

Court No. - 10

Case :- WRIT - A No. - 10222 of 2008

Petitioner :- Hemant Kumar Tyagi

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Siddharth Khare, Ashok Khare, G.K. Singh, Satya Prakash Mishra, V.K. Singh

Counsel for Respondent :- C.S.C., Neeraj Tiwari

Hon'ble Kshitij Shailendra, J.

1. Heard Sri R.C. Yadav, learned counsel for the petitioner and learned Standing Counsel for the State-respondents Nos.1 & 2 and Sri Rohit Pandey, learned counsel for respondent Nos.3 & 4.

2. Petitioner was appointed as Staff Nurse on 06.06.2006 on contract basis in the respondent No.3 institution and later on, pursuant to an advertisement dated 10.07.2007, he was appointed on 03.09.2007 as a probationer. After a period of two months, during continuance of his probation period, the services of the petitioner were terminated by the impugned order dated 08.11.2007 on the ground that in the meeting of governing body held on 24.09.2007, granting of age relaxation was not found to be in accordance with law.

3. While assailing the order impugned, it is submitted that termination of services without issuance of notice to the petitioner is illegal.

4. Learned counsel for the petitioner has referred to the stipulations contained in his appointment letter dated 03.09.2007 and by pressing clause (2) of the same, it is contended that even if the appointment of the petitioner was treated as purely temporary, requirement of serving one month's prior notice was not fulfilled. He further submits that no approval has been granted by the higher authority to the petitioner's termination.

5. With regard to age relaxation, it is submitted that since the petitioner continued since 06.06.2006, i.e. for a period of more than one year on the date when his services were terminated, he should have been accorded benefit of age relaxation.

6. Sri Rohit Pandey, on the other hand, submits that admittedly, the

petitioner was only a probationer on the date of termination of his services and though interim order was passed in the present case, the same was set aside by the Division Bench in special appeal. He further submits that petitioner is still continuing in the department even after termination of his services but in the capacity of an outsourced employee.

7. Having heard learned counsel for the respective parties and having perused the record, this Court finds that law relating to services of a probationer is well settled. The Apex Court in the case of **Rajesh Kumar Srivastva v. State of Jharkhand & ors; 2011 (4) SCC 447**, has held that in case services of a probationer are terminated, the same cannot be termed as a punitive or stigmatic punishment but would be treated only as a termination simplicitor and no interference is warranted in the order of termination. Similarly, the Apex Court in the case of **Shailaja Shivajirao Patil v. President, Hon'ble Khasdar UGS Sanstha & ors; 2002 (10) SCC 394**, has held that when the order of appointment of a probationer itself indicates the tenure of appointment and that it can be terminated at any time without notice, termination of a probationer cannot be interfered with.

8. The Court has perused the stipulations contained in the petitioner's letter of appointment dated 03.09.2007 and the emphasis of learned counsel for the petitioner on Clause (2) has been examined by this Court. For ready reference, clause (2) contained in the letter of appointment is quoted hereinunder:

"This appointment is purely temporary but likely to continue and can be terminated on one month's notice from either side or in lieu of this notice on payment of a sum equivalent to one month's salary."

9. A perusal of the clause (2) makes it clear that serving one month's prior notice is only one of the requirements and the other requirement is that concerned employee, in lieu of notice, would be entitled for payment of a sum equivalent to one month's salary. Annexure-6 to the writ petition is the copy of salary slips for the month of September and October, 2007 demonstrating that even the aforesaid requirement was satisfied by the department and even otherwise, this Court finds that there is no challenge to the impugned order on the said line.

10. Learned counsel for the petitioner has placed reliance upon the judgment of this Court on 09.07.2010 passed in **Writ Petition No.4582 of 2010 (Lal Ji Upadhyaya v. State of UP Through the Secretary & ors)**. I have perused the said judgment in which it has

been observed that the candidate who is working for long in department, should be considered for regular selection and due weightage of past services should be given to him while proceeding in the matter of regular selection and relaxation should be given for the purposes of age.

11. With due respect to the order of Division Bench of this Court in the said case, this Court is afraid of granting any benefit of the said judgment to the petitioner, inasmuch as, it is not a case of holding regular selection process and granting of age relaxation was to be seen at the time of making regular selection only. The judgment cited above does not deal with the termination of services of a probationer and, hence, is not applicable in the present case.

12. For all the aforesaid reasons, writ petition lacks merit and is, accordingly, **dismissed**.

13. Petitioner may agitate his claim, if any, on the basis of his **present status of service** in accordance with law before the authorities concerned but not certainly against the termination of his services.

Order Date :- 4.12.2023

P Kesari