
(2011) 02 AHC CK 0292
In the Allahabad High Court
Case No : Service Bench No. 34 of 2011

Anand Kumar Singh and Others

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 2 ADJ 713 : (2011) 128 FLR 1111

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh and S.C. Chaurasia, JJ.—The Petitioners have preferred the present writ petition under Article 226 of the Constitution of India, challenging the impugned advertisement by which the Managing Director, Uttar Pradesh Bhumi Sudhar Nigam Ltd., Lucknow (in short the Respondents Nigam), has invited application for appointment of Project Manager on deputation.

Brief matrix of the present case is discussed hereinafter.

2. The Petitioners are officiating on the post of Project Manager in the Respondents Nigam constituted under Companies Act, 1956 with the aims and object for reclamation of land including reclamation of saline and alkaline soils and ravine and gullied areas as well as to function in various ways and means for the land development, conservation, irrigation etc., the Projects are undertaken by the Respondent Nigam from time to time to meet its object.

3. According to Petitioners counsel a third Project was launched in 2008 in which the Petitioners are officiating as Project Manager and in case vacancies are filled up by deputationists, they shall be ousted. Submission of Petitioners' counsel is that for the sake of deputationists, the services of regular departmental employees cannot be given go bye. It has further been submitted that in case they resume duty, the Petitioner may face reversion to lower post which shall for

any reason whatsoever, is not lawful, just and proper.

4. On the other hand, Sri D.K. Upadhyay learned Counsel for the Respondents submits that the Petitioners, who are having officiating charge, do not possess any statutory or fundamental right to claim continuance on the post under Rule 17 of the Service Rules. According to Rule 17, the post of Manager can be filled by up direct recruitment, by promotion or transfer or deputation. 50% posts have been reserved for promotees for which the Petitioners have installed their claim.

5. Petitioner's counsel has relied upon the judgment dated 27.1.2010 in W.P. No. 105 (S/B) of 2011 (Chandra Prakash Sharma. v. State of U.P. through Principal Secretary, Housing and Urban Planning; and the cases reported in Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others, A. Satyanarayana and Others Vs. S. Purushotham and Others, 2011 LCD 106 Praveen Kumar Agarwal and Ors. v. State of U.P. and Ors.; Special Appeal No. 145 of 2008 (Uttar Pradesh Bhumi Sudhar Nigam Ltd. v. Abha Srivastava and Ors., Order dated 29.3.2008; Shri L. Chandrakishore Singh Vs. State of Manipur and Others,

On the other hand, Sri D.K. Upadhyay learned Counsel representing Respondents Nigam, has relied upon the judgment dated 2.12.2010 in W.P. No. 1680 (S/B) of 2009 (Raksha Goswami. v. State of U.P. and Ors.); Ramanuj Prasad Vs. Coal India Ltd. and Others,

6. The question cropped up for consideration is, as to whether the deputationist can be appointed as Project Manager that too, in the situation when no regular promotion has been done and some of the post of Project Manager are lying vacant.

7. The State Government has issued a circular dated 20.5.2009 contained in Annexure No. CA-3 to the counter affidavit, creating 761 posts in the Respondents Nigam for the third Project namely, Sodic Land Reclamation Project, Phase-III. It has been provided that the vacancy shall be filled up by deputation. Further again, by the Government order dated 9.12.2010 contained in Annexure No. CA-4 to the counter affidavit, the Government provided that the tenure of persons appointed under the Project, shall be the co-terminus with the life of the third Project. Thus, the power to make appointment on deputation flows not only from Rule 17 of the Service Rules but also from the Government order dated 20.5.2009 followed by 9.12.2010 (supra).

8. It has been asserted that in pursuance of the Government order dated 20.5.2009, all the vacancies have been filled up from the departmental candidates except the post of Project Manager. Further submission of Petitioners counsel is that no appointment could have been made on deputation basis by the impugned advertisement. The candidates of Respondents Nigam itself are available having experience of the field.

9. Though the impugned advertisement has been challenged and defended on

various grounds but it appears that the posts have been created by the Government order dated 20.5.2009 providing therein to fill up vacancies on deputation, followed by order dated 9.12.2010.

10. The questions whether the Government order has right to pass such circular and whether deputationist may be appointed in the event of availability of regular employees in the department and whether the reversion could be justified while making selection in pursuance of the impugned advertisement, are the questions raised by the Petitioners counsel in the writ petition without challenging the order dated 20.5.2009 and 9.12.2010 (supra), claiming following reliefs:

(a) issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned advertisement No. 35/2010 dated 16.12.2010 (annexure No. 1 to the writ petition) issued by the Respondent Nigam for appointment on deputation basis on the post of Project Manager;

(b) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the Respondents to treat the Petitioners as regularly promoted Project Managers w.e.f. 6.11.2007 with the regular pay scale along with the arrears being the difference of salary and not to replace the Petitioners by deputationists;

(c) issue any other appropriate writ, order or direction which this Hon''ble Court may deem just and necessary in the circumstances of the case may also be passed; and

(f) to allow the writ petition with costs.

11. Now, it is settled law that consequential decision cannot be challenged unless the original order is impugned. The Petitioners have challenged the advertisement which has been issued in pursuance of the two Government orders referred hereinabove. Since the original order has not been challenged the writ petition against the consequential action(advertisement), seems to be not maintainable, vide Government of Maharashtra and Others Vs. Deokar's Distillery,

12. It is also settled law that even if the order is incorrect, it shall remain operative unless it is set aside by the appropriate forum, vide, State of Kerala Vs. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and others,

13. Accordingly, no illegality has been committed by the Respondents while publishing the impugned advertisement in pursuance of the two Government orders referred hereinabove. Unless the order/orders are impugned on acceptable grounds, the judicial review of impugned advertisement is not permissible.

14. In view of the above, the writ petition is dismissed as not maintainable. However, it shall be open to the Petitioners to challenge the original orders in

case advised to do so, by preferring fresh petition.