
(1997) 12 SC CK 0126

In the Supreme Court Of India

Case No : Civil Appeal No. 2863 of 1989

Maresh Kumar Mudgil

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Constitution of India, 1950 — Article 166

Citation : (1997) 9 JT 696 : (1997) 7 SCALE 492 : (1998) 2 SCC 527 : (1998) SCC(L&S) 614 : (1997) 6 SCR 237 Supp : (1998) 1 UPLBEC 62

Hon'ble Judges : Sujata V. Manohar, J;D. P. Wadhwa, J

Bench : Division Bench

Advocate : Anil Kumar Gupta, for the Appellant; K.S. Chauhan and R.B. Misra, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Wadhwa, J.—That appellant is aggrieved by the order dated April 27, 1989 of the High Court of Judicature at Allahabad (Lucknow Bench) dismissing his writ petition wherein his challenge to the post of Officer on Special Duty (Special Component Plan) which he was holding, failed.

2. The appellant joined Secretariat service of the respondent as Lower Division Assistant in the temporary capacity in the year 1975. Whereafter he was promoted as Upper Division Assistant. While the appellant was holding the post of Upper Division Assistant in officiating capacity, he was selected and appointed on ex- cadre post of Officer on Special Duty (Special Component Plan) by order dated October 16, 1980. By Office Memorandum dated May 8, 1984, this post of Officer on Special Duty (Special Component Plan) was sought to be abolished and by notification dated May 14, 1984 Shri Shiva Shankar Singh, respondent No. 4, was appointed as Officer on Special Duty (Special Component Plan) in newly created post. Both the aforesaid office memorandum and the notification were challenged by the appellant in the writ petition in the High Court.

3. In support of his case in the High Court, the appellant had contended that a Government servant holding a temporary post for more than three years acquired right to be considered for confirmation against that post and if necessary by converting the temporary post into a permanent one. He said that since he had completed more than three years as Officer on Special Duty (Special Component Plan), he was entitled to hold that post which was being abolished by Office Memorandum dated May 8, 1984. His further case was that this post was borne on the cadre of Directorate of Harijan and Social Welfare and could not be abolished by the Secretariat Administration (Establishment) of the State Government. The case set up by the appellant did not find favour with the High Court and it dismissed his writ petition.

4. The only contention raised before us in this appeal is that the post of Officer on Special Duty (Special Component Plan) was in the cadre of the Directorate of Harijan and Social Welfare Department of the State Government and the State Government in the Secretariat Administration (Establishment) could not have abolished the same. We may note that on account of the interim orders issued by the High Court and later by this Court, the post of Officer on Special Duty (Special Component Plan) has been continued with the appellant, it appears, still holding the same. To understand how this post which the appellant was holding was created and how it was abolished, we may refer to sequence of certain events.

5. On October 16, 1980 a communication (No. 5158/26-3-80-11(17)80) was addressed by the secretary to the Government of U.P. to the Director, Harijan and Social Welfare Department according sanction to create one temporary post at Secretariat level in the pay scale of Rs. 500-1000. It was stated in the letter that for the purpose of implementation of special component plan for Scheduled Castes in an accelerated and effective manner, the Governor was pleased to accord sanction to create the above post from the date of filling up the post which date shall not be earlier than the date of this order upto February 28, 1981. It was mentioned that the said post shall be a gazetted post and the designation whereof shall be Officer on Special Duty (Special Component Plan). The holder of the said post was to be paid in addition to pay, dearness allowance and other allowances as applicable and approved by the Government from time to time. This letter also described the qualifications for holding this post and the functions which were to be performed. Then the letter gave the following directions :

"The above said expenditure shall be made in the income and expenditure account for the current financial year 1980-81 and charged against the head "288 - Social Security and Welfare - Ka - Scheduled Castes, Scheduled Tribes and other backward classes welfare -2 - uplift of Scheduled caste under organisation puronidhanit schemes by center-special central relief/subsidiary relief/component relief/state relief under the special component plant for the all around development of scheduled castes.

This order is issued with the Sanction of the finance department received by its non-official letter No. %- 2968-10-80 dated 15th October, 1980."

6. At the same time, by Office Memorandum dated October 16, 1980, the appellant was appointed to the post of Officer on Special Duty (Special Component Plan) in the pay-scale of Rs. 500-1000 created under the aforesaid Government Order No. 5158/26-3- 80-11(17) 80 dated October 16, 1980. By office order dated January 22, 1982 a new pay-scale for the post of Officer on Special Duty (Special Component Plan) was sanctioned and now this post was in the pay-scale of Rs. 770-1600. This was by letter of the Special Secretary to the Government of Uttar Pradesh to the Director, Harijan and Social Welfare Department. The post was being extended from time to time by various Government orders. Then comes the Office Memorandum dated May 8, 1984 issued by the Secretariat Administration (Establishment), Section I abolishing this post and, at the same time, creating a new post of the Officer on Special Duty (Special Component Cell). This Office Memorandum we may reproduce as under:

"Secretariat Establishment) Section-I No. 2667A/Twenty-E-I-544(2)/80 dated 8th May, 1984.

Administration Lucknow

OFFICE MEMORANDUM

In reference to the Government Resolution No. Pay R. 1590/Ten/42(M)/1980 dated 29th September, 1981 passed on the recommendations made in the report of Uttar Pradesh Pay Commission, the undersigned is directed to say that the Governor is pleased to accord sanction for creation of one temporary post of Officer on Special Duty (Special Component Plan) in the Uttar Pradesh Secretariat from the date of issuance of this order or from the date when the said post is utilised till 28th February 1985 whichever is later in the new pay scale of Rs. 770-40-1050- E.B.-50-1300-60-1420-E.B. 60-1600 in the cadre of Uttar Pradesh Secretariat Service with the condition that the said post may be abolished at any time before the specified date without any prior notice. As a result of creation of this post, one temporary post of Officer on Special Duty (Special Component Plan) in the old pay scale of Rs. 500-25-700-E.B.-40-900-E.B.-50-1000 created by the Harijan and Social Welfare Section 3 by Government Order No. 5158-26.3.80-11(17)/80 dated 16th October, 1980 which was revised to the new pay scale of Rs. 700-40-1050-EB-50-1300-60-1420-EB-60-1600 by Government Order No. 4346/26.3.82-11(84)/81 dated 22nd January, 1982 of the Harijan and Social Welfare Section-3 and the period of which has been extended for the last time upto 28th February 1985 by the Government Order No. 633/26.3.1984 dated 30th March 1984 of the same department, that post shall be deemed to be abolished from the date when the newly created post with the same name and equivalent to former post is brought into use.

2. The said post shall be deemed to be included temporarily in the posts of

Section Officers in the Cadre of Uttar Pradesh Secretariat Service.

3. The holder of the said post shall also be paid in addition to pay in the above mentioned pay scale, dearness allowances and other allowances as applicable under orders issued from time to time by the Government.

4. The expenditure incurred in this regard, shall be made in the income and expenditure account for the financial year-1984-85 and charged against the Head "228 - Social Security and Welfare (Ka) Scheduled Castes, Scheduled Tribes and other backward classes welfare (2) - Scheduled Castes Welfare (Ng-PURONIDHANIT) Schemes - by the center - under Organisation (2) Social Uplift Programme (No. 7733) -(Kha)-All round development of Scheduled Castes under special component plan special Central Relief (Cent per cent central relief)/Aubaid subsidiary grant/component/Government relief (grant No. 81).

5. These orders are issued with the assent of the Finance Department received by its non-official letter No. E- 129/71 4 (A) dated 4th May, 1984.

Vinod Chandra Pandey Deputy Secretary.

7. As noted above, in pursuance to this memorandum, the State Government by notification dated May 14, 1984 appointed Respondent No. 4, Shiva Shankar Singh on this newly created post. This notification in relevant part reads as under :

"Government of Uttar Pradesh, Secretariat Administration (Establishment) Section-1. ,

No. 2792/20-E-1-691/84 dated 14th May,

1984 Notification/Appointment

The following permanent Upper Division Assistants of Uttar Pradesh Secretariat are appointed as Section Officers on ad hoc and temporary basis from the date of taking charge thereof and are posted to the newly created post/vacancy shown in column 3 against their names respectively.

The above posts have been notified by office Memo No. 2667-2667-A/Twenty E 544 (2)/810 dated 8th May, 1984.

Sd/ Kamal Pandey, Secretary."

8. As we have seen the above letter dated October 16, 1980 creates the post of Officer on Special Duty at Secretariat level. To that effect letter was addressed by the Secretary, Government of Uttar Pradesh to the Director, Harijan and Social Welfare. Similarly, Office Memorandum dated May 8, 1984 reproduced above abolishes that post and creates a new temporary post of Officer on Special Duty. There is hardly any scope for controversy as raised by the appellant that the post of Officer on Special Duty which was a temporary post and to which he was appointed on ad hoc basis was created in the Directorate and not in the Secretariat which means in the Ministry. His contention, therefore, that

Secretariat Administration had no power or jurisdiction to abolish the post he was holding, does not appear to have any basis. Admittedly, the post of Officer on Special duty (Special Component Plan) which was temporary was being extended from time to time by various Government orders. There is no Government order further extending this post or any sanction order from the Finance Department as required under the Uttar Pradesh Rules of Business, 1975. Even otherwise the post in the absence of any order of extension or any financial sanction lapses of its own. The Office Memorandum dated May 8, 1984 is specific and leaves no room for doubt that the temporary post of Officer on Special Duty (Special Component Cell) which the appellant was holding was abolished. Under the Uttar Pradesh Rules of Business creation of post carrying pay scale the maximum of which is either Rs. 2,000 or less than Rs. 2,000 requires the sanction of Minister In-charge which he can do only after Department of Finance has concurred. If there is difference of opinion between the Minister In-charge of a particular department where the post is sought to be created and the Finance Department, the matter is referred under the aforesaid Rules to the Chief Minister. The letter dated October 16, 1980 creating the post and that Office Memorandum dated May 8, 1984 abolishing the post referred to above record the sanction issued by the Finance Department. We may refer to para 4(2) of the Uttar Pradesh Rules of Business, 1975 which is as under:

"4(2) Unless the case is fully covered by powers to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Finance Department, no department shall, without the previous concurrence of the Finance Department, issue any orders which may -

(a) involve any abandonment of revenue or involve any expenditure for which no provision has been made in the Appropriation Act;

(b) involve any grant of land or assignment of revenue or concession, grant, lease or licence of mineral or forest rights or a right to water, power or any easement or privilege in respect of such concession;

(c) relate to the number or grade of posts, or to the strength of a service, or to the pay or allowances of government servants or to any other conditions of their service having financial implications; or

(d) otherwise have a financial bearing whether involving expenditure or not;

Provided that no orders of the nature specified in Clause (c) shall be issued in respect of the Finance Department without the previous concurrence of the Department of personnel."

9. The Rule is specific and carries with it the mandate of the Constitution under Article 166 thereof.

10. We have not been shown any order of the State Government extending the duration of the post of Officer on Special Duty (Special Component Cell) which the appellant is holding or sanction of the Finance Department agreeing to the

continuation of that post. We do not find any bar that a post though created in the Secretariat establishment in the Ministry cannot be used in any attached or subordinate office but that does not give right to that office to hold on that post.

11. High Court has taken correct view of the matter. We find no reason to differ from the same. The appeal lacks merit, it is dismissed with costs.