NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.31526 OF 2017

JAGPAL SINGH **...PETITIONER**

VERSUS

THE STATE OF U.P. & ORS. **...RESPONDENTS**

J U D G M E N T

PANKAJ MITHAL, J.

1. Shri Parthiv K. Goswami, learned senior counsel for the petitioner and Shri Tanmaya Agarwal, learned counsel for the respondents were heard on merits.

2. Under challenge is the judgment and order dated 04.09.2017 passed by the Division Bench of the High Court whereby the Special Appeal was allowed after setting aside the judgment

and order of the learned Single Judge dated 31.10.2012 allowing the Writ Petition No.25718 of 2011.

3. The result of the impugned order is that the services of the petitioner who was appointed as the temporary Collection Peon stood terminated, notwithstanding, the subsequent promotion earned by him on the post of Collection Amin on the strength of his continued working under the interim order passed by the High Court.

4. The petitioner was appointed as a temporary Collection Peon on 01.02.1996. The appointment letter clearly stated that the services of the petitioner were purely temporary and that he could be removed without any notice. The services of the petitioner as temporary Collection Peon were terminated simpliciter vide order dated 30.11.1998 with one month's notice and salary & allowances.

5. Aggrieved by the termination of his services, petitioner filed a Writ Petition No.42216 of 1998 (Jagpal Singh vs. District Magistrate, Etawah and others). The said Writ Petition was

dismissed on 15.07.1999 by the learned Single Judge *in limine* with the observation that since the petitioner is purely a temporary appointee, as is evident from his appointment letter, he has no right to the post.

6. Not satisfied by the above decision, petitioner preferred Letters Patent Appeal i.e. Special Appeal No.740 of 1999 and obtained an interim order on 19.08.1999 staying the operation of the order of termination of his services. The petitioner, on the strength of the aforesaid order, continued to function as temporary Collection Peon. In view of his continued service, ignoring the fact that his services actually stood terminated and that he was working only under an interim order, the petitioner was promoted on 05.10.2009 on the post of Collection Amin by the District Selection Committee. The Special Appeal was unfortunately dismissed in default on 25.08.2009. Consequent to the dismissal of the Special Appeal, a detailed order was passed by the Sub-Divisional Magistrate, Bharthana, on 01.03.2011 notifying that as the services of the petitioner had been terminated and the said

order has attained finality with the dismissal of the Special Appeal, consequently the promotion of the petitioner was meaningless. Accordingly, petitioner stood reverted to the post of Collection Peon and his service also stood determined as earlier.

7. It may not be out of context to mention here that the petitioner after the dismissal of the Special Appeal, for want of prosecution, applied for recall of the order and the Special Appeal was restored on 11.03.2011 but again it was got dismissed as withdrawn vide order dated 15.04.2011. In short, the Special Appeal arising from the Writ Petition challenging the termination of the petitioner stood finally dismissed with no relief to the petitioner. The services of the petitioner as temporary Collection Peon accordingly stood determined as far back as on 30.11.1998 which order became final and conclusive.

8. Consequent to the order of the Sub-Divisional Magistrate dated 01.03.2011 notifying termination of the services of the petitioner in the wake of the earlier termination order

becoming final, petitioner filed Writ Petition No.25718 of 2011 challenging the same. The said Writ Petition was allowed by the learned Single Judge vide judgment and order dated 31.10.2012 observing that the promotion granted to the petitioner was not hedged by any condition, therefore, once the petitioner had been promoted from the temporary post of Collection Peon to the post of Collection Amin, his services were not liable to be treated as determined.

9. The aforesaid order of the learned Single Judge was assailed by the State of UP & others by means of Special Appeal Defective No.392 of 2013 and the same has been allowed by the order impugned dated 04.09.2017 on the ground that the learned Single Judge had failed to appreciate that the continuance of the petitioner as temporary Collection Peon and his consequential promotion as Collection Amin was only on the basis of the interim order operating in the Special Appeal though the services of the petitioner stood terminated. The court further observed that once the services of the petitioner stood terminated on 30.11.1998 and the Writ

Petition challenging the same had been dismissed as also the Special Appeal thereof, the petitioner went out of service and the very continuance of service of the petitioner on the strength of interim order which merged in the final order of dismissal of Special Appeal, lost all significance.

10. The submission of learned senior counsel for the petitioner Shri Parthiv K. Goswami is that the person who has continued for so long, may be in view of the interim order operating in his favour, cannot be thrown out in a cursory manner when a conscious decision had been taken to promote him as Collection Amin. Defending the impugned order, Shri Tanmaya Agarwal, learned counsel for the respondents had submitted that once the very foundation on which the petitioner was working had gone, his continuance in service and consequential promotion is of no effect. The petitioner has no right to continue in service either as Collection Amin or as temporary Collection Peon after his termination was held to be valid and was not interfered with by the courts.

11. The facts, as narrated above, clearly establish that the petitioner was appointed simply as a temporary Collection Peon and his services were determined simpliciter within three years vide order dated 30.11.1998. The said order, terminating the services of the petitioner, is final and conclusive. It has not been disturbed by any court of law. However, the petitioner continued to function as temporary Collection Peon on the strength of an interim order passed in Special Appeal which was ultimately dismissed. Therefore, any promotion given to the petitioner consequent to his continuance in service on the strength of the interim order would automatically fall to the ground once the Special Leave Petition is dismissed and the termination order attains finality.

12. In view of the aforesaid facts and circumstances, we are of the opinion that the view expressed by the Division Bench of the High Court in allowing the appeal, is well within the four corners of law which order does not suffer from any material illegality or irregularity. The Division Bench has rightly set aside the judgment and order of the learned Single Judge

dated 31.10.2012 by which the writ petition was allowed in complete ignorance of the fact that the services of the petitioner stood determined long back and that the petitioner is not entitled to any benefit on the basis of his subsequent promotion which automatically falls with the termination attaining finality. Accordingly, we find no merit in the Special Leave Petition and the same is dismissed, however, the respondents shall not initiate any recovery of the salary drawn by the petitioner for the period he has actually worked.

..... J.
(ABHAY S. OKA)

..... J.
(PANKAJ MITHAL)

NEW DELHI;
AUGUST 29, 2023.