

(2008) 11 AHC CK 0052
In the Allahabad High Court

Israr Mohammad

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 12-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 AWC 1656

Hon'ble Judges : V.M. Sahai, J;Ran Vijai Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.M. Sahai and Ran Vijai Singh, JJ.—This special appeal has been filed by the appellant-petitioner against the judgment and order dated 20.10.2008 passed by learned single Judge in Writ Petition No. 54217 of 2008, Israr Mohammad v. State of U.P. and Ors. by which the petition filed by the petitioner has been dismissed.

2. The facts giving rise to this appeal are that the petitioner was initially appointed on 19.9.1985 as Assistant Teacher in the Junior Basic School. In the year 1996, he was appointed as Sankul Prabhari while he was working as Assistant Teacher. In the year 2005, the petitioner was promoted on the post of Headmaster. After promotion on the post of Headmaster, he was again appointed as Sankul Prabhari, Karwa Buzurg on 31.8.2005 by the District Basic Education Officer, Etawah. The petitioner's appointment on the post of Sankul Prabhari was cancelled by the District Basic Education Officer, Etawah vide order dated 27.9.2008 on the ground of certain lapses on the part of the appellant with regard to the distribution of scholarship in the Junior Basic School and Senior Basic School Karwa Buzurg whereas the direction was issued to distribute the scholarship well within time. Another ground for cancellation to the appointment was that inspite of specific instructions for white washing of the school building from cement it was whitewashed by lime.

3. Shri Pankaj Kumar Srivastava, learned Counsel for the petitioner has challenged the impugned order dated 20.10.2008 on the following grounds:

(a) Because the impugned order in the writ petition dated 27.9.2008 was passed in breach of principle of natural justice as no opportunity whatsoever was given by the District Basic Education Officer, Etawah to the petitioner before cancelling his appointment as Sankul Prabhari, therefore, learned single Judge has erred in . dismissing the writ petition;

(b) Because the tenure of the appointment was not mentioned in the appointment letter, therefore, learned single Judge has wrongly noticed that the terms of appointment of two years has expired and on this ground refused to interfere with the impugned order dated 27.9.2008;

(c) Because the impugned order in the writ petition dated 27.9.2008 amounts to reversion as the salary of Sankul Prabhari is higher than the post of Head Master/Teacher.

4. Learned standing counsel appearing for the State respondent has submitted that at present the selection on the post of Coordinators (Sankul Prabhari) Block Resource Centres Coordinator and Nyaya Panchayat Resource Centres Coordinator (B.R.C.C. and N.P.R.C.C.) are made on deputation for the maximum period of two years pursuant to the Government order dated 29.6.2002. This Government order also put restriction that after completion of two years there will be fresh selection on the post and the persons once appointed as a coordinator will not be considered in the fresh selection.

5. Learned standing counsel also points out that the Government order dated 29.6.2002 was challenged before this Court through various petitions and this Court had dismissed the writ petitions on 9.4.2004. The number of leading writ petition happens to be 27778 of 2003, Shailendra Kumar Misra and Ors. v. State of U.P. and Ors.

6. This order was challenged through Special Appeal No. 535 of 2004 which too was dismissed on 11.5.2004.

7. He has also submitted that the petitioner's substantive post is of a teacher/Head master and he was only sent on deputation on the post of Sankul Prabhari, therefore, there is no illegality in repatriating the petitioner on the substantive post of Head Master/Teacher. He has further submitted that since this was a time bound appointment under a scheme, therefore, it will come to an end after the expiry of fixed period of two years. In his submissions even if impugned order in the writ petition has been passed without affording an opportunity of hearing, it will make no difference as in any condition petitioner cannot work beyond the period of two years pursuant to the Government order dated 29.6.2002 as he is bound by the terms and conditions of the aforesaid Government order.

We have heard learned Counsel for the petitioner Sri Pankaj Kumar Srivastava and learned standing counsel for the respondents.

Following questions would arise to decide the present controversy.

- (a) Whether the impugned order in the writ petition dated 27.9.2008 can be quashed on the ground of breach of principle of natural justice;
- (b) Whether the impugned order passed in the writ petition dated 27.9.2008 amounts to reversion of the petitioner;
- (c) Whether the terms of the deputation can be extended by the Court;
- (d) Whether the petitioner can travel beyond the terms of the Government order dated 29.6.2002 pursuant thereof the coordinators are appointed and are working in the State of U.P.

Point No. (a):

8. From the perusal of the impugned order dated 27.9.2008, it transpires that the said order has been passed without affording an opportunity of hearing to the petitioner. Now the question would arise whether that order can be interfered with under the facts and circumstances of the present case where the petitioner is holding substantive post of teacher/Head master and was sent on deputation on the post of coordinator under a scheme run by the State of U.P.

9. For applying the principle of natural justice there can be no straitjacket formula but it's observance depends upon the facts and circumstances of each case. It is settled law that observance of principle of natural justice is not a ritual which should be given in each and every case. If in a particular case even after giving an opportunity of hearing same result is likely to come and order has been passed without giving an opportunity then in that circumstances that kind of order should not be interfered with under Article 226 of the Constitution of India.

10. Learned Counsel for the petitioner has not been able to dispute this fact that the appointment of coordinators (Sankul Prabhari) is governed under the Government order dated 29.6.2002 where the maximum period of deputation is provided for two years, therefore, even if opportunity is given to the petitioner even then he will not be able to improve his case.

11. We are of the view that non-observance of principle of natural justice before passing the impugned order dated 27.9.2008 will not vitiate the order and it is not worthwhile to interfere with under Article 226 of the Constitution of India, as even if opportunity is given to the petitioner he will not be able to improve his case in view of the Government order dated 29.6.2002 which talks about the duration of deputation for the maximum period of two years.

Point No. (b):

12. Learned Counsel for the appellant submits that impugned order dated 27.9.2008 amounts to reversion as now his salary will be reduced. It is noticeable that the Government order dated 29.6.2002 under which the appointment of coordinator is made talks about the deputation. According to

which a teacher eligible for appointment on the post of coordinator is sent on deputation only for a period of two years, therefore, even if the petitioner was getting higher salary on the post of coordinator even then the impugned order passed in the writ petition will not amount to reversion as his original post is of a teacher/Head master and he has been repatriated on the said post without any stigma. Reversion means reduction in rank than the original post which cannot be the case of the petitioner as his original post is of a teacher/Head master. Therefore, we are of the view that the impugned order do not amount reversion.

Point No. (c):

13. It is not in dispute that the petitioner has been sent on deputation and now he has been repatriated on his substantive post of Head Master/teacher. It is settled law deputationist has no right and he can be repatriated in the parent department even before the expiry of the period of deputation. This question in the case of coordinators has been considered by a Division Bench of this Court in the case of *Net Ram Gangwar and Ors. v. State of U.P. and Ors.* 2004 ESC 1911 where it was observed:

The appointment letters issued by the District Basic Shiksha Adhikari specifically provided that they were appointed on deputation on a purely temporary arrangements which can. come to an end at any time without any prior information. The appointment order made it clear that the deputation is upto the period of the scheme or upto 31.3.2003 whichever is earlier and the post shall be treated to be sanctioned only till that time.

....

The petitioners were not held out any assurance that they would be engaged as Coordinator/Assistant Coordinator for an indefinite period. The scheme was treated to be sanctioned upto the year 2000 by the G.O. dated 18.8.1984 which was extended upto 31.3.2003. The appointment order specifically provided that he was appointed on deputation on a purely temporary arrangement which could come to an end at any time without prior intimation. The appointment order made it absolutely clear that the deputation is upto the period of the scheme or upto 31.3.2003 whichever is earlier, and the post shall be treated to be sanctioned only till that time.

The appellants were on deputation and they have been repatriated to their substantive post. As rightly held by the learned single Judge, the petitioners have no right to continue under the new scheme. They were on deputation, and it is well-settled that a person on deputation has no right to continue on deputation, and he can be repatriated to his parent department at any time vide *Kunal Nanda Vs. Union of India and Another*, *Kunal Nanda Vs. Union of India and Another*, *Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others*, ; *Dr. O.P. Singh Vs. State of U.P. and Others*, ; *Rameshwar Prasad v. Managing Director, U.P. Rajkiya Nirman Nigam Ltd. and Ors.* 1999 (3) UPLBEC 2412.

14. This view has been reaffirmed by the Apex Court in Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, Uttar Pradesh Gram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, , etc.

15. Otherwise also the maximum period of appointment on the post of coordinator is two years, therefore, it will automatically lapse after that period in view of the decision of the Apex Court in Director Natural Manufacture Development, U.P. v. Pushpa Srivastava 1992 (4) SCC 23.

16. In view of the aforesaid decisions we are of the view that even if in the appointment letter of the petitioner the period of deputation is not mentioned it will make no difference as the petitioner's appointment as Sankul Prabhari has been made pursuant to the Government order dated 29.6.2002 where the maximum period of deputation is provided for two years. Learned single Judge has rightly observed that the period of deputation cannot be extended beyond the period of two years and has rightly dismissed the writ petition.

Point No. (d):

17. It is settled law that one cannot travel beyond the terms of the scheme under which he has been appointed. The Apex Court in the case of I. L. Honnegouda v. State of Karnataka and Ors. AIR 1978 SC 28, held as under:

In view of our judgment in D. Nagaraj and Others Vs. State of Karnataka and Others, which has just been delivered and the fact that the appellant acquiesced to the 1970 Rules by applying for the post of the Village Accountant, appearing before the Recruitment Committee for interview in 1972 and 1974 and taking a chance of being selected, the present appeal which question the constitutionality of Rules 4 and 5 of the 1970 Rules cannot be allowed. It is accordingly dismissed but without any order as to costs.

18. A Division Bench of this Court in the case of Chandra Gupta Vs. State of U.P. and others, while dealing with the appointment petty diesel dealer who are appointed pursuant to the Government orders has observed:

They have no independent right to get supply of diesel for the purpose of sale. Therefore, they are bound by the terms and conditions of the aforesaid Government orders. On the facts of the case, the petitioners cannot complain that any right guaranteed to them under Article 19 (1) (g) of the Constitution has been violated.

19. Otherwise also the appointment of coordinators is based on policy decision of the State Government pursuant to the Government order dated 29.6.2002. Therefore, also it should not be interfered with unless the policy decision taken by the Government is against any statutory provisions or is violative of fundamental right of the citizens.

20. The Apex Court in the case of Maharashtra State Board of Secondary and

Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, Ekta Shakti Foundation v. Government of N.C.T. of Delhi AIR 2006 SC 3601 : 2007 (1) AWC 91 (SC); Asif Hameed and others Vs. State of Jammu and Kashmir and Others, M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, ; The University of Mysore and Another Vs. C.D. Govinda Rao and Another, Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and Others, , has taken the same view and elaborated the scope of judicial interference in the policy matter of State Government.

21. We are of the view that the State Government is competent to make policy with regard to the appointment of coordinators and the policy under which the appointments have been made cannot said to be hit by any of the provisions of the Constitution or any other statute governing the field.

In the result special appeal fails and is hereby dismissed.