
(1999) 03 AHC CK 0051
In the Allahabad High Court
Case No : C.M.W.P. No. 41440 of 1996

Govind Vallabh Pandey

APPELLANT

Vs

Director, Local Body and others

RESPONDENT

Date of Decision : 23-03-1999

Acts Referred:

Uttar Pradesh Development Authority (Centralised Service) Rules, 1985 — Rule 28, 7
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 59(3), 59(4),
5A(2)

Citation : (1999) 2 AWC 1719

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : K.S. Rathor, for the Appellant; S.C., S.K. Jaiswal and M.M.D. Agarwal, for the Respondent

Judgement

D.K. Seth, J.—The petitioner was appointed as Surveyor in Kanpur Development Board on 12.10.1945. Thereafter he was appointed as Sub-Overseer in Nagar Mahapalika, Kanpur, after the Kanpur Development Board was renamed as Nagar Mahapalika, Kanpur. The petitioner was promoted to the post of Junior Engineer on 3.1.1968 in Nagar Mahapalika, Kanpur and then from 1.6.1975 till 11.5.1981 he worked as Assistant Engineer on deputation in Kanpur Development Authority. While working as such, in the year 1982 the petitioner was sent on deputation to the Pithoragarh Nagar Palika to look after the development work of the Pithoragarh. The petitioner had applied for absorption in the Kanpur Development Authority as Assistant Engineer. Thereupon, the petitioner having been absorbed/appointed as Assistant Engineer in the Kanpur Development Authority on 16.4.1983, by a letter dated 24.5.1983 he was relieved from Pithoragarh whereupon he Joined as Assistant Engineer in Kanpur Development Authority on 25.5.1983. The petitioner retired on 31.7.1985 as Assistant Engineer from Kanpur Development Authority. After his retirement, anticipatory pension of the petitioner was being paid by the Nagar Nigam, Kanpur but his pension and gratuity has not been paid. On the other hand, the Chief Accounts

Officer, Nagar Mahapalika, Kanpur has raised an objection that since the petitioner is an employee of Kanpur Development Authority, therefore, he should be paid his pension and gratuity by the Kanpur Development Authority. In that view of the matter, the liability to pay the retirement benefit of the petitioner is being disputed between the Nagar Nigam and the Kanpur Development Authority.

2. Learned counsel for the petitioner submits that having saved for a long time, he is entitled to the retirement benefits which cannot be denied and he cannot be victimised because of the dispute between the two authorities.

3. Shri M. M. D. Agarwal, learned counsel for Nagar Nigam on the other hand contends that the petitioner having been appointed in the Kanpur Development Authority in terms of letter dated 18.5.1983 after he was selected through the selection committee, he became an employee of the Kanpur Development Authority and subjected to the terms and conditions of service applicable to the employee of the Kanpur Development Authority after giving him continuity on account of his past service. Therefore, according to him, the liability is that of Kanpur Development Authority and not of the Nagar Nigam. In support of such statement, certain documents have been annexed as Annexure to the said counter-affidavit filed by Nagar Nigam.

4. Shri Amitab Dwivedi, learned counsel appears with Shri S. K. Jalswal, learned counsel for the Kanpur Development Authority. Counter-affidavit on behalf of Kanpur Development Authority has already been filed by them which is on record.

5. I have heard learned counsel for the parties at length.

6. The fact as discussed above is that though the petitioner was appointed in the Nagar Mahapalika but by virtue of his appointment through the appointment letter dated 18.5.1983, he became an employee of the Kanpur Development Authority. In the said letter dated 18.5.1983 which is Annexure-CA-1 to the counter-affidavit filed on behalf of respondent No. 3, it was pointed out that pursuant to the constitution of selection committee and in the interview held on 17.5.1983,, the petitioner having succeeded he was appointed in the post of Assistant Engineer in the Kanpur Development Authority on the condition that he would be placed at the scale of Rs. 850-1720 and would be entitled to other allowances and that his posting is in the Kanpur Development Pariyojna. He should also produce High School certificate as a proof of his age and a character certificate from the highest authority of the employer where he was employed as well as other document relating to certain other requirements, in the letter dated 24.5.1989, the Deputy Director Local Self Government of U. P. had indicated that other persons who have joined the Development Authorities they were all adjusted in the Centralised Services of U. P. Development Authorities and similarly the petitioner's case may also be adjusted in such centralised services.

7. The moment the petitioner has been appointed, even on temporary basis, he became employee of the Kanpur Development Authority subject to the service conditions governing the employees of the Kanpur Development Authority. After

having so appointed. It cannot be said that he would still be governed by the service conditions applicable to the employee of the Nagar Nigam. The petitioner had been working in the Kanpur Development Authority since 1975 and had retired on 31.7.1985 from the Kanpur Development Authority, therefore, it cannot be said that he was still on deputation. If he was on deputation with Kanpur Development Authority, in that event, it was incumbent upon the Kanpur Development Authority to send him back to parent organisation before retirement so that he could have retired from the parent organisation. In such circumstances, it is not open to the Kanpur Development Authority to deny its liability in respect of the retirement benefit to the petitioner. However, if there is any law which governs the service condition of persons appointed in the Kanpur Development Authority which requires that erstwhile employer will bear the share of the retirement benefit in proportion to the period of service rendered with such authority. In that event, the question might be different.

8. In the counter-affidavit filed on behalf of the Kanpur Development Authority, they had contended that the petitioner being a member of the U. P. Palika Centralised Service. It was the responsibility of the Nagar Mahapallika to pay the pension of the "petitioner.

9. Rule 7 of the U. P. Development Authority (Centralised Service) Rules, 1985 prescribed that :

"(1) notwithstanding anything in Rule 28, the seniority of such officer and other employees who are absorbed in the services under sub-section (2) of Section 5A of the Act shall be determined on the criteria of the continuous length of services including services rendered in Development Authority, Nagar Mahapalika. Nagar Pallka or improvement trust on similar post."

Section 59 sub-clauses (3), (4) and 15) of the U. P. Urban Planning and Development Act. 1973 provides as follows :

"59. Repeal etc., and savings-

(1) ****

(2) ****

(3) On and from the constitution of the Development Authority in relation to a development area which includes the whole of a city as defined in the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, all posts borne on the establishment of the Nagar Mahapallika of that city exclusively in connection with its activities under Chapter XIV of the said Adhiniyam or under the Uttar Pradesh (Regulation of Building Operations) Act, 1958. immediately before the date of the constitution of the Development Authority, not being a post governed by the Uttar Pradesh Palika (Centralised) Services Rules, 1956 (hereinafter in this section referred to as the Centralised Services), shall, on and from such date, stand transferred to the Development Authority with such designations as the Authority may determine and officers and other employees who are not members

of any Centralised Services, serving under the Nagar Mahapalika of that city not exceeding the number of posts so transferred shall be selected in accordance with such directions as may be issued by the. State Government for being appointed on the said posts and on such selection shall sand transferred to and become officers and other employees of the Development Authority and shall as such hold office by the same tenure, at the same remuneration and on the same terms and conditions of service as they would have held the same if the Authority had not been constituted and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Authority :

Provided that any service rendered under the Nagar Mahapalika by any such officer or other employee before the constitution of the Authority shall be deemed to be service rendered under the Authority ;

Provided further that the Authority may employ any such officer or other employee in the discharge of such functions under this Act as it may think proper, and every such officer or other employee shall discharge those functions accordingly.

(4) On and from the date of the constitution of the Development Authority in relation to a development area which includes the whole of a city as defined in the Uttar Pradesh Nagar Mahapalika Adhintyam, 1959. all posts governed by the Centralised Services which were borne on the establishment of the Nagar Mahapalika of that city exclusively in connection with its said activities immediately before the date of constitution of the Development Authority shall, and from such date, stand transferred to the Development Authority with such designation as the State Government may determine, his all such posts shall continue to be filled by members of the Centralised Services, as they would have filled had they not been so transferred to the Authority, and the said Adhiniyam and the rules relating to the Centralised Services shall be amended accordingly.

(5) Every Officer and other employee serving under an improvement Trust referred to in sub-section (2) immediately before the date of the constitution of the Development Authority shall, on and from such date, be transferred to and become an officer or other employee of the Development Authority with such designations as the Authority may determine and shall hold office by the same tenure, at the same remuneration and on the same terms and conditions of service as he would have held the same if the Authority had not been constituted and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Authority :

Provided that any service rendered under the Trust by any such officer or other employee before the constitution of the Authority shall be deemed to be service rendered under the Authority :

Provided further that the Authority may employ any such officer or other employee in the discharge of such functions under this Act as it may think

proper, and every such officer or other employee shall discharge those functions accordingly."

10. A plain reading of the said sections show that after constitution of the Development Authority, persons employed in the Nagar Palika would be placed at the disposal of the Development Authority. Those who were governed under the Uttar Pradesh Palika (Centralised) Services Rules, 1956 would now be governed by the Centralised Service Rule of the Development Authority. On and from constitution of the Development Authority in relation to a development area, all posts governed by the Palika Centralised Services shall stand transferred to the Development Authority with such designation as the State Government may determine. Unless there is alteration in the service by reason of the decision, taken by the authority, such person would continue to hold the post on the same remuneration and on the same terms and conditions of service. In the present case, the petitioner was not on deputation with Kanpur Development Authority but his services in effect was transferred to the Kanpur Development Authority with its constitution. Since the petitioner was member of such service which was supposed to be so transferred to the Kanpur Development Authority, in that view of the matter, it is the responsibility of the Kanpur Development Authority to pay pension and all retirement benefits which have not yet been paid to the petitioner. Any amount on account of retirement. If paid by the Nagar Mahapallika, Kanpur, the same shall be allowed to be retained by the petitioner. In case there is any dispute between the Kanpur Development Authority and the Nagar Pallka the same may be resolved between themselves without affecting the petitioner in any manner.

11. In that view of the matter, Kanpur Development Authority is hereby directed to pay the pension and other retirement benefits to the petitioner which are admissible in law and has not been paid to the petitioner. Such amount should be paid to the petitioner as early as possible preferably within a period of six months from the date a certified copy of this order is produced before the concerned authority. Let a writ of mandamus do issue accordingly. In view of inordinate delay in releasing the retirement benefit, the dues shall carry interest at the rate of 12% "per annum simple from the date it became due till its date of payment.

12. The writ petition is thus disposed of. However, there will be no order as to costs.