
(2016) 07 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 197 of 2016

Dr. Yashwant Barthwal

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2016) LIC 3401

Hon'ble Judges : K.M. Joseph, CJ. and V.K. Bist, J.

Bench : Division Bench

Advocate : Mr. Manoj Tewari, Senior Advocate, assisted by Mr. N.S. Pundir, Advocate, for the Petitioner; Mr. Anil K. Joshi, Additional C.S.C, for the State of Uttarakhand/Respondent No. 1; Mr. Paresh Tripathi, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

K.M. Joseph, C.J.(Oral)—The petitioner was appointed in the year 1986 pursuant to the advertisement issued by the Director of Agriculture Statistics, Uttar Pradesh, as a Junior Statistical Inspector. He was given ad-hoc appointment on 01.09.1990 as Lecturer in the Government Inter College, Anjani Sain, Tehri. Petitioner resigned from the post of Junior Statistical Inspector on 21.09.1990 and he joined as Lecturer in Physics in the Government Inter College, Anjani Sain, Tehri on 22.02.1990. Petitioner's service was regularised in 1995. On 28.11.2013, respondent no. 1 appointed him on deputation as Assistant Director, Agriculture Statistics, Grade-II. It was, according to the petitioner, that on his application, the petitioner was relieved on 28.11.2013 from the post of Lecturer Physics and he joined on 17.12.2013 in the new assignment. On 02.01.2014, an order of suspension was passed against the petitioner by the Director, Secondary Education. It is on the basis that he had assumed charge without No Objection Certificate from the Education Department. It is the petitioner's further case that on 20.02.2014, the Additional Director, who is the Appointing Authority, revoked the suspension order (Annexure No. 5) on 20.02.2014. The Director of

Secondary Education issued No Objection Certificate (Annexure No. 6) to the petitioner for joining as Assistant Director, Statistics. The second respondent-University was established in the year 2011. The first Registrar is to be appointed by the State Government. It is the case of the petitioner that though advertisement was made, no one could be appointed pursuant to the advertisement. The petitioner made his application on 18.01.2014 and the same was forwarded by the Vice Chancellor by communication dated 21.01.2014. The Vice Chancellor, in fact, requested the Government to expedite the appointment. The petitioner was appointed on deputation as Registrar of the University vide order dated 22.01.2014 (Annexure No. 8). The petitioner was relieved by the Director, Agriculture by order dated 23.01.2014 (Annexure No. 10) and he joined as Registrar. Subsequently, the service of the petitioner was absorbed on the post of Registrar by order dated 05.03.2014 (Annexure No. 11). This was, according to the petitioner, on the perception of the importance of the post of Registrar and as continuance of a deputationist as Registrar was considered detrimental to the interest of the University. It is, thereafter, that after more than two years, respondent no. 1 has issued Annexure No. 13 dated 25.05.2016, by which both the deputation and the absorption of the petitioner as Registrar has been cancelled. It is complaining of the same that the petitioner has approached this Court seeking the following reliefs:

"(i) issue a writ, order or direction in the nature of certiorari for quashing the impugned order dated 25.05.2016 passed by respondent no. 1 (Annexure No. 13 to the writ petition).

(ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioner as duly appointed Registrar of the University and to grant him all benefits available to a regular Registrar.

(iii) issue a writ, order or direction in the nature of mandamus commanding the respondents to reinstate the petitioner on the post of Registrar of the University with all consequential benefits including arrears of salary."

2. We heard Mr. Manoj Tewari, learned Senior Counsel assisted by Mr. N.S. Pundir, learned counsel for the petitioner, Mr. Anil K. Joshi, learned Additional C.S.C. for the State of Uttarakhand and also Mr. Paresh Tripathi, learned counsel appearing on behalf of the second respondent.

3. Mr. Manoj Tewari, learned Senior Counsel for the petitioner would submit that there is violation of principles of natural justice. Before issuing the impugned order, the petitioner was not afforded opportunity of representing his case. Next, he would submit that there is malice in law. He would contend that the State is one; the absorption took place in the year 2014 and it was done by the Chief Minister of the State. The Chief Minister at that time was actually, holding the charge of the Portfolio of Education as well as Agriculture Department. Therefore, the grounds, which have been stated in the impugned order, cannot hold good. At this juncture, it is necessary to refer to the order, which reads as follows:

"Government of Uttarakhand

Agriculture and Marketing Section-2

No./XIII-II/05 (12)/2013

Dehradun : Dated 25 May 2016

Office Memo

On the recommendation of the Vice Chancellor of Uttarakhand University of Agriculture and Forestry, Bharsar the agriculture and Agriculture Marketing Department, Government of Uttarakhand vide its memo no. 70/XIII-II/2012-05 (12)/2013 dated 22 January, 2014 Dr. Yashwant Barthwal was appointed as Registrar on deputation of University of Horticulture and Forestry, Bharsar. Thereafter in continuance of Government office memo no. 241/XIII-II/2014-01 (14)/2012 dated 05 March 2014 the services of Dr. Barthwal on deputation was regularized/absorbed on the post of Registrar of Bharsar University.

2- It has come within the knowledge of Government that at the time of appointment on deputation Dr. Yashwant Barthwal was under suspension in his parent department (education department) and further there was no objection certificate with him at the time of appointment on deputation on the post of Registrar of the University but Dr. Barthwal did not mention this fact in his application and neither the Vice Chancellor of the Bharsar University has mentioned and enquired these facts before recommending the application to the Government.

3- Therefore, the aforesaid office memo no. 70/XII-II/2012-05 (12)/2013 dated 22 January 2014 and the office memo no. 241/XIII-II/2014-01 (4)/2012 dated 05 March 2014 hereby cancelled and the appointment of Dr. Yashwant Barthwal as Registrar of the University on deputation is hereby cancelled and Dr. Barthwal is directed immediately joined his parent department (Education department).

(Dr. Ranbir Singh)

Addl. Chief Secretary"

Learned Senior Counsel for the petitioner would submit that the cancellation is done after a longtime. According to him, the Chief Minister, who is fountainhead of all powers, must be treated as having cured all irregularities, which are now urged at this distance of time. There is a case that there is a political motive. The suspension order of the petitioner was clearly on the ground of want of No Objection Certificate and that suspension was actually revoked by the Additional Director. Therefore, no longer the ground is available.

4. Per Contra, the learned counsel for the respondents would, in fact, urge that the petitioner, without getting No Objection Certificate from the parent department, namely, the Education Department, went and joined as Assistant Director, Agriculture Statistics, Grade-II, which is in the Agriculture Department.

He was placed on suspension on 02.01.2014. Subsequently, the Director gives No Objection Certificate for deputation of the petitioner in the Agriculture Department. What the petitioner did was, the petitioner made an application directly to the second respondent i.e. Vice Chancellor of the University. On 18.01.2014, the Vice Chancellor forwarded it directly to the Government; but, what is crucial is that when the application was made and it was forwarded by the Vice Chancellor, the petitioner was already suspended on 02.01.2014. The suspension, even according to the petitioner, was revoked only on 20.02.2014. The petitioner did not bring it to the notice of the Vice Chancellor. The Vice Chancellor also does not mention about it in his communication dated 21.01.2014 to the Government. It is under this misconception of the true state of affairs that the Government was persuaded apparently to make the appointment of the petitioner by deputation. There was no N.O.C. granted for him to be appointed on deputation in the second respondent at all, as No Objection Certificate was granted specifically for being appointed as Additional Director in the Agriculture Department. It is despite these two aspects that the petitioner was appointed initially on deputation as Registrar of the second respondent University and secondly, on 05.03.2014, the service of the petitioner was absorbed. The Governor (Chancellor) of the State actually, brought this anomaly to the notice of the Government. It is, thereupon, that the action was taken and, in the circumstances of the case, no case is made out. Learned counsel for the respondents would also impress upon the Court the fact that the appointment of the first Registrar of the University is limited to a period of three years and, in this regard, reliance is placed on the Government Order, which has been issued, so limiting the first appointment.

5. Mr. Manoj Tewari, learned Senior Counsel appearing for the petitioner, in response to the argument that the order of suspension dated 02.01.2014 was not brought to the notice of the Vice Chancellor in his application for appointment to the post of Registrar, submitted that he had no knowledge of the order. He would submit that even if No Objection Certificate was not available, when the appointment was made at the highest level with the blessings of the Chief Minister, who headed both the concerned Departments at that point of time and being the Head of the Departments, the appointments, be it by way of deputation or by way of absorption, must hold good in law and this is not a matter where the appointments could have been disturbed and, that too, at this distance of time and that is where the "malice in law" argument is pressed. He would also submit that as far as appointment being for three years is concerned, the petitioner was appointed in March, 2014 and, even if it is taken as three years, the period would run out only in March, 2017. Argument was addressed that the same officer, who had taken the petitioner on deputation in Agriculture Department, has passed all these orders.

6. The first question, we must address is whether the impugned order is vitiated for non compliance of natural justice. It is true that the petitioner was initially appointed on deputation and it was followed by absorption. Principles of natural

justice ordinarily would have applied, as they are intended to sub-serve the cause of justice and they apply in a situation, where a person may have a legal right or even a legitimate expectation, and if they are tinkered with, hampered or, in any way, diminished or abridged or taken away, it can only be done after providing the person concerned an opportunity to at least represent against the said order. It is also not much in dispute in law that, when the relegating of the matter for compliance of natural justice becomes mere exercise in futility, the Court would not resort to such a course by way of an empty formality. In this case, the matter was addressed before us threadbare by all the parties. The facts are not in a region of dispute. The petitioner was working in the Education Department. Without securing No Objection Certificate, he went and joined in the Agriculture Department on deputation. He was placed under suspension on 02.01.2014. The ground was that, without obtaining No Objection Certificate, he had gone and joined on deputation. This order was passed by the Director, who, according to the petitioner, was not his Appointing Authority. It is, thereafter, that he was given the No Objection Certificate for joining in the Agriculture Department by proceedings dated 20.02.2014. The said No Objection Certificate clearly permitted him to join in the Agriculture Department. It is, on 18.01.2014, however, that without having any No Objection Certificate, he applies for being considered as Registrar in the second respondent. Without No Objection Certificate from the parent department for being considered as Registrar in the second respondent University, his application was forwarded by the Vice Chancellor. There is no mention in the communication dated 21.01.2014 issued by the Vice Chancellor that there is no N.O.C. from the parent department and that the petitioner was, in fact, placed under suspension on 02.01.2014. No doubt, learned Senior Counsel for the petitioner has a case that the order of suspension was not brought to his notice. Equally, the respondents would point out that the petitioner has not pleaded as to when the order of suspension came to his knowledge. Furthermore, there is reference to the representation of the petitioner for revoking the suspension. The order of suspension was revoked on 20.02.2014. So, certainly, the order of suspension would have been served on the petitioner at some point prior to 20.02.2014. In such circumstances, if we take the view that the order impugned can be supported in law without the slightest manner of doubt, then we would think that the argument based on natural justice must perish, as we would think that no useful purpose may be served.

7. In the undisputed facts that we have noted, the petitioner was appointed on deputation as Registrar unsupported by the No Objection Certificate from the parent department. Equally, he was also under suspension as on the day he was appointed on deputation. The argument that since the Chief Minister is the Head of the Department of both the concerned departments, requirement of No Objection Certificate is reduced to an empty formality may not be correct. In fact, the petitioner was given a No Objection Certificate on the same day, as his suspension order was revoked; but, that No Objection Certificate was for taking

up appointment in the Agriculture Department. The admitted absence of the No Objection Certificate went to the root of the matter. There was also the aspect of his being under suspension on the day on which he was appointed on deputation. It is highly doubtful, to say the least, if a person, while he is under suspension in one post, can be taken on deputation and appointed in another post. When a person is placed under suspension, he ceases to discharge the duties. We would think that, on first principle, when a person is placed under suspension, even if the first Registrar of the University under the statute is to be appointed by the State Government and also that it does not provide for any particular method of appointment, if deputation is to be resorted to, we would think that it cannot be contemplated in respect of a person, who is suspended from the post he is working in the parent department. Apparently, it was being unaware of there being suspension or also ignoring the fact that there was no N.O.C. that the appointment was made. It is this appointment, which was un-done. We would think that in such circumstances, we cannot visit the impugned order with invalidation on the grounds which have been alleged.

8. In such circumstances, we would think that the petitioner has not made out a case. The writ petition is dismissed. No order as to costs.

9. In view of the order, the petitioner is obliged to join the parent department. If the petitioner reports within a period of one week, he will be permitted to join at the parent department.