

In The Hon'ble High Court Of Judicature At Allahabad,
Sitting at Lucknow

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Neutral Citation No. - 2024:AHC-LKO:79304-DB

RESERVED

Judgment Reserved on : 25.11.2024

Judgment Delivered on : 29.11.2024

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 592 of 2024

Appellant :- Anoop Kumar Dubey

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Rural
Development Lko And 4 Others

Counsel for Appellant :- Manoj Kumar Mishra, Arpit Dwivedi, Pankaj
Kumar

Counsel for Respondent :- C.S.C., Mohan Singh

Hon'ble Attau Rahman Masoodi J.

Hon'ble Subhash Vidyarthi J.

(Per Subhash Vidyarthi, J.)

1. Heard Shri Manoj Kumar Mishra, learned Counsel for the appellant, Shri Prafulla Kumar Yadav, learned Standing Counsel appearing for the State-respondents and Shri Mohan Singh, learned Standing Counsel appearing for the Gram Panchayat concerned.
2. The Special Appeal is filed along with an application for condonation of delay duly supported by an affidavit as it is reportedly filed beyond time by 21 days.
3. Cause shown in the affidavit filed in support of the application seeking condonation of delay in filing the special appeal is sufficient.
4. Accordingly, the application for condonation of delay is **allowed** and delay of 21 days in filing the special appeal is hereby condoned.
5. By means of the present intra-Court appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 the appellant has sought to set aside an order dated 09.09.2024 passed by the learned Single Judge in Writ-A No.5507 of 2024; Anoop Kumar Dubey vs. State of U.P. and others.

6. The aforesaid writ petition was filed by the appellant challenging a resolution dated 01.07.2024 passed by the Gaon Sabha Maholi, Block Sohawal, District Ayodhya and a consequential order dated 02.07.2024 passed by the Gram Pradhan terminating the contract of service of the appellant as a Gram Rozgar Sewak.
7. Briefly stated, facts of the case are that the State Government had issued a Government Order dated on 23.11.2007 for making contractual appointments of Gram Rozgar Sewak under National Rural Employment Guarantee Scheme which provides that every Gram Panchayat shall avail the services of one employee on contractual basis under National Rural Employment Guarantee Scheme and he will be called 'Gram Rozgar Sewak'. The person shall be appointed on contract basis for a period of one year or till continuance of Employment Guarantee Scheme, whichever is earlier. Upon completion of the period of one year, a new selection will be held as per the procedure laid down in the Government Order. In case, his services are found to be satisfactory, the Gram Sabha can renew his contract of service by a resolution passed in an open meeting. Gram Panchayat has been given the authority to take action against such Gram Rozgar Sewak whose work and conduct is not satisfactory and his contract can be terminated after giving a show cause notice and after taking into consideration the reply submitted by the person through a resolution passed at least by 2/3rd majority of the total number of Village Panchayat Members.
8. The appellant was appointed as Gram Rozgar Sewak for Village-Maholi by means of an order dated 01.04.2008 and he continued to work on the aforesaid post, till long after expiry of the maximum period of three years stipulated in the Government Order dated 23.11.2007.
9. On 21.03.2023, the Programme Officer/Block Development Officer, Sohawal, Ayodhya passed an order stating that five Gram Rozgar Sewaks named in the order, including the appellant, were unauthorizedly working in other Gram Panchayats whereas Gram Rozgar Sewak is appointed by the Gram Panchayat and he can only be

transferred to other Gram Panchayat only under certain special circumstances and that too, after obtaining approval from the District Magistrate. The appellant had been appointed as Gram Rozgar Sewak in Village-Maholi and he was unauthorizedly working in Village-Seewar, although no circumstances existed for his transfer and no approval had been granted by the District Magistrate for the appellant's transfer. In such circumstances, the appellant cannot work for any village Panchayat, other than the village panchayat for which he was appointed. The aforesaid order directed the appellant to report and start performing his duties in Village Panchayat Maholi and start performing his official duties and he was released from Gram Panchayat Seewar.

10. On 22.03.2023, the Block Development Officer, Sohawal, Ayodhya, issued another order assigning 56 Gram Rozgar Sewaks the duties to perform survey work of Mission Antodya Yojna. The appellant was assigned the work to do survey in Village Maholi, where he was originally appointed.
11. On 13.04.2023 the Gram Panchayat issued a show cause notice to the appellant stating that he had not reported in the Village Panchayat, Maholi till 13.04.2023 in spite of the order passed by the Block Development Officer directing him to report in Village Panchayat Maholi and start performing duties of Gram Rozgar Sewak. The appellant's failure to perform duties even after having been nominated to perform Mission Antyodya Survey work indicates his waywardness and insubordination. The appellant was directed to show cause about his absence since 22.03.2023 and not working in Village Panchayat, Maholi since June 2021.
12. The appellant submitted his explanation on 24.04.2023 stating that he was working in Village Panchyat Seewar under instructions of the then Block Development Officer since June 2021 and he had not received any letter for working in village Panchayat Maholi. The appellant did not state in this letter dated 24.04.2023 that he had reported for performing duties in Village-Maholi.

13. On 31.05.2023 the Programme Officer/Block Development Officer had issued a letter to three Gram Rozgar Sewaks, including the appellant, stating that they were not performing their duties in the Gram Panchayat in which they had been appointed and they were directed to report for performing their duties in the Village Panchayat concerned in which they have been appointed.
14. On 19.12.2023 the Village Panchayat Officer sent a letter to the Block Development Officer stating that in response to the show cause notice dated 13.04.2023, the appellant submitted a reply dated 24.04.2023 but he did not report to the Village Pradhan and he has not shown willingness to perform his duties. The appellant had sent a letter dated 09.06.2023 which indicates that the appellant does not want to work with the Village Pradhan.
15. The appellant claims that he submitted a representation to the Village Panchayat, Maholi for being permitted to work and when no action was taken thereon, he filed Writ-A No.1532 of 2024 in this Court, which was disposed of by means of an order dated 27.02.2024 permitting the appellant to file a fresh representation before the Gram Pradhan concerned, who was directed to decide the same within six weeks.
16. Thereafter the appellant submitted a representation dated 07.03.2024 to the Program Officer/Block Development Officer along with a copy of the aforesaid order dated 27.02.2024 passed by this Court. He submitted another representation to the Village Pradhan also.
17. After taking into consideration the explanation submitted by the appellant, the Village Panchayat passed a resolution dated 01.07.2024 stating that after receiving reply submitted by the appellant, a three member committee had been constituted by the Village Pradhan which has submitted a report. The Committee gave an opportunity to the appellant to produce evidence but he did not produce any evidence. The appellant has stated in the explanation given by him that the village Pradhan was not permitting him to work in village Maholi but he has not submitted any evidence in support of this contention. Before issuance of the show cause notice, the appellant did not make

any request for working in Village Panchayat Maholi. He could not produce any order of the Block Development Officer whereby he was transferred/posted in village Panchayat Seewar. The Village Panchayat had not received any communication from the office of Block Development Officer regarding posting of the appellant in village Panchayat Seewar. There was nothing on record to establish that the appellant had been restrained from working in Village Panchayat Maholi. Therefore, the appellant was guilty of abstaining from working in Village Panchayat Maholi since June, 2021. The Village Panchayat, Secretary has informed that the appellant had been assigned duty of conducting survey under Mission Antyodya Scheme but when he did not perform this work, it was assigned to the Panchayat Assistant, who has completed the work. Therefore, the appellant is guilty of not performing the survey work under Antyodya Scheme. Keeping in view all the aforesaid facts, the village Panchayat recommended termination of contract of service of the appellant.

18. Acting on the aforesaid recommendation, the impugned order dated 02.07.2024 was passed terminating the contract of service of the appellant.
19. The appellant challenged validity of the aforesaid order by filing Writ-A No.5507 of 2024 which has been dismissed by the judgment and order dated 09.09.2024 which is under challenge in this special appeal.
20. The Writ Court has held that the appellant had not produced any material to establish that he was working in Gram Panchayat Maholi (*Sic* - Seewar) under orders of the Program Officer/Block Development Officer. Further, the appellant had been initially engaged as Gram Rozgar Sewak in the year 2008 and his contract of service could not be extended beyond the period of two years. Accordingly, the writ court disposed of the writ petition leaving it open for the Gram Panchayat Adhikari/Secretary Gram Panchayat, Maholi and the Gram Panchayat Maholi through its Pradhan to consider re-engagement or fresh appointment of the appellant in case his previous

services were found to be satisfactory and are not barred by any provision of law.

21. The Gram Sabha has filed a counter affidavit inter alia stating that a notice was sent to the appellant, who took a photograph of the notice but declined to receive the same. A copy of the enquiry report has been annexed with the counter affidavit wherein it is recorded that the appellant did not produce any document in support of his contention that he had been assigned duties in Village Panchayat Seewar. Thus, he is guilty of abstaining from working in Village Panchayat Maholi since June, 2021. The appellant did not perform the duties of survey under Antyodya Scheme and this duty had to be performed by the Panchayat Assistant. As the appellant did not submit any evidence, there was no substance in the explanation submitted by him and the enquiry committee recommended termination of services of the appellant.
22. Challenging validity of the order passed by the Writ Court, Sri Manoj Kumar Mishra, learned counsel for the appellant has submitted that although the Government Order provides for a maximum tenure of three years, several other similarly situated Gram Rozgar Sewaks are continuing in service but the appellant had not been permitted to work. He has also submitted that as the appellant was working in Gram Panchayat, Seewar under the order of Block Development Officer, he cannot be held guilty of willfully abstaining from work. However, learned counsel for the appellant could not substantiate the aforesaid submission by any documentary evidence.
23. A Gram Rozgar Sewak can be transferred to another Village Panchayat only under certain special circumstances and that too, only after approval of the District Magistrate. There is no pleading regarding existence of those special circumstances warranting the appellant's transfer. There is no order on record whereby the petitioner has been transferred from Gram Panchayat Maholi to Gram Panchayat Seewar. Admittedly no approval had been granted by the District Magistrate for transfer of the appellant to village Panchayat Seewar. Therefore, the submission of the learned counsel for the appellant that

the services rendered by the appellant in Village Panchayat Seewar justifies his absence from Village Panchayat Maholi is not supported by any material and it cannot be accepted.

24. The writ court has held that the maximum period of service of contractual service as Gram Rozgar Sewak has expired long back and therefore, there is no good ground to interfere in the order of termination of services.
25. Sri Prafulla Kumar Yadav, the learned Additional Chief Standing Counsel has supported the aforesaid reasoning of the writ court by placing reliance on a judgment rendered by a Division Bench of this Court in **Smt. Geeta Devi vs. Uma Shanker Yadav and others**: 2010 (7) ADJ 169, wherein removal of a Gram Rozgar Sewak was challenged on the ground that it had been done without following the procedure prescribed by law and arbitrarily. In that case also, it was submitted that continuance of the Gram Rozgar Sewak beyond the stipulated period of three years was never disputed either by the State authorities or by the Gaon Sabha. However, the Division Bench held that in view of the admitted position that the maximum permissible period of engagement of Gram Rozgar Sewak had expired long back, the question as to whether he could have been removed or not, loses significance inasmuch as once the tenure of Gram Rozgar Sewak had come to an end, there was no legal right vested in him to claim continuance.
26. The aforesaid judgment was followed by another Division Bench of this Court in the case of **State of U.P. and others vs. Shiv Manorath Shukla and others**: (2011) 85 ALR 826. The Division Bench order passed in Shiv Manorath Shukla (supra) was challenged before the Supreme Court by filing **Special Leave to Appeal (C) No.4711 of 2011** which was dismissed in default by an order dated 10.01.2018.
27. Therefore, we find ourselves in complete agreement with the view taken by the writ court that he had refrained from performing his duties in village Panchayat Maholi and despite ample opportunity, the appellant could not submit any evidence to substantiate that he was working in Village Panchayat Seewar in pursuance of any order

passed by the competent authority and that the tenure of contractual appointment of the appellant having expired long ago, there is no good ground to order renewal his term.

28. Accordingly, we find no merit in the special appeal, which is hereby **dismissed**.

(Subhash Vidyarthi, J.) (Attai Rahman Masoodi, J.)

Order Date- 29.11.2024

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