
(2016) 11 AHC CK 0150
In the Allahabad High Court
Case No : Special Appeal No. 1132 of 2008

Ashok Kumar Pal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-11-2016

Acts Referred:

Citation : (2017) 2 ADJ 375 : (2017) 1 AllWC 661 : (2017) 120 ALR 165 :
(2017) 152 FLR 630

Hon'ble Judges : Arun Tandon and Naheed Ara Moonis, JJ.

Bench : Division Bench

Advocate : S.K. Pal and Y.S. Sachan, Advocates, for the Appellant; C.S.C, Bijai Prakash Tiwari, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Arun Tandon and Naheed Ara Moonis, JJ. - Heard learned counsel for the parties.

2. Facts relevant for deciding the present intra-court appeal are as under:

Appellant-petitioner Ashok Kumar Pal claims to have been appointed as Safai Karmchari in the selection held for filling up for backlog of reserved category posts vide letter of appointment dated 2nd November, 2007 issued by the Executive Officer, Nagar Palika Parishad, Pukharayan, Kanpur Dehat in compliance to the letter of the Director, Local Bodies U.P. Government at Lucknow dated 10th September, 2007 at Nagar Palika Parishad, Pukharayan, Kanpur Dehat.

3. It is claimed that the petitioner was sent on deputation to work at Nagar Palika Parishad, Amraudha, Kanpur Dehat within 19 days of his joining on mere exchange of letters between the Chairman, Nagar Palika Parishad, Amraudha and the Chairman, Nagar Palika Parishad, Pukharayan.

4. Letter dated 3rd December, 2007 was forwarded by the Chairman, Nagar Palika Parishad, Pukharayan directing the petitioner to report back for duties on

his parent post in Nagar Palika Parishad, Pukharayan.

5. According to the petitioner, the Chairman, Nagar Palika Parishad, Amraudha refused to relieve the petitioner on the pretext that as and when reliever was appointed, petitioner can go back at Nagar Palika Parishad Pukharayan.

6. The Executive Officer, Nagar Palika Parishad, Pukharayan required the petitioner to comply with the earlier orders vide letter dated 31st December, 2007. However, the petitioner did not respond to the directions so issued only on the plea that under oral order of the Chairman, Nagar Palika Parishad, Amraudha received on 21st January, 2008, he was directed to continue to function at Nagar Palika Parishad, Amraudha.

7. It is admitted in paragraph-17 of the writ petition that the petitioner was informed by the Chairman, Nagar Palika Parishad, Amraudha that his deputation had been cancelled by the parent department, namely, Nagar Palika Parishad, Pukharayan.

8. According to the petitioner he continued to function at Nagar Palika Parishad, Amraudha despite all this.

9. Faced with the aforesaid defiance of the lawful orders at the hands of the petitioner, the Executive Officer, Nagar Palika Parishad, Pukharayan vide order dated 19th June, 2008 informed the petitioner that under the resolution of the Board of Nagar Palika Parishad, Pukharayan dated 9th June, 2008, his services have been put to an end. This information was supplied to the petitioner under letter dated 27th June, 2008. Not being satisfied with the same, petitioner approached this Court by means of Civil Misc. Writ Petition No. 34235 of 2008.

10. The learned Single Judge under order dated 30th July, 2008 has recorded that there has been deliberate noncompliance of the directions of the parent department to resume his duties after cancellation of the deputation, which the petitioner disobeyed with impunity. Therefore, the Court is not inclined to interfere with the order impugned. The writ petition was therefore, dismissed. The learned Single Judge has observed that the petitioner can always approach the District Magistrate or the Divisional Commissioner in respect of his grievance raised by means of the writ petition, who can look into the matter and do the needful. Hence the present intra-court appeal.

11. Learned counsel for the petitioner contended before us that the District Magistrate or the Divisional Commissioner has no power to look into the matter as no appeal or revision is provided, even if there was an alternative remedy, the order impugned being passed in violation of principles of natural justice, would not be a bar.

12. We have considered the submissions-made by the learned counsel for the parties and have examined the records of the present writ petition.

13. In order to ascertain the nature of appointment of the petitioner, we had

specifically enquired as to after what procedure appointment had been offered to the petitioner, learned counsel for the petitioner could refer to the letter of the appointment dated 5th November, 2007, which only mentions that in terms of the letter of the Director, Local Bodies requiring the local bodies to fill back log vacancies. Interview was held and the petitioner had been selected. Nether in the letter of the appointment nor in the writ petition there is any mention of any advertisement having been published for filling up the backlog vacancies. Learned counsel for the petitioner has failed to refer to any statutory provision or the Government Order wherein appointment could be offered on mere interview.

14. We further find that within 19 days of his appointment in Nagar Palika Parishad, Pukharayan, petitioner claims to have been sent on deputation merely by exchange of letters between the Chairmans of Nagar Palika Parishad, Pukharayan and Nagar Palika Parishad, Amraudha. There is hardly any denial of the fact that it is only the Division Commissioner/Director, Local Bodies who can permit deputation of an employee from one Nagar Palika Parishad to another. Further the knowledge of the order asking the petitioner to report back to its parent Nagar Palika Parishad i.e Pukharayan dated 27th November, 2007 within 12 days of the order of deputation is admitted to the petitioner. He has deliberately avoided the compliance thereof only in collusion with the Executive Officer and Chairman of Nagar Palika Parishad, Amraudha.

15. The learned Single Judge in the facts of the case has rightly refused to interfere on the asking of such an employee.

16. We see absolutely no reason to take any different view in the facts of the case.

17. The present intra-court appeal is accordingly dismissed. Interim order, if any, stands discharged.