

(2019) 05 UK CK 0269

In the Uttarakhand High Court

Case No : Special Appeal No. 526 Of 2019, Delay Condonation Application No. 7076 Of 2019

Gulsher Ali

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 27-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 16

Citation : (2019) 05 UK CK 0269

Hon'ble Judges : Ramesh Ranganathan, CJ;N.S. Dhanik, J

Bench : Division Bench

Advocate : Parikshit Saini, Prabha Naithani

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. The application to condone the delay of 22 days' in preferring the appeal is not opposed by the learned counsel for the respondent; and the delay is, therefore, condoned.

2. Heard Sri Parikshit Saini, learned counsel for the appellant-writ petitioner, and Ms. Prabha Naithani, learned Brief Holder for the State Government and, with their consent, the Special Appeal is disposed of at the stage of admission. This appeal is preferred against the order passed by the learned Single Judge in WPSS No. 692 of 2019 dated 28.03.2019 dismissing the said writ petition.

3. Facts, to the limited extent necessary, are that the appellant-writ petitioner, who is working as an Assistant Teacher in the Education Department, submitted his application for appointment to the post of District Minority Welfare Officer, pursuant to the advertisement issued on 01.12.2017. Even before the applications, submitted pursuant to the said advertisement, could be processed, a second advertisement was issued on 16.05.2018 inviting applications afresh. A corrigendum was issued, to the advertisement dated 16.05.2018, on the next

day i.e. 17.05.2018 stating that those, who had submitted their application pursuant to the advertisement dated 01.12.2017, need not apply afresh; and the earlier applications would also be considered.

4. It is the appellant-writ petitioner's case that, four posts of District Minority Welfare Officers were sought to be filled up by a selection process; the appellant-writ petitioner was among the four who were selected; when the select list was placed before the Minister In-charge for his approval, he had directed that a fresh process of selection be undertaken; and, pursuant thereto, yet another advertisement was issued on 20.02.2019, aggrieved by which the appellant-writ petitioner had invoked the jurisdiction of this Court by filing WPSS No.692 of 2019 wherein he sought a writ of certiorari to quash the notification dated 20.02.2019, and for a mandamus commanding the respondents to issue an appointment letter in the appellant-writ petitioner's favour for the post of District Minority Welfare Officer, Dehradun.

5. In the order under appeal, the learned Single Judge observed that the advertisement dated 20.02.2019 was questioned by the petitioner as being actuated by malice; and, in support of such a contention, the petitioner had claimed that, earlier, the Principal Secretary, Minority Welfare had decided to give appointment to the candidates selected by the Selection Committee including the petitioner; subsequently a meeting was held in the residence of the Ministry In-charge, in which it was decided to re-advertise the vacancies and, according to the petitioner, that decision, taken in the meeting held in the residence of the Minister, was unsustainable; and since he was recommended for appointment by the Selection Committee, and the said recommendation was accepted by the Government, he was entitled to be appointed as a District Minority Welfare Officer, Dehradun. While opining that he was not impressed by the submission, the learned Single Judge held that it was settled position in law that mere selection does not confer any indefeasible right for appointment; it had come on record that the petitioner was a permanent employee of the Education Department; the selection was concerned only with appointment on deputation; and since the petitioner was already serving in the Education Department, where he had a lien over the post of Assistant Teacher, there was no reason to interfere with the order impugned in the writ petition. The writ petition was, accordingly, dismissed.

6. Before us, Sri Parikshit Saini, learned counsel for the appellant-writ petitioner, would submit that the learned Single Judge was swayed by the fact that the post of District Minority Welfare Officer was a deputation post, and had therefore held that no right was conferred on the petitioner to claim appointment; since the very mode of appointment, to the posts of District Minority Welfare Officers, is only by way of deputation, it is only employees of the State Government who are entitled to participate in the selection process, and seek appointment to the said post by way of deputation; as the petitioner has already been selected for appointment as a District Minority Welfare Officer, an appointment order should

have been issued in his favour by the State Government, instead of holding a fresh process of selection; and the malafides of the Minister is evident from the fact that the appellant-writ petitioner had earlier questioned the appointment of Sri Ahsan, as a District Minority Welfare Officer, before this Court; and it is only because the selection and appointment of Sri Ahsan was set-aside by this Court and, pursuant to the fresh advertisements, his candidature for selection was rejected, was the petitioner not appointed as a District Minority Welfare Officer, and a fresh advertisement was issued only to favour Sri Ahsan and to ensure his selection and appointment.

7. On the other hand, Ms. Prabha Naithani, learned Brief Holder for the State, would submit that the contentions of malafides, urged across the bar, are not supported by any pleadings in the writ petition; it has not been stated in the writ affidavit that appointment orders were not issued to the appellant-writ petitioner only to favour Sri Ahsan; the allegation, of the advertisement dated 20.02.2019, being vitiated by malice is not supported by any pleadings in the affidavit filed in support of the writ petition; and such a contention, not even urged in the writ petition filed before the learned Single Judge, cannot be put forth for the first time before a Division Bench in an intra-Court appeal.

8. It is always open to the Competent Authority to cancel the selection process for just and valid reasons, and to commence a process of selection afresh. We are in agreement with the opinion of the learned Single Judge that mere selection does not confer any indefeasible right to claim that the selectee should be appointed. No candidate has a legal right to be appointed. In terms of Article 16 of the Constitution of India, he has only a right to be considered for selection and appointment. (Pitta Naveen Kumar and Ors. Vs. Raja Narasaiah Zangiti and Others: (2006) 10 SCC 261). Ordinarily, the notification of posts is merely an invitation to the qualified candidates to apply for recruitment and, on their selection, they do not acquire any right to the post. Unless the relevant recruitment rules so provide, the State is under no legal duty to fill up all or any of the vacancies. If a number of vacancies are notified for appointment, and adequate number of candidates are found fit, it does not mean that the successful candidates can claim to be appointed as of right, as inclusion of their names in the list of successful candidates does not confer on them an indefeasible right. (Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others: (1998) 7 SCC 469; Shankarsan Dash Vs. Union of India: (1991) 1 SCC 47; State of Bihar and Ors. Vs. Md.Kalimuddin and Others: (1996) 2 SCC 7; and Punjab State Electricity Board and Ors. Vs. Malkiat Singh: (2005) 9 SCC 22). By mere selection, the candidates acquire no indefeasible right for appointment even against existing vacancies. (All India SC & ST Employees' Association and Anr. Vs. A. Arthur Jeen and Others: (2001) 2 SCR 1183; Aryavrat Gramin Bank Vs. Vijay Shankar Shukla: (2007) 12 SCC 413; State of Rajasthan and Ors. Vs. Jagdish Chopra: (2007) 8 SCC 161; State of M.P. and Ors. Vs. Sanjay Kumar Pathak and Others: (2008) 1 SCC 456 and Asha Kaul (Mrs.) and Anr. Vs. State of Jammu and Kashmir and Others: (1993) 2 SCC 577).

9. The allegations, of malice vitiating the advertisement dated 20.02.2019, does not also merit acceptance. Malice must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. (State of Bihar Vs. P.P. Sharma : AIR 1991 SC 1260). The burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. (E.P. Royappa Vs. State of T.N. : (1974) 4 SCC 3; Smt. Swaran Lata Vs. Union of India : 1979(3) SCC 165).). It is the last refuge of a losing litigant (Gulam Mustafa Vs. State of Maharashtra : AIR 1977 SC 448; Ajit Kumar Nag Vs. GM(PJ), Indian Oil Corpn. : (2005)7 SCC 764 ; and Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttaranchal : (2007) 8 SCC 418). Malafides, in the sense of improper motive, should be established only by direct evidence. If bad faith would vitiate the order, the same can be deduced as a reasonable and inescapable inference from proved facts. (Pratap Singh Vs. State of Punjab : (1964) 4 SCR 733). He who seeks to invalidate or nullify any act or order must establish the charge of bad faith. While the indirect motive or purpose, or bad faith or personal ill-will, is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, though this may sometimes be done (Edgington Vs. Fitzmaurice : (1884)29 Ch.D 459)

10. Vague allegations of malafides are, however, not enough to dislodge the burden resting on the person who makes them. (Express Newspapers (P) Ltd. & others Vs. Union of India & others : (1986) 1 SCC 133). There must be strong and convincing evidence to establish allegations of malafides specifically and definitely alleged in the petition. The presumption under law is in favour of the bonafides of the order unless contradicted by acceptable material. (Chandra Prakash Singh Vs. Purvanchal Gramin Bank : (2008) 12 SCC 292 ; First Land Acquisition Collector Vs. Nirodhi Prakash Gangoli : (2002) 4 SCC 160). Allegations of malafides, when made, must inspire confidence in the Court and should be based on concrete material. Such allegations ought not to be entertained on the mere making of it, or on considerations borne out of conjectures or surmises. (State of U.P. Vs. Gobardhan Lal : (2004) 11 SCC 402). There must be firm foundation of facts pleaded and established, and inference of malafides cannot be drawn on the basis of vague suggestions. (Rajendra Roy Vs. Union of India and another : (1993) 1 SCC 148). Vague insinuations, in the affidavit filed in support of the Writ Petition filed before this Court, would not suffice to hold that an order is vitiated by malafides.

11. Though the burden of proving that there is an abuse of power lies on the person who challenges the order, such burden is not by way of proof to the hilt but such as will render the absence of bonafides reasonably probable. (Ratanlal Gupta Vs. District Magistrate of Ganjam : ILR 1951 Cuttack 441; Brundaban Chandra Dhir Narendra Vs. State of Orissa (Revenue Department) : ILR 1952 Cuttack 529). While exercising the power of judicial review, the High Court would not readily accept the charge of malus animus laid against the State and its

functionaries. The burden to prove the charge of malafides is always on the person who moves the court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to malafides. The Court would resist the temptation of drawing dubious inferences of malafides or bad faith on the basis of vague and bald allegations or inchoate pleadings. (Jasbir Singh Chhabra Vs. State of Punjab : (2010) 4 SCC 192). Further the persons against whom malice is alleged must be arrayed as a respondents, for no findings of malice can be recorded behind his back (State of Bihar vs. P.P. Sharma: AIR 1991 SC 1260). While making such vague and bald allegations of malice, the appellant-writ petitioner has not even chosen to array the Minister, against whom such insinuations of malice are made, as a party-respondent to the writ petition.

12. It does appear, however, that the mode of appointment, to the post of District Minority Welfare Officer, is only by way of deputation, and it is only employees of the State Government who are entitled to participate in the selection process and, on their selection, to be appointed to the post of District Minority Welfare Officer on deputation for a specified duration. As mere selection does not confer any right on the appellant-writ petitioner to claim that he should be appointed, and the allegations of malice have not been established, we see no reason to entertain this appeal, or to interfere with the selection process for which the fresh advertisement dated 20.02.2019 was issued.

13. Sri Parikshit Saini, learned counsel for the appellant-writ petitioner, would submit that, while the earlier advertisement was issued on 16.05.2018 and its corrigendum was issued the next day i.e. 17.05.2018 permitting the applicants, who had submitted their applications pursuant to the earlier advertisement dated 01.12.2017, to also participate in the selection process held in the year 2018 without submitting any fresh application, no such benefit has been conferred under the advertisement dated 20.02.2019; as a result it is only the appellant-writ petitioner who is now disabled from participating in the selection process pursuant to the advertisement dated 20.02.2019; the applications, required to be submitted pursuant to the said advertisement, must be accompanied by a no objection certificate; this no objection certificate is required to be issued by the parent department, conveying its no objection for the employee to be posted to the deputation post; from 01.01.2019 onwards, the Education Department, in which the appellant-writ petitioner is working, has stopped issuing no objection certificates for its employees to join in another post on deputation; and, as a result thereof, the appellant-writ petitioner is disabled from participating in the fresh process of selection being undertaken pursuant to the advertisement dated 20.02.2019.

14. It is well settled that no employee can be posted on deputation without his consent or without the consent of the borrowing department to which he is deputed or, for that matter, without the consent of his parent department i.e. the Education Department (Umapati Choudhary vs. State of Bihar & others: (1999) 4

SCC 659). A no-objection certificate, to his being appointed on deputation as District Minority Welfare Officer, must therefore be obtained from his parent department, before the appellant-writ petitioner can claim appointment to the deputation post of District Minority Welfare Officer.

15. We see no reason to dwell on this issue any further, or to examine whether the Education Department is justified in refusing to grant permission for its employees to go on deputation to other departments, since refusal by the Education Department, to give a no objection certificate, was not even subjected to challenge in the writ petition filed before the learned Single Judge. Suffice it to observe that neither the order passed by the learned Single Judge, nor the order now passed by us, shall disable the appellant-writ petitioner, if he so chooses, from questioning the action of the Education Department, in refusing to give a no objection certificate to its employees to go on deputation, in appropriate legal proceedings. Leaving it open to the appellant-writ petitioner to do so, the appeal fails and is, accordingly, dismissed. No costs.