
(2003) 04 AHC CK 0116
In the Allahabad High Court
Case No : C.M.W.P. No. 8741 of 2003

K.N. Dwivedi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-04-2003

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2003) 3 AWC 2380

Hon'ble Judges : Prakash Krishna, J; M. Katju, J

Bench : Division Bench

Advocate : Yashwant Varma, for the Appellant; W.H. Khan, A. Singh and B.N. Singh, for the Respondent

Judgement

M. Katju, J.—This writ petition has been filed against the impugned order dated 14.2.2003 Annexure-10 to the writ petition by which the petitioner's service as Principal Director, Fragrance and Flavour Development Centre, Kannauj has been terminated and he has been reverted to the substantive post of Deputy Director (Chemical).

2. We have heard the learned counsel for the parties.

3. In the district of Kannauj, there is a society called Fragrance and Flavour Development Centre which is registered under the Societies Registration Act. It is run on grants given by the Government of India and is run under the aegis of the Ministry of Small Scale Industries, Government of India. The affairs of the society was managed by a Governing Council which comprises Secretaries and officers attached to the Ministry of Small Scale Industries, representative of the C.S.I.R. and other Research Laboratories run by the Government of India. The entire share capital is owned by the Government of India which has control over its affairs.

4. In paragraph 8 of the writ petition it is alleged that the petitioner was initially appointed as Deputy Director in the society and subsequently he was promoted

as Director on 6.6.2000 vide Annexure-1 to the writ petition. It is alleged in paragraph 9 of the writ petition that he was appointed as Director, Fragrance and Flavour Development Centre on a permanent and substantive basis and acquired a lien on the said post. The petitioner joined as Director on 6.6.2000 vide Annexure-2 to the writ petition.

5. An advertisement was issued for appointment for the post of Principal Director vide Annexure-3 and the petitioner applied for the same and he underwent the selection process on 16.8.2000. A memorandum was issued to the petitioner offering him the post of Principal Director and stating that his appointment was initially for two years vide Annexure-4 to the writ petition. The petitioner accepted the terms of appointment and a formal appointment order was issued in his favour on 14.9.2000 vide Annexure-5 to the writ petition. The petitioner joined on the post of Principal Director on 18.8.2000.

6. While in terms of the memorandum dated 16.8.2000 the petitioner was to continue on probation for two years, an order dated 19.12.2001 was issued extending the probation period for six months w.e.f. 17.2.2002. True copy of the order dated 19.12.2001 is Annexure-6 to the writ petition. The petitioner's probation period was extended for six months w.e.f. 18.8.2002 vide Annexure-7 to the writ petition.

7. In paragraph 20 of the writ petition it is alleged that under the rules governing the terms and conditions of service the maximum period of probation is two years and there is no provision for extending the probation period.

8. On 23.8.2002 a memorandum was issued to the petitioner by the respondent No. 3, Joint Development Commissioner stating that the petitioner has shown poor leadership quality and has failed to motivate the staff vide Annexure-8 to the writ petition. It is alleged that right from the joining on the post of Principal Director on 18.8.2000 no complaint or adverse remark was made against the petitioner. His confidential entries are good. It is alleged in paragraph 24 of the writ petition that the recital in the memorandum dated 23.8.2002 stating that the shortcomings and poor performance of the petitioner had been repeatedly pointed out to him is false. It is alleged that the said memorandum was issued due to mala fide designs. The petitioner gave reply to the memorandum on 30.11.2002 vide Annexure-9 to the writ petition. Thereafter the petitioner was served with the impugned order dated 14.2.2003 stating that his service of Principal Director is terminated and he is reverted to the post of Deputy Director (Chemical) vide Annexure-10 to the writ petition. It is alleged in paragraphs 29 and 30 of the writ petition that the impugned order is arbitrary and mala fide and the work of the petitioner had been good. It is alleged that prior to the order dated 23.8.2002 no complaint was made against the petitioner in respect of his work. In paragraph 36 of the writ petition, it is alleged that the petitioner could not be reverted to the post of Deputy Director (Chemical) as his substantive lien was on the post of Director. It is alleged that the petitioner was appointed as Director on permanent basis and not on temporary basis.

9. A counter-affidavit has been filed and we have perused the same. In paragraph 4 of the same it is stated that the Government of India gives grant-in-aid to the society for offsetting the gap between the revenue generation and the expenditure, otherwise the society has a mandate to function on self sustaining basis. It is alleged that the society is not State under Article 12 of the Constitution and hence is not amenable to writ jurisdiction. In paragraph 7 of the counter-affidavit it is stated that under the memorandum dated 16.8.2000 the petitioner was on probation as Principal Director for two years but the said period was liable to be extended or curtailed at the discretion of the competent authority and his service could be terminated without notice or without assigning reasons. The petitioner voluntarily accepted this offer and joined as Principal Director. In paragraph 9 it is stated that after one year probation the work of the petitioner as Principal Director was reviewed and found unsatisfactory. Though the period of probation was for two years and only one year has expired a letter dated 19.12.2001 was issued to him extending the period of probation for six months from 18.8.2001 to 17.2.2002 implying that he should improve his performance. In paragraph 10 of the counter-affidavit it is stated that the petitioner did not improve, rather his work became more unsatisfactory. He was again reminded through letter dated 9.5.2002 that his performance was not up to the mark and he should improve it. True copy of the said letter is Annexure-C.A.-2 to the counter-affidavit. In paragraph 12 it is stated that on 23.8.2002 a memorandum was issued by the Joint Development Commissioner stating that the petitioner's performance was reviewed and it was still found to be unsatisfactory. He showed poor quality of leadership and divisive style of functioning, leading to dissatisfaction and demotivation among the staff, his performance in the field of administration both financial management and personnel management has been poor. Consequently the recovery ratio revenue earning as percentage of revenue expenditure of the organization has shown a declining trend. The petitioner did not show improvement in his work performance even during his extended period of probation and his work continued to remain unsatisfactory.

10. In paragraph 14, it is alleged that instead of improving his performance the petitioner tried to pressurize the answering respondent through political persons. In paragraph 15 it is stated that petitioner's reply was considered and was not found satisfactory. The termination of the petitioner's probation service was passed on a bona fide over all assessment of his performance which was not found to be satisfactory not merely by one officer but by successive Chairmen of the Governing Council and the Secretaries of the Government of India. The petitioner was reverted to the post of Deputy Director which post he was holding when he applied for the post of Principal Director. In paragraph 16, it is stated that another person took over charge as Principal Director w.e.f. 14.2.2003. In paragraphs 18 and 19 it is stated that the respondent had filed a caveat and it was sent to the petitioner through registered post which was not mentioned in the writ petition but he obtained an ex parte order. Hence, he is not entitled to

any equitable relief as he has not come to the Court with clean hands. In paragraph 26, it is stated that it is not correct that the society runs only on the grants given by the Government of India. The Society has its own resources of generating revenue and only the losses are compensated by the Government. The members of the Governing Council include private persons also. The Society is an independent body and it is wrong to say that the Government of India has deep and pervasive control over its affairs.

11. In paragraph 29 of the counter-affidavit it is stated that the petitioner was only holding the post of Deputy Director when he applied for the post of Principal Director. In the present case the petitioner's work was unsatisfactory and hence his service was terminated. In paragraph 46 it is stated that all the reports during the petitioner's probation period were to the effect that his performance was not satisfactory. The impugned termination order was passed on over all assessment of his performance.

12. We have carefully considered the submissions of the learned counsel for the parties. In our opinion, the petitioner has no right to continue as Principal Director because he was not promoted on that post in a permanent capacity but was only on probation. The memorandum dated 16.8.2000 Annexure-4 to the writ petition clearly states that the petitioner will be on probation for two years and that his service can be terminated at any time. It is well-settled that a probationer has no right to the post vide *Wasim Beg Vs. State of Uttar Pradesh and Others*, . We have not been shown any rule fixing the maximum period of probation, and hence, the petitioner cannot claim that he has been automatically confirmed on the post of Principal Director.

13. The respondents have not found the performance of the petitioner satisfactory on the post of Principal Director and hence, there is no illegality in terminating his service on the post of Principal Director. To that extent there is no illegality in the order dated 14.2.2003.

14. A Full Bench of this Court in *Umesh Chand Bhilwar Vs. State of U.P. and others*, held that "under service jurisprudence, it is a settled principle that if a person appointed on probation for a specific period is allowed to continue in service after expiry of the period of probation, he does not acquire the status of a confirmed employee, unless a specific order to that effect is passed."

15. However, the petitioner's reversion order to the post of Deputy Director appears to us as arbitrary since the petitioner was holding the post of Director from 6.6.2000 vide Annexure-1 to the writ petition and hence, he could only be reverted to the post of Director and not Deputy Director.

16. On the facts of the case, it is not necessary for us to go into the question as to whether the society is State under Article 12 of the Constitution.

17. The petition is partly allowed. The impugned order dated 14.2.2003 is upheld to the extent it terminates the service as Principal Director but it is quashed to

the extent that it reverted the petitioner as Deputy Director. The petitioner shall be allowed to work as Director in terms of the order dated 6.6.2000 Annexure-1 to the writ petition.