

(2012) 06 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition No. 779 of 2004

Keerti Kumar Agrawal

APPELLANT

Vs

Government of Chhattisgarh and Another

RESPONDENT

Date of Decision : 25-06-2012

Acts Referred:

Constitution of India, 1950 — Article 166, 166(1), 166(2), 229, 77(1)
Contempt of Courts Act, 1971 — Section 2
Income Tax Act, 1961 — Section 11, 255(4), 4(3)(i)

Citation : (2013) 2 SCT 638

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Prafuli Bharat and Ms. Hamida Siddiqui, for the Appellant; Y.S. Thakur and Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Since WP No. 779 of 2004 and WP (S) No. 5376 of 2006 filed by the same petitioner-Keerti Kumar Agrawal and involve the same facts and, as such, both the petitions are being considered and disposed of by this common order. For adjudication of these petitions, the facts involved in WP No. 779 of 2004 are referred herein.

WP No. 779 of 2004 :

The petitioner seeks a direction for absorption of service in the Commercial Tax Department, Government of Chhattisgarh (for short "the CTD"), on the post of Deputy Commissioner (Information Technology) from the date of joining of the post i.e. 5th February, 2001 and consequential seniority with effect from that date.

2. The facts, in brief, leading to filing of these petitions, are that the petitioner was basically an employee of the MP. State Co-operative Oil-seed Growers' Federation Ltd., Bhopal (for short "the Federation"). Thereafter, the petitioner

joined on the post of Deputy Director (Computer, Planning and Development) at Directorate of Health Services, Government of Chhattisgarh, on deputation. There he remained from 17th November, 2000 till 4th February, 2001. On 19th January, 2001 (Annexure-P/1), the petitioner made an application to the Principal Secretary, CTD, for his appointment on the post of Deputy Commissioner (Information Technology) on deputation. By order dated 1st February, 2001 (Annexure-P/2), the petitioner was appointed as Deputy Commissioner (Information Technology) in the pay scale of Rs. 12000-16500 on deputation.

3. During the period of deputation, on 3rd April, 2002 (Annexure-P/4) the petitioner made a request to the Commissioner, CTD to deduct CPF and with the employers' contribution transfer to the Provident Fund Account. On 23rd January, 2001 (Annexure-P/5), the Director (Personnel & Administration) of the Federation sent a communication to the Secretary, CTD. Government of Chhattisgarh for absorbing the services of the petitioner in the CTD stating therein that the Federation had no objection and also no enquiry was pending against the petitioner.

4. In the meanwhile, the petitioner applied for appointment on the post of Director (Energy Infotech Centre), Chhattisgarh State Electricity Board (for short "the CSEB") on deputation. Accordingly, he made a request to the Managing Director of the Federation on 31st January, 2003 (Annexure-P/6) that his lien be maintained with the Federation and he may be permitted to join the post of Director (Energy Infotech Centre), CSEB.

5. The Additional Commissioner, CTD by letter dated 28th April, 2003 (Annexure-P/8) requested the CSEB for extension of time for the petitioner to join the post till 31st May, 2003. On 8th May, 2003 (Annexure-P 9). The petitioner represented to the Commissioner, CTD that he could not join the post of Director (Energy Infotech Centre), CSEB, thus the services of the petitioner be absorbed in the CTD on the post of Deputy Commissioner (Information Technology). The petitioner has made similar requests on 24th September, 2003, 6th October, 2003 also. The petitioner also made a request for deduction of provident fund on regular basis from his salary. He was informed by the Deputy Commissioner (Headquarters). CTD vide communication dated 28th October 1st November, 2003 that his request dated 13th August, 2003 and 24th September, 2003 has been forwarded to the Government.

6. The petitioner had written a letter to the Secretary, CTD on 15th November, 2003 (Annexure-P/17) to finalise his case for absorption and it was further stated that if action was not taken within a period of one month he would take legal action. Legal notice was also sent by way of reminder on 23rd December, 2003 (Annexure-P/18). The Additional Commissioner (Administration), office of the Commissioner, CTD had written to the Under Secretary to the State Government, Commercial Tax, Finance and Planning Department recommending the case of the petitioner for absorption on the post.

7. Learned counsel appearing for the petitioner would submit that the proceeding was initiated in the Secretariat for absorbing the petitioner on the post of Deputy Commissioner (Information Technology) wherein it was proposed to absorb his service. Learned counsel would further submit that there was sufficient representations and promise to the petitioner and, as such, the action of the State is governed by the principle of estoppel. Thus, a direction be issued to absorb the service of the petitioner on the post of Deputy Commissioner (Information Technology), as sought for in the petition.

8. Learned counsel would next submit that some of the employees have already been absorbed in the service. It is further submitted that the Federation is a Government Corporation and, as such, there is no difficulty in absorbing the services of the petitioner. The petitioner was finally informed by order dated 29th March, 2004 (Annexure-R/1) that the petitioner was an employee of the Federation, it was a Corporation and, as such, it was not possible to absorb his service in the State Government.

9. Shri Bharat would also submit that on account of non-relieving of the petitioner from the CTD, he lost an opportunity of joining the post of Director (Energy Infotech Centre), CSEB and it was a clear indication that the State Government wanted to absorb the services of the petitioner in the CTD. The petitioner suffered loss on account of the above-stated facts, therefore, a direction be made to the authorities to act on their promise and absorb the services of the petitioner.

10. Shri Thakur, learned Dy. Adv. General appearing for the State, would submit that the petitioner was informed vide letter dated 28th October/1st November, 2003 (Annexure-R/2) that the request of the petitioner for deduction of provident fund was not possible unless his services were absorbed in the Government. Even the deputation of the petitioner came to an end and on 31st January, 2005, as he was informed by communication dated 9th November, 2004. The petitioner was relieved from the service of the CTD on 8th November, 2006 (Annexure-D/2), to join his parent department.

11. Shri Thakur would further submit that no promise or representation was made to the petitioner that his services would be absorbed. Though there was a proceeding and the notings, however, the same was never intimated to the petitioner. The deputation order also does not indicate anything about the intention of the State to absorb the services of the petitioner in the State Government.

12. Having considered the rival contentions advanced by the learned counsel appearing for the parties, perused the pleadings and the documents appended thereto, it is an admitted position that at no point of time, the Government has made any representation or any promise was given to the petitioner except that the recommendation was made by the concerned department i.e. CTD to consider his case for absorption to the Secretary of the concerned department of

the Government. Proposal was also made by some officials in the internal proceedings for absorption of the services of the petitioner.

13. There were several representations from the petitioner to the Commissioner, CTD however, at no stage he was represented or promised by the State Government that he would be considered for absorption on the post of Deputy Commissioner (Information Technology).

14. It is well settled principle of law that notings & correspondence are mere expressions/opinions of the officers and the same cannot be held as either promise or assurance or a decision of the State Government.

15. In the case on hand, some officers, as aforesaid, have informed that his case has sent to the State Government for consideration, however, the Government has never informed to the petitioner that he would be considered for absorption in service.

16. On perusal of the minutes, it appears that the post of Deputy Commissioner (Information Technology), CTD was available and it was also proposed by the different officers that the petitioner may be considered for absorption. However, it was not found that finally any official decision was taken in the notings and order to that effect, thereafter was passed.

17. The Supreme Court in State of Uttaranchal and Another Vs. Sunil Kumar Vaish and Others, laid down the principle as under :

24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, can such noting be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review. (See State of Punjab v. Sodhi Sukhdev Singh, Bachhittar Singh v. State of Punjab, State of Bihar v. Kripalu Shankar, Rajas than Housing Board v. Shri Kishan, Sethi Auto Service Station v. DDA and Shanti Sports Club v. Union of India).

18. The Supreme Court in Union of India (UOI) and Another Vs. Kartick Chandra Mondal and Another,

17. The next issue that we are required to consider pertains to internal communications which are relied upon by the respondents and which were also

referred to by the Tribunal as well as by the High Court. Ex facie, the aforesaid communications were exchanged between the officers at the level of board hierarchy only.

18. An order would be deemed to be a government order as and when it is issued and publicised. Internal communications while processing a matter cannot be said to be orders issued by the competent authority unless they are issued in accordance with law. In this regard, reliance may be placed on the decision of this Court in *State of Bihar v. Kripalu Shankar* wherein this Court observed, in paras 16 and 17, as follows: (SCC pp. 4445)

16. Viewed in this light, can it be said that what is contained in a notes file can ever be made the basis of an action either in contempt or in defamation. The notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the officer concerned on the subject under review. To examine whether contempt is committed or not, what has to be looked into is the ultimate order. A mere expression of a view in notes file cannot be the sole basis for action in contempt. Business of a State is not done by a single officer. It involves a complicated process. In a democratic set-up, it is conducted through the agency of a large number of officers. That being so, the noting by one officer, will not afford a valid ground to initiate action in contempt. We have thus no hesitation to hold that the expression of opinion in notes file at different levels by officers concerned will not constitute criminal contempt. It would not, in our view, constitute civil contempt either for the same reason as above since mere expression of a view or suggestion will not bring it within the vice of clause (b) of Section 2 of the Contempt of Courts Act, 1971, which defines civil contempt. Expression of a view is only a part of the thinking process preceding government action.

17. In *Bachhittar Singh v. State of Punjab* a Constitution Bench of this Court had to consider the effect of an order passed by a Minister on a file, which order was not communicated. This Court, relying upon Article 166(1) of the Constitution, held that the order of the Revenue Minister, PEPSU could not amount to an order by the State Government unless it was expressed in the name of Rajpramukh as required by the said article and was then communicated to the party concerned. This is how this Court dealt with the effect of the noting by a Minister on the file: (AIR p. 398, para 9)

9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on

the file and write fresh ones.

(Emphasis supplied)

19. Besides, the said communications were exchanged after disposal of the original application by the Tribunal. The note on which reliance has been placed by the High Court specifically, was written by the Deputy Director, Headquarters for Director General, Ordnance Factories dated 20-11-1997 and it refers to the orders passed by the Tribunal as also the order passed in the contempt petition. From a bare perusal of the note it transpires that it was prepared on a representation of Shri K.C. Mondal, Respondent 1 herein, and was submitted to the Ministry of Defence requesting to consider his case for recruitment/absorption/regularisation of services of casual workers in Group D posts. That itself indicates that the proper and competent authority to pass an order for recruitment, absorption and regularisation was the Ministry of Defence and not the Director General, Ordnance Factory.

20. In the said note itself it was clearly mentioned that an early action in the matter was requested, which means that the said order was not the official communication which was issued from the Ordnance Factory Board and that the Director General, Ordnance Factory was himself not the competent authority to pass an order regarding absorption, recruitment and regularisation of service of the respondents. In the said note it was further stated that the Ministry of Defence may pass necessary orders to allow regularisation of the services of Shri K.C. Mondal and Shri S.K. Chakraborty in terms of the aforesaid Office Memorandum dated 7-5-1985 or to accord permission to recruit Shri K.C. Mondal and Shri S.K. Chakraborty for the post of peon without reference to the employment exchange in relaxation of ban. The note of the Legal Adviser culminated in the aforesaid note of the Deputy Director which clearly indicates that no official order was passed by the competent authority and therefore issuing directions to the appellants to absorb the respondents on the basis of the same was unjustified and uncalled for

19. The contention of learned counsel appearing for the petitioner that the petitioner was having legitimate expectation, in view of the representations or promise and, as such, the State be directed on the basis of the principle of estoppel, not to take a different stand and repatriate back the petitioner to the parent department without absorbing the service of the petitioner in the State. For applicability of doctrine of promissory estoppel there should be some representation or promise by the State Government. The rule of promissory estoppel involves equity jurisdiction, which cannot be extended without there being a promise or representation by the authorities.

20. The Supreme Court in *Shree Sidhali Steels Ltd. and Others Vs. State of U.P. and Others*, , observed as under :

32. The doctrine of promissory estoppel is by now well recognised and well defined by a catena of decisions of this Court. Where the Government makes a

promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of the doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise.

The question involved in *Shree Sidhballi Steels Limited (supra)* was whether the principles of promissory estoppel would be applicable in a case where concessions/rebates given by a statutory notification are subsequently withdrawn by another statutory notification,

21. In *Collector, Distt. Gwalior and Another Vs. Cine Exhibitors P. Ltd. and Another*, the Supreme Court observed as under :

14. It is not disputed before us that the first respondent had not perfected its right, title and interest by way of adverse possession as it could not have been. Evidently, the High Court has proceeded on the basis of the doctrine of promissory estoppel. It is settled in law that the said doctrine is founded on the principles of equity and to avoid injustice. The said principle cannot be soundly embedded or treated to be sacrosanct when a public authority carries out a representation or a promise which is prohibited by law or is devoid of the authority of law.

22. In the instant case, there was no promise on the part of the State Government. Even the representation of the petitioner to deduct the provident fund from his salary was also not decided and ultimately it was held that the same may be considered, if his service was absorbed and the petitioner has also not acted on any promise, as pleaded by the petitioner.

23. It is evident from the fact that during his deputation on the post of Deputy Commissioner (Information Technology), CTD he had applied for appointment on the post of Director (Energy Infotech Centre), CSEB also wherein he had clearly stated that maintaining his lien in the Federation, he should be allowed to continue in service with the CSEB. He could not join the service of the CSEB on account of not being relieved from the post cannot be said that it amounts to promise. Thus, it cannot be held that there was any promise or representation on the part of the State Government to the petitioner.

24. In view of foregoing, the doctrine of principle of estoppel is not applicable to

the facts of the case on hand, the petitioner was throughout on deputation and he was subsequently relieved from deputation on 8th November, 2006 (Annexure-D/2 page 248 of the paper book).

25. As an upshot, WP No. 779 of 2004, being bereft of merit, is liable to be and is hereby dismissed. No order as to costs.

WP(S) No. 5376 of 2006:

26. The relief sought for by the petitioner in this petition is to quash the order dated 26th July, 2006 (Annexure-P/1) and the order dated 2nd August, 2006 (Annexure-P/9) whereby the application of the petitioner for higher studies was rejected stating therein that the petitioner may obtain permission from the parent department, as aforesaid. The decision to repatriate back the petitioner to the parent department was taken on 9th November, 2004. The impugned orders are not flawed. Even otherwise, the issue has become academic, as the petitioner applied for admission to M. Tech. in Electrical Engineer for the session 2006-07 and the said academic session has already come to an end. Thus, no direction to consider his application can be granted, at this stage.

27. With regard to prayer for earned leave is concerned, the petitioner has claimed earned leave for 119 days vide his representation dated 17th August, 2006 (Annexure-P/14). The earned leave for 119 days has already been granted vide order dated 5th May, 2007 (Annexure-XI) and even the payment has also been paid to the petitioner, as stated by the State in the application for taking documents on record dated 23rd May, 2008. In view of the above, nothing remains in WP (S) No. 5376 of 2006 for adjudication and the same is accordingly disposed of. No order as to costs.