
(2006) 01 AHC CK 0106
In the Allahabad High Court

Case No : Writ Petition No. 87(S/B) of 2006 and 1062(S/B) of 2005

Chandra Prakash Srivastava

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 27-01-2006

Acts Referred:

Citation : (2006) 01 AHC CK 0106

Hon'ble Judges : Pradeep Kant, J and S.N.Shukla, J

Final Decision : Dismissed

Judgement

1. Heard the learned Counsel for the petitioner Sri Umesh Kumar Srivastava, learned Counsel for the State Sri A.K. Verma and Sri P.K. Srivastava, who has moved the application for impleadment of Janardan Lal, who has filed writ petition No. 1062 (SB) of 2005, challenging the very initial order of appointment by deputation of the petitioner on the post of Director in the Department of Prison Administration and Correctional Services.

2. The petitioner Chandra Prakash Srivastava who was substantially appointed and working in the parent department, namely, Department of Industries, Government of U.P. as Assistant Director, Industries, feels aggrieved by an order dated 1212006, by means of which his deputation to the Department of Prison Administration and Correctional Services on the post of Director, Jail Industries has been cancelled.

3. Assailing the aforesaid order, the learned Counsel for the petitioner Sri Umesh Kumar Srivastava has submitted that the order has been passed in violation of the terms of appointment by means of which he was sent on deputation contained in Annexure2 dated 1462005, besides being stigmatic in character. He further submits that since the petitioner was sent on deputation on 1462005, it will be within the knowledge of the State Government that against the petitioner some charges were pending and, therefore, after the issuance of the chargesheet and initiation of disciplinary proceedings, merely on the pendency of the disciplinary proceedings, the order of deputation could not be cancelled.

4. Sri A.K. Verma has submitted that the impugned order is neither stigmatic nor it caused any prejudice to the petitioner, so far his service career is concerned. He has argued that the Government in its discretion thought that it was not appropriate to transfer the petitioner on deputation and keep the petitioner away from the parent department during the pendency of disciplinary proceedings and, therefore, the order in question has been passed.

5. Relying on the contents mentioned in the appointment order/deputation order dated 1462005, he has submitted that the petitioner, who was sent on deputation, cannot claim any legal or enforceable right to remain on deputation as it is within the discretion of the State Government to repatriate the petitioner to its parent department.

6. Sri P.K. Srivastava appearing for Janardan Lal, the petitioner in writ petition No. 2062 (SB) of 2005, a contesting candidate for the aforesaid post on deputation, submitted that the very first appointment/deputation of the petitioner was illegal and in violation of the Rules known as the Uttar Pradesh Jail (Group "A" and "B" Service) (Second Amendment) Rules, 2002, wherein the basic criteria is that an officer who is to be sent on deputation should be a Class I officer, namely, falling in Group "A" but because of the political influence, the sole name of the petitioner was forwarded to the Department of Prison and despite the name of Janardan Lal being also recommended, it was not forwarded, though he is a Class I Officer and fully eligible for the office.

7. Sri Umesh Kumar Srivastava has submitted that so far the case of Janardan Lal is concerned, he was not recommended for appointment on deputation and that since no Class I Officer was available for being sent on deputation, the petitioner's name was forwarded, though he admits that he was a Class II Officer.

8. The aforesaid Rules of 2002, which came into force on 1092002 in subrule (5) of Rule 5, prescribe that an officer belonging to Group "A" can be sent to the Director, Jail Industries from the Industries Department.

9. We have considered the arguments raised by the parties' Counsel and gone through the record of both the writ petitions, which have been connected together.

10. The impugned order dated 2112006 has to be read in the light of the reasons given therein. The order only says that the petitioner was formally sent on deputation to Prison Administration and Correctional Service wherein he remained as Director, Jail Industries from 612000 to 1932000. During that period of his posting on deputation, certain illegalities and irregularities were detected in respect of purchase of raw material for the years 2000 to 2002. The petitioner was thereafter repatriated on 1932002. This order says that on 13102005, proceedings have been initiated against the petitioner in which Sri J.N. Tripathi, Joint Director, Directorate of Industries, U.P., Kanpur has been appointed as enquiry officer and, therefore, keeping in mind the pendency of the enquiry, the order of deputation is cancelled and that the petitioner should join in the parent

department.

11. We do not find any substance in the argument of the learned Counsel for the petitioner that the order is stigmatic simply because it mentions that some disciplinary proceedings is pending against him. It is a bare fact that the petitioner was repatriated to the parent department in the year 2002 where he was first posted in the year 2000, on it being detected that there were certain illegalities/irregularities committed in the matter of purchase of raw material. The enquiry proceedings have been initiated and they are pending against the petitioner in the parent department.

12. In case the Government is of the view that the enquiry can be conducted more appropriately by keeping the petitioner in the parent department, where the enquiry is to proceed with, such an order cannot be said to be invalid or stigmatic, as it does not say that the petitioner has been found guilty of the charges levelled against him. It appears that the cancellation has been done only with a view to facilitate the enquiry proceedings and to make the officer available in the parent department to avoid any inconvenience to either of the parties and, therefore, placing the petitioner in the hands of parent department during the enquiry would not amount to any stigma nor any mala fides can be attributed to the same.

13. The argument of the learned Counsel for the petitioner that condition number 2 in the appointment order provided that minor punishment can be awarded by the borrowing department and after enquiry if it is found that the officer is liable for major punishment, he would be sent to the parent department for necessary action is wholly irrelevant, which need not be entered into the present writ petition.

14. Another argument has been raised by the learned Counsel for the petitioner that since petitioner's appointment was initially for a period of three years, which could have been terminated before that period only if it was found that performance of the petitioner was not satisfactory and, therefore, merely on the basis of the enquiry pending in respect of a charge of much prior period, the petitioner's appointment on deputation could not have been cancelled.

15. We would like to observe that the discretion to curtail the period of deputation also lies with the State Government and no capital can be made if curtailment has been done on reasonable ground or for some valid reason.

16. The petitioner cannot claim by way of right to remain in the borrowing department for a particular period or for all times to come. The circumstances may arise which required the petitioner to be repatriated to the parent department and unless such action is absolutely arbitrary, mala fide or against the statutory provisions or for any ulterior motive, such an order cannot be faulted with.

17. So far the case of Janardan Lal is concerned, the pleas raised by him do not

require any answer from us as the appointment of the petitioner Chandra Prakash Srivastava stands cancelled. Therefore, there is no surviving cause of action at this stage so far as Janardan Lal is concerned.

18. The writ petition No. 87 (SB) of 2006 of Chandra Prakash Srivastava is dismissed.

For the reasons stated above, the writ petition No. 1062 (SB) of 2005 of Janardan Lal has become infructuous and is hereby dismissed as such.

By the Court.

Heard the learned Counsel for the petitioner Sri Umesh Kumar Srivastava, learned Counsel for the State Sri A.K. Verma and Sri P.K. Srivastava, who has moved the application for impleadment of Janardan Lal, who has filed writ petition No. 1062 (SB) of 2005, challenging the very initial order of appointment by deputation of the petitioner on the post of Director in the Department of Prison Administration and Correctional Services.

2. The petitioner Chandra Prakash Srivastava who was substantially appointed and working in the parent department, namely, Department of Industries, Government of U.P. as Assistant Director, Industries, feels aggrieved by an order dated 1212006, by means of which his deputation to the Department of Prison Administration and Correctional Services on the post of Director, Jail Industries has been cancelled.

3. Assailing the aforesaid order, the learned Counsel for the petitioner Sri Umesh Kumar Srivastava has submitted that the order has been passed in violation of the terms of appointment by means of which he was sent on deputation contained in Annexure2 dated 1462005, besides being stigmatic in character. He further submits that since the petitioner was sent on deputation on 1462005, it will be within the knowledge of the State Government that against the petitioner some charges were pending and, therefore, after the issuance of the chargesheet and initiation of disciplinary proceedings, merely on the pendency of the disciplinary proceedings, the order of deputation could not be cancelled.

4. Sri A.K. Verma has submitted that the impugned order is neither stigmatic nor it caused any prejudice to the petitioner, so far his service career is concerned. He has argued that the Government in its discretion thought that it was not appropriate to transfer the petitioner on deputation and keep the petitioner away from the parent department during the pendency of disciplinary proceedings and, therefore, the order in question has been passed.

5. Relying on the contents mentioned in the appointment order/deputation order dated 1462005, he has submitted that the petitioner, who was sent on deputation, cannot claim any legal or enforceable right to remain on deputation as it is within the discretion of the State Government to repatriate the petitioner to its parent department.

6. Sri P.K. Srivastava appearing for Janardan Lal, the petitioner in writ petition No. 2062 (SB) of 2005, a contesting candidate for the aforesaid post on deputation, submitted that the very first appointment/deputation of the petitioner was illegal and in violation of the Rules known as the Uttar Pradesh Jail (Group "A" and "B" Service) (Second Amendment) Rules, 2002, wherein the basic criteria is that an officer who is to be sent on deputation should be a Class I officer, namely, falling in Group "A" but because of the political influence, the sole name of the petitioner was forwarded to the Department of Prison and despite the name of Janardan Lal being also recommended, it was not forwarded, though he is a Class I Officer and fully eligible for the office.

7. Sri Umesh Kumar Srivastava has submitted that so far the case of Janardan Lal is concerned, he was not recommended for appointment on deputation and that since no Class I Officer was available for being sent on deputation, the petitioner's name was forwarded, though he admits that he was a Class II Officer.

8. The aforesaid Rules of 2002, which came into force on 10/9/2002 in subrule (5) of Rule 5, prescribe that an officer belonging to Group "A" can be sent to the Director, Jail Industries from the Industries Department.

9. We have considered the arguments raised by the parties' Counsel and gone through the record of both the writ petitions, which have been connected together.

10. The impugned order dated 21/12/2006 has to be read in the light of the reasons given therein. The order only says that the petitioner was formally sent on deputation to Prison Administration and Correctional Service wherein he remained as Director, Jail Industries from 6/12/2000 to 19/3/2002. During that period of his posting on deputation, certain illegalities and irregularities were detected in respect of purchase of raw material for the years 2000 to 2002. The petitioner was thereafter repatriated on 19/3/2002. This order says that on 13/10/2005, proceedings have been initiated against the petitioner in which Sri J.N. Tripathi, Joint Director, Directorate of Industries, U.P., Kanpur has been appointed as enquiry officer and, therefore, keeping in mind the pendency of the enquiry, the order of deputation is cancelled and that the petitioner should join in the parent department.

11. We do not find any substance in the argument of the learned Counsel for the petitioner that the order is stigmatic simply because it mentions that some disciplinary proceedings is pending against him. It is a bare fact that the petitioner was repatriated to the parent department in the year 2002 where he was first posted in the year 2000, on it being detected that there were certain illegalities/irregularities committed in the matter of purchase of raw material. The enquiry proceedings have been initiated and they are pending against the petitioner in the parent department.

12. In case the Government is of the view that the enquiry can be conducted more appropriately by keeping the petitioner in the parent department, where

the enquiry is to proceed with, such an order cannot be said to be invalid or stigmatic, as it does not say that the petitioner has been found guilty of the charges levelled against him. It appears that the cancellation has been done only with a view to facilitate the enquiry proceedings and to make the officer available in the parent department to avoid any inconvenience to either of the parties and, therefore, placing the petitioner in the hands of parent department during the enquiry would not amount to any stigma nor any mala fides can be attributed to the same.

13. The argument of the learned Counsel for the petitioner that condition number 2 in the appointment order provided that minor punishment can be awarded by the borrowing department and after enquiry if it is found that the officer is liable for major punishment, he would be sent to the parent department for necessary action is wholly irrelevant, which need not be entered into the present writ petition.

14. Another argument has been raised by the learned Counsel for the petitioner that since petitioner's appointment was initially for a period of three years, which could have been terminated before that period only if it was found that performance of the petitioner was not satisfactory and, therefore, merely on the basis of the enquiry pending in respect of a charge of much prior period, the petitioner's appointment on deputation could not have been cancelled.

15. We would like to observe that the discretion to curtail the period of deputation also lies with the State Government and no capital can be made if curtailment has been done on reasonable ground or for some valid reason.

16. The petitioner cannot claim by way of right to remain in the borrowing department for a particular period or for all times to come. The circumstances may arise which required the petitioner to be repatriated to the parent department and unless such action is absolutely arbitrary, mala fide or against the statutory provisions or for any ulterior motive, such an order cannot be faulted with.

17. So far the case of Janardan Lal is concerned, the pleas raised by him do not require any answer from us as the appointment of the petitioner Chandra Prakash Srivastava stands cancelled. Therefore, there is no surviving cause of action at this stage so far as Janardan Lal is concerned.

18. The writ petition No. 87 (SB) of 2006 of Chandra Prakash Srivastava is dismissed.

For the reasons stated above, the writ petition No. 1062 (SB) of 2005 of Janardan Lal has become infructuous and is hereby dismissed as such.