

Dinesh Kumar vs Chairman Town Area Committee ... on 27 January, 2020

Bench: Arun Mishra, Indira Banerjee

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 757/2020
(ARISING OUT OF SLP(C) No. 20480/2017)

DINESH KUMAR

VERSUS

CHAIRMAN TOWN AREA COMMITTEE, BULANDSHAHAR & ORS.

O R D E R

1. Heard learned counsel for the parties.
2. Leave granted.
3. Against the dismissal of the special appeal which was filed against a decision of the Single Judge passed in Civil Misc. Writ Petition No.32052/1992 the appellant has approached this Court.
4. The facts in short are that in response to the invitation dated 10.03.1991 the appellant submitted an application for the post of Clerk/Tax Collector in Town Area Committee, Bilaspur, District Bulandshahar, State of Uttar Pradesh. He was appointed on daily wage basis as a Clerk/Tax Collector for a period from 16.03.1991 to 25.04.1991. On 20.04.1991 his services were further extended on daily wage basis. Later on an order was passed on 05.07.2011 by the Chairman, Town Area Committee, Bilaspur as one Dheer Singh was not likely to report back on duty. Using the powers under Section 10 of the United Provinces Town Areas Act, 1914, appellant/Dinesh Kumar was appointed on the post of Clerk/Tax Collector as full time employee. The order was cancelled on 15.7.1992 and services were terminated on the ground that services of the appellant were not required. Order dated 15.7.1992 was questioned by the appellant by way of filing a Misc. Writ Petition No.14679/1992 in the High Court. During the pendency of the writ petition an interim order was passed on 01.09.1992 staying the operation of the order dated 15.07.1992.
5. An order dated 03.11.1994 was passed by the respondent informing the appellant that his

appointment was approved under Section 74 of the U.P. Municipalities Act, 1916. Thereafter, yet another order was passed on 12.12.1994 that his work was satisfactory and he was made permanent on the post of Clerk, Nagar Panchayat, Bilaspur. The District Magistrate, Bulandshahr was accordingly informed by the Nagar Panchayat, Bilaspur on 13.12.1994.

6. The writ petition came to be dismissed by the learned Single Judge of the High Court. The High Court has opined that the appointment of the appellant was temporary and was liable to be terminated at any point of time, selection procedure was not followed and the appellant having been appointed purely on temporary basis had no right to hold the post. The Letters Patent Appeal preferred by the appellant has also been dismissed by way of impugned order treating the appointment as temporary one, and it could have been terminated at any point of time.

7. It further appears that later on there were inquiries conducted against the appellant in which he was suspended. However, learned counsel appearing on behalf of Respondent No.1/Chairman, Town Area Committee, submitted that the appellant has not served with effect from 2006 and has not reported back on duty. Be that as it may. Some litigation is pending in that regard.

8. It appears that the appellant was not heard before he was unceremoniously removed, even if appointment was illegal, opportunity of hearing to the appellant ought to have been afforded, in the facts and circumstances of the instant case. Initial appointment was on daily wage basis and purely temporary but later on above mentioned orders were passed by the Chairman, certain rights accrued to the appellant under the orders. Thus it was necessary to afford opportunity of hearing to him which has not been afforded, as such the order of removal passed on 15.07.1992 cannot be said to be sustainable. The same is set aside. However, there was dispute later on with respect to the appellant holding other higher post, it is made clear that we have not commented on the merits of any subsequent events.

9. It would be open to the respondents to pass orders in accordance with law, after hearing the appellant.

10. Any pending proceedings, disciplinary or otherwise, shall not be affected by virtue of this order.

11. The appeal is, accordingly, allowed to the aforesaid extent.

12. Pending application(s), if any, shall stand disposed of.

.....J. [ARUN MISHRA]J. [INDIRA BANERJEE] NEW DELHI;

JANUARY 27, 2020.

ITEM NO.49

COURT NO.3

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 20480/2017 (Arising out of impugned final judgment and order dated 01-03-2017 in SA No. 844/2009 passed by the High Court of Judicature at Allahabad) DINESH KUMAR PETITIONER(S) VERSUS CHAIRMAN TOWN AREA COMMITTEE, BULANDSHAHR & ORS. RESPONDENT(S) (IA No. 184711/2019 - EXEMPTION FROM FILING O.T. IA No. 154619/2019 - EXEMPTION FROM FILING O.T. IA No. 65367/2017 - EXEMPTION FROM FILING O.T. IA No. 184710/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES IA No. 171880/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) Date : 27-01-2020 These matters were called on for hearing today. CORAM : HON'BLE MR. JUSTICE ARUN MISHRA HON'BLE MS. JUSTICE INDIRA BANERJEE For Petitioner(s) Mr. Rakesh K. Khanna,Sr.Adv.

Ms. Shefali Jain,Adv.

Mr. Himanshu Mehara,Adv.

Mr. Aditya Pushkal Khanna,Adv.

Ms. Ramya Khanna,Adv.

Ms. Vaishali Gupta,Adv.

Mr. Rajesh Prasad Singh, AOR For Respondent(s) Mr. Rohit Amit Sthalekar,Adv.

Mr. T. Mahipal, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed, in terms of the signed order.

(NARENDRA PRASAD)
COURT MASTER

(JAGDISH CHANDER)
COURT MASTER

(Signed order is placed on the file)