

Court No. - 7

Case :- WRIT - A No. - 2574 of 2023

Petitioner :- Harsh Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Rural Development Lko.
And 5 Others

Counsel for Petitioner :- Anumesh Mishra, Awadhesh Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner and learned Standing counsel appearing on behalf of the State-respondents.
2. Under challenge is the order dated 24.01.2023 passed by the Block Development Officer, Unnao, a copy of which is annexure 1 to the writ petition whereby the authority has required the Gram Panchayat to terminate the services of the petitioner and to inform the authority.
3. Learned counsel for the petitioner contends that initially the petitioner was appointed in November, 2007 on the post of Rozgar Sewak on a contractual basis. He continued to work and his agreement was extended from time to time. Subsequent thereto, as per the averments made in paragraph 7 of the writ petition, the honorarium of the petitioner was withheld though the petitioner continued to discharge the duties. Later, on the basis of a proposal of administrative committee of Gram Panchayat being forwarded by the Pradhan and Gram Panchayat Adhikari in the year 2014, honorarium of the petitioner was paid. The petitioner claims to be working since then and he is also being paid the honorarium of the post of Rozgar Sewak.
4. Subsequent thereto, a complainant was filed by one Sri Ram Pratap contending that the appointment of the petitioner made in the year 2014 is bad.
5. The competent authority, after perusal of the records, has indicated in the order impugned that the petitioner was removed from the post of Rozgar Sewak in the year 2009 and was subsequently re-appointed in the year 2014. However, his reappointment would be against Clause 7(Cha) of the Government order

dated 23.11.2007, a copy of which is annexure 2 to the writ petition which indicates that in case a Rozgar Sewak has been removed by the Gram Panchayat he would be ineligible for being reappointed.

6. Considering the aforesaid facts including the provisions of the Government order dated 23.11.2007 the competent authority has required the Gram Panchayat to remove the petitioner and to inform the competent authority.

7. The argument of learned counsel for the petitioner is that at no stretch of time was he ever removed from service of the post of Rozgar Sewak rather it was only his honorarium that had been withheld for a certain period of time which also started to be paid since the year 2014 and is also now being paid and as such, the order impugned is patently bad in the eyes of law by which the competent authority has required the Gram Panchayat to terminate the services of the petitioner and to report back to the competent authority in this regard.

8. On the other hand, learned Standing counsel on the basis of averments contained in the counter affidavit argues that as various complaints had been received against the petitioner regarding his working which also included not doing the work of MNREGA, keeping both the copies of the job cards made under the NREGA scheme with himself of which one copy should be with the registered laborers as per rules, showing indifference in completing the records, manipulating the wages of the workers, committing extortion through falsification of wages in the copies for the purpose of labor exploitation, not maintaining the records of the actual wages of workers and misbehaving indecently with the registered laborers, consequently a charge sheet/notice was issued to the petitioner on 04.02.2009 by the Gram Panchayat with the direction to submit his reply. Various notices were issued to the petitioner including the final notice on 26.05.2009 and as the petitioner failed to submit his reply consequently, the Gram Panchayat vide its proceedings dated 08.06.2009 terminated the services of the petitioner from the post of Rozar Sewak.

9. In ignorance of the order of removal of the petitioner, the new Gaon Sabha again appointed the petitioner in the year 2014 which appointment was made

without considering the provisions of Clause 7 (Cha) of the Government order dated 23.11.2007. When a complaint in this regard was received the competent authority went through the entire records and found that the petitioner was ineligible for being reappointed in the year 2014 and consequently, the order impugned has been passed whereby the Gram Panchayat has been required to remove the petitioner from service, his appointment being made in gross violation of paragraph 7 (Cha) of the Government order dated 23.11.2007 and to report back the same to the competent authority and as such, there is no illegality or infirmity in the same.

10. Responding to the aforesaid argument of learned Standing counsel, the argument of learned counsel for the petitioner is that he was not aware about the proceedings dated 08.06.2009 passed by the Gram Panchayat and as such, there is no infirmity in the petitioner having been reappointed in the year 2014.

11. Heard the learned counsels appearing on behalf of the contesting parties.

12. The argument of learned counsel for the petitioner is that the petitioner was appointed as Rozgar Sewak in November, 2007. He claims that his honorarium was stopped which was restarted subsequently and he claims to be working on the post of Rozgar Sewak as of date and is also being paid the honorarium.

13. The petitioner is aggrieved by the order dated 24.01.2023 whereby the Block Development Officer, Unnao has required the Gram Panchayat to terminate the services of the petitioner and to report back on the ground that services of the petitioner had been dispensed with in the year 2009 and as per the Government order dated 23.11.2007 more particularly Clause 7 (Cha) of the said Government order, once the services of a Rozgar Sewak have been terminated he is ineligible for being appointed which reappointment was made in the year 2014.

14. However, a perusal of records indicate that the services of the petitioner were dispensed with by the Gram Sabha by following the provisions of the Government order dated 23.11.2007 vide order dated 08.06.2009, a copy of which is annexure CA 5 to the counter affidavit. A perusal of the said order

would indicate that the services of the petitioner have been terminated on the basis of serious allegations levelled in the said order. The Government order dated 23.11.2007, with which the services of the Gram Rozgar Sewak are governed, categorically indicates in Clause 7 (Cha) that those Gram Rozgar Sewak against whom proceedings have been initiated and the services have been terminated by the Gram Panchayat are ineligible for being appointed.

15. When the services of the petitioner as a Rozgar Sewak were dispensed with by the Gram Sabha itself vide order dated 08.06.2009 consequently, the petitioner was ineligible for being reappointed keeping in view the specific provisions of Clause 7 (Cha) of the Government order dated 23.11.2007. Thus, in case the appointment of the petitioner was made in ignorance of the said Government order consequently, no illegality or infirmity can be found with the order impugned whereby the competent authority, after noticing the aforesaid irregularities in the appointment of the petitioner in the year 2014, has required the Gram Panchayat to terminate the services of the petitioner and to report back.

16. A relevant aspect of the matter is that no disclosure has been made in the entire petition about the services of the petitioner having been terminated by the Gaon Sabha vide order dated 08.06.2009 and thus it is apparent that there has been blatant concealment of fact by the petitioner. Even though the respondents while filing the counter affidavit have brought on record the termination order dated 08.06.2009 as filed as annexure 5 to the counter affidavit and counter affidavit having itself been filed in May, 2023 yet no steps have been taken by the petitioner for raising a challenge to the said termination order. Even though the respondents while filing the counter affidavit have categorically indicated in paragraph 2 about the said termination order and of the petitioner having been reappointed/re-selected in the year 2014 with the change of Gram Pradhan yet while filing the rejoinder affidavit the averments have been made in paragraph 2 of the counter affidavit, which pertains to the termination order of the petitioner by the Gaon Sabha has not been specifically denied. Moreover, while filing the rejoinder affidavit it has been indicated that the members of the Gaon Sabha

have given an affidavit in respect of the work and performance of the petitioner as Rozgar Sewak and they have stated that they have never put their signatures upon any proposal for removal of the petitioner. the affidavits in this regard have been filed as annexure 7 to the writ petition. A perusal of the said affidavits, which incidentally are all of the year 2022, indicate that the members of the Gaons Sabha have indicated that they did not sign any proposal of the Gaon Sabha meaning thereby that the proposal of the Gaon Sabha was in the knowledge of the petitioner by which his services had been dispensed with but the said fact has not been disclosed in the writ petition and thus there is blatant concealment of fact by the petitioner. Irrespective of the above, it was in the fitness of things that the said order should have been challenged by the petitioner more particularly when it had already been filed by the respondents along with counter affidavit. Also there is no averment in the rejoinder affidavit of the said order dated 08.06.2009 not having been passed by the Gaon Sabha, the competent authority rather, as already indicated above, it has been indicated that certain members did not put their signature on the said proposal. Notwithstanding, once the order was brought to the knowledge of the petitioner consequently the should have have challenged the same.

18. It is settled proposition of law that a person who approaches the High Court must approach with clean hands. In case a person comes to the Court with false claims, he cannot plead equity nor would the Court be justified to exercise equity jurisdiction in this favour. Equity jurisdiction cannot be exercised in the case of a person who either gets the appointment on the basis of misrepresentation of facts or fraud and hence no sympathy or equity in such circumstances can come to rescue to the petitioner.

19. In this regard, it would be apt to indicate as to the observations of the Apex Court in the case of **R.Vishwanatha Pillai Vs. State of Kerala and Ors** reported in **2004 (2) SCC 105**.

"A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor the Court would be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who

got the appointment on the basis of false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud."

20. A perusal of the allegations on the basis of which services of the petitioner had been dispensed with by the Gaon Sabha vide order dated 08.06.2009 would indicate serious allegations including embezzlement of the amount meant for the laborers and behaving indecently with them. The said conduct of the petitioner cannot be countenanced in any manner more particularly when as a responsible employee, he was atleast expected to adhere to the provisions of the MNREGA & NREGA scheme and to have ensured that the bottom rung of the society i.e unemployed persons and laborers who are working under the scheme of the MNREGA & NREGA are looked after properly and the salary/wages which are due to them are paid expeditiously and honestly and full wages are paid to them and there should not be any exploitation. However, the petitioner miserably failed to even work for the bottom rung of the society and as such, there cannot be any sympathy or any equity in his favour.

16. Keeping in view the aforesaid discussion, the writ petition is dismissed.

Order Date :- 30.11.2023

Pachhere/-