

(2011) 02 DEL CK 0215

In the Delhi High Court

Case No : RSA No's. 107 and 110 of 2004 and CM No's. 5790 and 5847 of 2004

Mr. J.K. Bhatnagar

APPELLANT

Vs

Food Corporation of India

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0215

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Bahar-U-Barqi, for the Appellant; Deepak Dewan, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.—Two suits had been filed by the plaintiff J.K. Bhatnagar. Defendants were the Food Corporation of India (hereinafter referred to as "the FCI"). plaintiff was appointed as a Weightment Clerk in the Department of Food, Ministry of Food and Agriculture on 22.6.1959. In 1966 the plaintiff was promoted as Quality Inspector; this post was designated as Assistant Grade-1(D). plaintiff was entitled to promotion for post of Assistant Manager (D) in the year 1972 but employees junior to him were promoted to the said post. plaintiff was not considered for malafide reasons. Representations were disregarded. On 25.8.1980 plaintiff was promoted to the post of Assistant Manager (D); he was put on probation for a period of one year w.e.f 18.9.1980. This was in terms of Regulation 15 of the Food Corporation of India Act (Staff) Regulations 1971 (hereinafter referred to as "the Regulations"); nothing adverse was communicated to the plaintiff in this probation period. plaintiff was entitled to be confirmed to the post of Assistant Manager (D) w.e.f. 17.9.1980; he was, however, not promoted. On 08.12.1981 the period of probation of the plaintiff was extended for another six month that is up to 17.3.1982 which was again extended up to 17.9.1982. The extension twice of the probation period of the plaintiff was violative of Circular No. 3-6/73-EP dated 31.8.1973. On 26.5.1982 plaintiff was reverted back form the post of Assistant Manager (D) to Assistant

Grade-1(D). On 12.02.1985 plaintiff was informed that his promotion had been withheld to the post of Assistant Manager (D) till further orders due to his involvement in vigilance cases. These were the averments in the first suit.

2. In the second suit it had been pleaded that vide order dated 15.12.1984 reduction of the rank of the plaintiff had been withdrawn and the previous order vide which he had been promoted to the post of Assistant Manager(D) had been revalidated. plaintiff had joined in compliance of the said order; thus the plaintiff had become permanent Assistant Manager(D) w.e.f. 15.12.1989; on 16.6.1987 period of probation of the plaintiff to the post of Assistant Manager (D) was extended for one year w.e.f.04.12.1986. In this second suit, the plaintiff has challenged the order dated 16.6.1987 extending this period of probation and consequential reliefs have also been prayed for.

3. Defendants had contested the suit. It was stated that the plaintiff had rightly been reverted back; he was involved in vigilance cases during the period of probation. This was the primary contention of the Defendants. Right to promotion was not automatic.

4. On the pleadings of the parties, in the first suit, the following issues were framed:

1. Whether the plaintiff, is entitled to the decree of declaration along with consequential relief as prayed for, with cost? OPP

2. Whether the suit of the plaintiff, is not maintainable as per the pre. Objections taken in W.S. at serial No. 1 to 11? OPP

3. Relief.

The following issues were framed in the second suit:

1. Whether the plaintiff is entitled to the decree of declaration along with consequential reliefs, as prayed for? OPP

2. Whether the suit of the plaintiff is not maintainable in view of the preliminary objections? OPD

3. Relief.

5. Both the suits of the plaintiff on the basis of oral and documentary evidence led by the parties had been decreed. The court was of the view that the plaintiff was entitled to the relief claimed by him. Court was also of the view that the probation could have been extended only in terms of the guidelines; the guidelines laid down in the Circular Ex.PW-1/X and Ex.PW-1/Y had been violated ; the lapses on the part of the plaintiff could not be proved.

6. In appeal, the judgment of the Trial Court was set aside. Suits of the plaintiff stood dismissed. The Circulars of the department were examined; the court was of the view that since the plaintiff was admittedly on probation during the period when he was not confirmed, he was not as a matter of right entitled to

confirmation and the fact that his conduct has been found unfit, the department had rightly reverted him.

7. This is a second appeal. It had been admitted on 5.5.2010. The following substantial question of law was formulated:

Whether Respondent has the power to extend the period of probation retrospectively under the Staff Regulations 1971?

Additional substantial question of law formulated reads as follows:

Whether the findings in the impugned judgment dated 21.8.2003 are perverse, if so its effect?

8. This Court is sitting in second appeal and can interfere with findings of fact only if the same are perverse. What is perversity has also been defined by various Courts. To amount to a perversity such a finding must be based on no evidence or consideration of evidence which did not exist or amount to a patent or a prima facie illegality. The Staff Regulations of 1971 which were admittedly the Rules governing the plaintiff during his period of probation have been examined by the two fact finding Courts below. The first fact finding Court had held that there has been a gross violation of the said regulations; the period of probation of the plaintiff could not have been extended time and again; these guidelines having been violated plaintiff was rightfully entitled to decree as prayed for by him. The second fact finding Court had, however, taken a different view; it had re-examined the guidelines and drawn a conclusion that the Staff Regulation 1971 had not been violated.

9. Before dealing with this contention it would be relevant to state that during the course of arguments learned Counsel for the Appellant has vehemently urged that the plaintiff has been discriminated qua other similarly placed persons namely one Sadhu Singh and C.B. Bhatnagar and both Sadhu Singh and C.B. Bhatnagar were also involved in vigilance cases during their probation period, yet they have been granted relief and both Sadhu Singh and C.B. Bhatnagar had been held eligible for promotion to the post of Manager (D). On this submission which has been raised by the learned Counsel for the Appellant on 11.1.2011 the learned Counsel for the Respondent had been directed to take instructions qua this discriminatory attitude of the Respondent department. The department has reverted back and placed on record a status report dated 28.1.2011. The facts as emerged are that Sadhu Singh and C. B. Bhatnagar were also identically placed along with J.K. Bhatnagar. The only variation as pointed out by the department is that Sadhu Singh and C.B. Bhatnagar although involved in vigilance enquiries yet this was after the completion of one year probation period. In the case of Appellant J.K. Bhatnagar, he was involved in a vigilance enquiry during his first year of the probation period; this is the only difference pointed out in the case of Sadhu Singh and C.B. Bhatnagar and the present Appellant. Admittedly both Sadhu Singh and C.B. Bhatnagar have since been promoted to the post of Manager (D) w.e.f. 19.8.1980 and were granted all consequential benefits. It is

pointed out by learned Counsel for the Respondent that these benefits had in fact been granted to Sadhu Singh and C.B. Bhatnagar under the orders of the High Court of Punjab and Haryana.

10. Perusal of the record shows that on all other counts the cases of the three persons i.e. Sadhu Singh, C.B. Bhatnagar and the present Appellant are identical. All three had become eligible for promotion to the post of Manager(D). On 8.12.1981, the probation period of all three was extended and lastly up to 17.9.1982. Thereafter reversion took place from the post of Assistant Manager (D) to Assistant Grade-1(D); reason was involvement in vigilance cases. As per the Respondent Department in the case of Sadhu Singh and C.B. Bhatnagar, their involvement in the vigilance cases was after the first year of probation. In the case of J.K. Bhatnagar his involvement was in the first year of probation. This was the only difference pointed out in the case of these three persons and being the reason for discrimination qua the Appellant. In the written statement, it has been stated that a vigilance enquiry had been initiated against the Appellant which had been intimated to him on 22.9.1981 which date is after first year of probation which had stood expired on 17.9.1981. Thus this contention of the learned Counsel for the Respondent that the case of the Appellant is distinct from the case of C.B. Bhatnagar and Sadhu Singh completely falls flat. It holds no water. In view of this factual scenario and as is evident from the status report dated 28.1.2001 placed on the record of this Court it is clear that the department is still nursing a bias against the Appellant. This is a glaring example of a travesty of justice and has hit the Court in the eye. The department had chosen to exonerate Sadhu Singh and C.B. Bhatnagar giving them all consequential benefits after promotion whereas J.K Bhatnagar has been singled out for no reason whatsoever. The reason of the department that he was involved in vigilance enquiry in the first year of his probation is even otherwise of no relevance keeping in view the admitted position that the probation of all persons was extended after the first year and thereafter against up to 7.9.1982. Thus when all the three aspirants were on probation, whether the vigilance enquiry was initiated in the first year or in the later part of the year is of no relevance. This was no reason whatsoever to discriminate against the present Appellant. The bias and prejudice of the department (which had been pleaded in the plaint) against the Appellant is writ large. This amounts to a perversity and interference is called for on this ground alone.

11. In *Arulvelu and Another Vs. State* represented by the Public Prosecutor and Another, while detailing the definition of "perverse" the Supreme Court had held that perverse is that which is not right, it has turned the wrong way; it has distorted from right; deviating from what is right, proper and correct etc; all that would amount to a perversity.

12. In *Samrat Shipping Co. Pvt. Ltd. Vs. Dolly George*, where the Appellant had made out a case for consideration being the discriminatory treatment meted out to him, the relief sought by the Appellant had been granted in his favour. In that

case the date on which the Appellant had been given compassionate appointment he had the necessary qualification for being appointed as a Sub Inspector of Excise; Respondent No. 3 to 4 were appointed to the post of Sub Inspector Excise whereas the case of the Appellant remained unconsidered; Apex Court had held that such a hostile discrimination clearly calls for an interference.

13. The next question which arises is about the status of the employee and this shall also be adverted to. Whether or not the Appellant was a probationer on the date of his termination within the meaning of Regulation 15 of the Staff Regulations 1971? If he was a probationer and his services were terminated on the ground of non-suitability, a 30 day notice period or paying salary in lieu thereof would suffice. On the other hand, if the Petitioner was a regular employee, he could not be removed except for a cause established in accordance with the procedure.

14. Regulation 15 requires that every person appointed to any post in the FCI has to undergo a period of one year probation from the date of his appointment. Under Regulation 15(2) the appointing authority may in its discretion extend that period of probation by a further period. The Circulars dated 31.8.1973 (Ex.PW-1/W) and 16.6.1977 (Ex.PW-1/X) are also relevant. Under Ex.PW-1/W the probation of an employee may be extended and would be confirmed after completion of a maximum period of two years. In terms of Ex.PW-1/X if no formal order has been passed either confirming or extending the probation after it has been extended the person concerned would be deemed to be automatically confirmed after a maximum period of two years.

15. In this case, the Petitioner had been appointed as an Assistant Manager (D) on probation for a period of one year w.e.f. 18.9.1980. First year of his probation period ended on 17.9.1981. Nothing adverse was communicated to him in this period. Adverse report i.e. initiation of a vigilance enquiry against the Petitioner was (as per the written statement) communicated to him only on 22.9.1981 which was after the first year of probation. Admittedly in the first year of probation nothing adverse was informed to the Petitioner. There being no formal extension of probation in the first year; in terms of Regulation 15(2), probation of the Petitioner stood satisfactorily completed. His probation for the second time was extended on 8.12.1981. This was admittedly after the Petitioner has successfully completed his first year period of probation. His second extension on 8.12.1981 was thus against the Regulations. On this count also the Petitioner is liable to succeed.

16. The Staff Regulations 1971 had been considered by the Punjab and Haryana High court in Praveen Chander v. FCI 1984 3 SLR 813; it was held that they have a binding force. In AP Bulusu Sree Ramamurthy v. FCI (1982) III LLJ 58 Regulation 15 of the said Regulations were under scrutiny. In this case where the Petitioner's statutory period of probation of one year had been completed, it was held that there being no order formally extending his probation, it could not be said that the Petitioner continued to be on probation; it was held that in the

absence of any extension of the Petitioner's probation period beyond one year; the probation having been completed satisfactorily; such an appointee having been terminated was against the Regulations and the procedures of the FCI.

17. Justice demands that the plaintiff should be considered confirmed to the post of Assistant Manager (D) at the end of his first year period of probation w.e.f. on 17.9.1980. The order dated 26.5.1982 reducing rank of the plaintiff from Assistant Manager (D) to Assistant Grade-1(D) as a necessary corollary is thus illegal and set aside. plaintiff will be deemed to be working in the post of Assistant Manager (D) w.e.f. 18.9.1980 as a probationer and is confirmed to this post w.e.f. 17.9.1981. The order dated 16.6.1987 whereby the probation of the plaintiff to the post of Assistant Manager(D) had been extended for a period of one year w.e.f. 04.12.1986 is also declared null and void. He be treated as permanent employee to the post of Assistant Manager (D) w.e.f. 17.9.1980. All consequential reliefs flowing thereto are also granted to the Appellant.

18. Substantial question of law are answered accordingly. Both the appeals are allowed; pending applications are disposed of.