector being the appointing authority and the directly recruited Money Testers and Extra Money Testers.

11. It is submitted that according to the definition contained in Rule 9(30-A) of the Fundamental Rules (in short "F.R."), the tenure posts are intrinsically permanent and it cannot be held by an individual Government Servant as the same was for a specified limited period. As a natural corollary, the additional Extra Money Testers deployed in cash branch of the District Treasuries are ab initio Government servants despite piecemeal sanction accorded by the Finance (Services) Department on six-monthly basis. That the Money Testers and Additional Extra Money Testers used to draw their pay and allowances from the budget granted by the State Government, debitable to major Head of Account, "254-Treasuries & Administrative Services- Non Plan-07-Treasury Establishment" and that the work and conduct of Money Testers/Extra Money Testers are reflected in annual confidential reports, like any other Government Servants and thus for all intents and purposes the Extra

Money Testers would come within the ambit of persons appointed to public posts and services in connection with the affairs of the State as per Article 309 of the Constitution of India.

12. On hearing learned Counsel for the parties at length and perusal of the record and the documents placed before this Court I find that the post of Money Testers/ Extra Money Testers are not classifiable as tenure post as defined in Rule 9(30-A) of the Fundamental Rules, 1922 (hereinafter referred to as "F.R.") and in the cash branch of the District Treasuries, there exists a cadre of Cashiers, Tahvildars and the Money Testers in specified time scale of pay, as defined in F.R. 9(31)(a), having varying rates of increments on an annual footing in between the minimum and maximum of the pay scales and in each cadre there exists permanent posts which are sanctioned without limit of time and temporary posts sanctioned for a limited time, as defined in F.R. 9(22) and F.R. 9 (31) respectively. That the Money Testers and Additional Extra Money Testers used to draw their pay and allowances from the budget granted by the State Government, debitable to major Head of Account, "254-Treasuries & Administrative Services- Non Plan-o7-Treasury Establishment" and that the work and conduct of Money Testers/Extra Money Testers are reflected in annual confidential reports, like any other Government Servants. From the record it is clear that the additional Extra Money Testers were civil servants serving in the affairs of the State, which is fortified by the decision of the Supreme Court given in *Audh Narain Singh (Supra)* wherein at paragraphs 9 & 10 the apex Court held that Tahvildars of the cash branch were remunerated by the State and controlled by the District Collector with regard to their work/discipline and that they happen to be civil servant. I also find that the impugned order has been passed in contravention of the provisions of Rule 4(2) of the U.P. Temporary Government Servants (Termination of Service) Rules, 1975 since the petitioner was neither given one month's notice nor was paid one month's salary in lieu thereof. The impugned order of termination simplicitor was neither occasioned by petitioner's unsuitability for the post, nor entailed a preliminary inquiry into petitioner's conduct and performance of duties and as the record shows the petitioner was not guilty of participation in illegal strike or unauthorized absence, and no break in service was attracted as to merit for forfeiture of the past services rendered by the petitioner for the purposes of pensionary benefits on lesser qualifying period of service and thus, he is entitled for full back wages as per the decisions of the Supreme Court rendered in the cases of [Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others](#), [Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another](#), and [Dayal Saran Sanan Vs. Union of India \(UOI\) and Others](#), . I also find that the stance of the Senior Treasury Officer, Meerut taken in its letter dated 30th January, 1990 seeking to justify pay fixation on 11.3.1983 at the minimum Rs. 354/- of the pay scale on promotional post of Tahvildar due to non-availability of last pay certificate was untenable excuse in context with basic pay of the petitioner at the stage of Rs. 477/- already featuring in

service Book (Annexure No. S.R.A.-1 to the Supplementary Rejoinder Affidavit) since as per F.R. 22 (1), the pay fixed on re-appointment must not be less than the pay drawn last in earlier post holds good even in cases involving appointment on promotional post as per F.R. 22 (I)(a), the pay on the promoted post is to be fixed at the stage next above the notional pay arrived at by increasing the pay in the lower post by an increment at the stage at which such pay accrued or Rs. 100/- whichever is more. Thus, the stopgap appointment on the post of Tahvildar effective from 11.3.1983 warranted petitioner's pay being raised.

13. The contention of the learned Counsel for the respondents to the extent that the petitioner was engaged on contractual basis with reference to the contents of Paragraph 135 of the Resource Manual is concerned has not been quoted in the counter affidavits filed by the respondents either on 1.10.2001, 23.7.2003, or 17.8.2005. A reference has been made by Principal Secretary, Finance in his office Memorandum dated 19th July 2003 (Annexure No. S.R.A. 11). However, text of para 135 of the Resource Manual provided by the learned Counsel for the petitioner reads as under:

135. Extra Shroffs or Potdars maybe engaged, whenever necessary with the special sanction of the Head of District, to deal with the heavy receipts or to accompany remittances or to take the place of permanent Shroffs or Potdars. They will be paid such rate as may be determined by the Local Government and will be entitled to ordinary and special rates of Travelling allowance admissible to permanent Potdars.

Temporary Potdars may be engaged from outside the District when it is not possible to procure men locally; they will be entitled to ordinary travelling allowance for their journeys between their homes and the place of their appointment.

14. On perusal of the said provision, I find that it nowhere envisages engagement of Extra Money Testers on a written contract basis, either on daily wage or on the basis of fixed consolidated monetary sum. It also does not disclose about tenurial appointment nor of engagement of Extra Money Tester on six monthly basis or like renewal for further period of six months nor there is any reference of the same in the appointment letter of August, 1962 nor in the letter disengaging the petitioner from service. The Dictionary meaning of "Manual" as per Longman Dictionary of Contemporary English is "a book of teaching information about something"; Chamber's Twentieth Century Dictionary gives the meaning of the said word as- "a handy compendium of a large subject or treatise" and Funk & Wagnall Standard Desk Dictionary describes the said word as a small book of instructions. In such circumstances, I find that the aforesaid Manual was neither issued in the form of General Statutory Rules, nor was published in the Gazette of India which is a statutory requirement for giving effect to as the "Rules" nor it was issued by or in the name of the Governor General of India under Government of India Act, 1919 and there arises no question of its being issued under Government of India Act, 1935, therefore it cannot be officially titled as a "Rule". The respondents have also

failed to produce before this Court a copy of the alleged written contract detailing the terms of employments, continuance on the job or renewal of term from time to time from the year 1963 to August, 1982.

15. From perusal of the record I also find that the State Government having once taken a definite stand, based on a larger Bench decision (5 Judges Bench) of the Hon"ble apex Court in the case of Audh Narain Singh (Supra) and issued the G.O. dated 21st August, 1964 (Annexure No. AA/1 to the Amendment Application) that Money Tester serving in Cash Section of the District Treasuries are to be deemed Government Servants, then, it was proscribed from taking a contrary stand. The observation of the Court in the case of Hari Narain and Ors. v. Ram Raj and Ors. 1969 RD 33 that a party litigant cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent aptly apply to this case. Considering the facts and circumstances of the instant case, in my view, after a lapse of 40 years period, the respondents cannot be permitted to come out & assert that the petitioner was appointed on contract basis as Money Tester, more so, as at no point of time it was so even whispered by the respondents to the petitioner. Such ground, therefore, is baseless and holds no water.

16. The services of the petitioner as money tester in relationship with the State Government in terms of the decision of the Hon. Supreme Court given in Audh Narain's case (Supra) is that of a Master and servant. From the record it is clear that the petitioner was appointed to perform the duties initially of money tester in Government Treasuries and his appointment was made by the Government Treasurer with the approval of the District Collector. However, it was made for performance of public duties and remuneration was paid to him by the State directly and not by the said Government Treasurer. He was also liable to be transferred, suspended or removed from service only with the approval of the District Collector. Considering all material and relevant circumstances in the present case normally selection by the employer, coupled with payment made to him of his remuneration or wages, the right to control the method of work, and the power to suspend or remove from employment strongly indicate the relationship of master and servant, even ordinarily, the right of an employer to control the method of doing the work, and the power of superintendence and its control is strongly indicative of the relation ship of master and servant. It is not only the power to direct the doing of some work but also the power to direct the manner in which the work is to be done which equally indicates the relationship of master and servant. The Hon"ble apex Court in the case of [Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra](#), it has held that "the prima facie test of the relationship of master and servant is the existence of the right in the employer not merely to direct what work is to be done but also to control the manner in which it is to be done. In the present case the work of the Government Treasurer was conducted according to the Rules and Regulations framed by the Government and directions issued from time to time by it. The

Government Treasurer holds the post in a public employment and he is assisted by number of persons including the post of money tester in the performance of his duties. The petitioner as money tester performed his duties not on behalf of the Treasurer but on behalf of the State. In the case of [Piyare Lal Adishwar Lal Vs. The Commissioner of Income Tax, Delhi](#), it has been held that the Treasurer appointed by the Bank who was to carry out the duties as directed by the Bank was a servant of the Bank and not an independent contractor. In the case of [Shivnandan Sharma Vs. The Punjab National Bank Ltd.](#), it has been held that a Head Cashier in one of the branches of the Bank who had been appointed by the Treasurer in charge of the Cash Department under an agreement with the Bank was an employee of the Bank and the entire directions and control of the cashier and of the ministerial staff-in-charge of the Cash Department of the Bank was entirely vested in the Bank. At page 411 it reads as under:

If a master employs a servant and authorizes him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master.

17. In absence of any proof or material on record that the petitioner was appointed on contractual basis by the Government Treasurer independently even though for assisting him in discharge of his duties, the payment of remuneration to the petitioner was for services rendered in the "cashier department of the District treasury" of the State which he received directly from the State, and was subject to the control of the District Officer in the matter of transfer, removal etc., for the purpose of carrying out the work of the State, even though a degree of control was exercised by the Government Treasurer. In such circumstances, it is held that the petitioner was entitled to the protection of Article 311 of the Constitution of India and his removal vide impugned order dated 23/26 August, 1982 did not conform to the requirements of Article 311(2) of the Constitution and was on that account invalid.

18. In view of the discussions made herein above, the impugned orders dated August 23/26, 1982 and dated 24.3.1999 (Annexures No. III & VI respectively to the writ petition) passed by Government Treasurer, Saharanpur and the Director, Directorate of Pension, U.P., Lucknow respectively are hereby quashed and the subsequent order dated 19.7.2003 passed by the Principal Secretary (Finance) Government of U.P., Lucknow rejecting the petitioner's representation is also hereby quashed. The petitioner is entitled for payment of difference in basic pay to be calculated after refixing the same at Rs. 477/- on the promotional post of "Tahvildar", which he was drawing on 31.8.1982 as "money tester" instead of the one paid to him at the pay scale of Rs. 430-685 plus allowances together with interest. The respondents are directed to calculate gratuity, commuted value of pension, superannuation pension plus appropriate clearness relief etc., taking into

account the entire service of the petitioner from 6.8.1962 to 31.7.1998, as qualifying service and pay the same to the petitioner. The interest to be paid to the petitioner shall be calculated @ 12% on the entire amount so payable. Accordingly, the writ petition is allowed to the extent indicated above with costs quantified at Rs. 5000/-.