(2001) 02 AHC CK 0023

In the Allahabad High Court

Case No : C.M.W.P. No. 18543 of 2000

N. Kumar APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:

Citation : (2001) 2 AWC 940

Hon'ble Judges : Sudhir Narain, J;Krishna Kumar, J

Bench : Division Bench

Advocate : P.K. Pandey and T.P. Singh, for the Appellant; S.C. and V. Sahai, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The Petitioner has sought writ of certiorari quashing the order dated 14.4.2000 whereby he was informed by Respondent No. 1 that the competent authority has decided not to grant any further extension to the Petitioner in the post of Managing Director of Bharat Pumps and Compressor, Naini, Allahabad (hereinafter referred to as B.P.C.L.).

2. The Petitioner was appointed as Managing Director of B.P.C.L., Respondent No. 3, vide letter dated 15.10.1993 with effect from 19.10.1993 for a period of five years. The appointment could, however, be terminated by either side by giving three months'' notice or pay in lieu thereof. Paragraph 3 of the letter mentioned that the detailed terms and conditions of the appointment will be followed. The Petitioner was informed of the terms and conditions of the appointment by letter dated 4th January, 1994. Clause (i) of the terms of appointment provided for the period of appointment as under:

Period: The period of his appointment will be five years w.e.f. 19.10.1993 in the first instance or till the age of superannuation whichever is earlier and in accordance with the provisions of the Company Law. The appointment may, however, be terminated even during this period by either side on 3 months notice or on payment of three months salary in lieu thereof.

3. The period of five years was to expire on 18.10.1998. The period of appointment of the Petitioner was extended for three months on 15.10.1998. This period was extended six times. Each time he was given three months''. The Deputy Secretary to Government of India vide letter dated April 14, 2000, intimated to the Petitioner that the competent authority has decided not to grant any further extension to him in the post of Managing Director of B.P.C.L. The Petitioner has challenged this decision of the Respondents.

4. Sri T.P. Singh, learned senior counsel for the Petitioner, has challenged this order on two grounds. Firstly, that the terms of the appointment clearly envisaged that the appointment of the Petitioner will be for five years with effect from 19.10.1993 in the first Instance or till the age of superannuation whichever is earlier but after the expiry period of five years there was legitimate expectation that he would be permitted to continue to function as Managing Director of B.P.C.L. till the age of superannuation but the Respondents without any justification have not extended the tenure of the Petitioner and secondly, on the ground that the action of the Respondents is arbitrary as it does not disclose any reason for not extending the tenure of the Petitioner.

5. Admittedly, the appointment of the Petitioner to the post in question was only for a period of five years and this period was temporarily ex-tended from time to time. The Petitioner has no enforceable right against the Respondents seeking mandamus to permit him to continue in service till the age of superannuation. The contention of the Petitioner is that the Petitioner having per-formed his duties well was expecting to continue in service till the age of superannuation and has a legitimate expectation in this respect. It is necessary to examine this aspect. In Halsbury''s Laws of England, Fourth Edition, Volume I(I)151, a passage explaining the scope of "legitimate expectations" runs thus:

81. Legitimate expectations. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice.

The existence of a legitimate expectation may have a number of different consequences; it may give locus standi to seek leave to apply for judicial review; it may mean that the authority ought not to act so as to defeat the expectation without some overriding reason of public policy to justify its doing so; or it may mean that, if the authority proposes to defeat a person''s legitimate expectation, it must afford him an opportunity to make representations on the matter. The Courts also distinguish, for example in licensing cases, between original applications, applications to renew and revocations; a party who has been granted a licence may have a legitimate expectation that it will be renewed unless there is some good reason not to do so, and may therefore, be entitled to greater procedural protection than a mere applicant for a grant.

6. In Schmidt v. Secretary of State for Home Affairs (1969) 2 Ch 149, wherein an alien who was granted leave to enter United Kingdom for a limited period challenged the order revoking the permission on the ground that he had a legitimate expectation to stay till the period for which permission was granted expires and if the permission was revoked, he should be given an opportunity of hearing, the Court accepted his submission.

7. In Union of India and Ors. v. Hindustan Development Corporation and Ors. AIR 1994 SC 988, their Lordships of the Supreme Court, after surveying all the relevant decisions on this aspect laid down the principles when an order could be challenged on the ground that the Petitioner had a legitimate expectation. It was observed:

Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However, earnest and sincere a wish, a desire or a hope may be and however, confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not itself fructify into a right and therefore, it does not amount to a right in the conventional sense.

(Emphasis supplied)

8. In Madras City Wine Merchants'' Association and Another Vs. State of T.N. and Another, , their Lordships, analysing various decisions, laid down the following principles:

From the above, it is clear that legitimate expectation may arise:

(a) If there is express promise ,given by public authority: or

(b) Because of the existence of a regular practice which the claimant can reasonably expect to continue;

(c) Such an expectation must be reasonable.

However, if there is a change in policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise.

9. In Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, , the

Supreme Court observed:

The mere reasonable or legitimate expectation of a citizen, in such a situation may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reason-able or legitimate in the context is a question of fact in each case. Whether the question arises, it is to be determined not according to the claimant''s perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this matter would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.

10. From the survey of various decisions, it may be observed that the doctrine of legitimate expectation contemplates:

(i) fairness in action;

(ii) equal treatment;

(iii) absence of arbitrariness;

(iv) the authority is to follow the normal course of conduct in its dealing with the person concerned; and

(v) judicial review of the authority concerned.

These principles may be made applicable even though the aggrieved person has no legal right in private law as stated in Halbsury''s Laws of England that the person may have a legitimate expectation of being treated in certain way by an administrative authority having no legal right in private law to receive such treatment.

11. Coming to the facts of the present case, the Petitioner was appointed for a period of five years. In accordance with terms of the appointment letter, the period of his appointment was for five years with effect from 19.10.1993 in the first instance or till the age of superannuation, whichever may be earlier and in accordance with the provisions of the Company Law. The period of appointment was for five years with effect from 19.10.1993. The emphasis is on the words "in the first instance" implying thereby the period may be extended after expiry of five years. This, however, did not give any enforceable right to the Petitioner that Respondent No. 1 must appoint the Petitioner after expiry of five years. Sri Yogeshwar Prasad, learned senior counsel appearing for the Respondents, vehemently urged that the appointment of the Petitioner was a contract and

there being no specific terms in the appointment letter that the Petitioner shall be considered for extension of his tenure to the post in question, he has no enforceable right for extension of his tenure. He has placed reliance upon the decision Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., , wherein the Supreme Court held that if the domestic inquiry has been conducted and the employee has been found to be guilty it is not for the Court to substitute its own judgment on appreciation of evidence.

12. Learned Counsel for the Petitioner submitted that the action of the Respondents should be transparent, reasonable and reflect fairness in its dealing. It is urged that before expiry of the term of the Petitioner, the Respondents sought opinion of the Public Enterprises Selection Board (in short the Board) in respect of extension of period of his services. The Board submitted its recommendation on 27.8.1998 recommending that the period of service of the Petitioner may be extended taking into account his service record for the period 1993 to 1998. A copy of the said report has been annexed as Annexure-5 to the writ petition. This report was subject to the clearance by the Central Vigilance Commission (in short C.V.C.) and further approval of the Appointment Cabinet Committee. This Court passed an order directing the Respondents to disclose the reasons why the recommendation of the Board recommending extension of the Petitioner''s tenure by five years from 1998 has not been accepted.

13. Sri V. Sahai, on behalf of Respondent Nos. 1 and 2, filed counter-affidavit dated 19th July, 2000 and in paragraph 5, he has given the reason that there were charges against the Petitioner and the Central Vigilance Commission did not grant vigilance clearance. The Government, instead of proceeding to take disciplinary action against the Petitioner, decided not to extend his tenure. This Court passed an order directing the Respondents to produce relevant record for perusal of the Court. The records were produced before us. We found that the Central Vigilance Commission had recommended for disciplinary proceedings against the Petitioner. The Petitioner was being granted extension. The authorities instead of proceeding for vigilance inquiry decided not to extend the period of his appointment. The recommendation of the Board was subject to clearance of C.V.C. and approval of the Appointment Cabinet Committee.

14. In the facts and circum-stances of the case, it is not necessary for this Court to examine as to whether the charges against the Petitioner were correct. It was a matter to be examined in the disciplinary proceedings. If the authority has any doubt about the conduct of the officer, it may take a decision not to grant any extension of the tenure of an employee. If the employer has lost his faith in his employee for one reason or the other, the employer cannot be compelled to take work from him by extending the period of his tenure which is not an enforceable right against the employer.

15. In Union of India v. N.P. Dhamania AIR 1995 SC 168, the Supreme Court observed that the recommendations of Departmental Promotional Committee are

advisory in nature. Such recommendations are not binding on the appointing authority and it is open to the appointing authority to differ from the recommendation in public interest. It must, however, give reasons for so differing to ward off any attack of arbitrariness. Those reasons may be recorded in the file. In this case, the Court had summoned the record and held that it was not necessary to intimate reasons to the employee. The Court observed:

If the file had contained reasons something could be said in favour of the: Appellant. But, that is not the case here. Then the question would be whether the reasons recorded are required to be communicated to the officer concerned. Our answer is in the negative. There is no need to communicate those reasons. When challenged it is always open to the authority concerned to produce the necessary records before the Court.

16. The Petitioner has himself filed letter dated 2.2.1998 as Annexure-1 to the rejoinder-affidavit dated 18th August, 2000, written by the Under Secretary to Government of India to Executive Director (Vigilance) in respect of complaint received from B.P.C.L. Employees Union against the Petitioner in regard to travelling allowance allegedly taken by the Petitioner illegally. The Vigilance Commission started making inquiry in the matter and it never gave the clearance for extension of the tenure of the service of the Petitioner. In Anand Darbari v. Union of India and Ors. 2000 II AD (Del) 453, wherein the extension of the Petitioner''s tenure as Chairman-cum-Managing Director of Cement Corporation of India was not extended even though the Public Enterprises Selection Board had recommended for extension, the Court held that the recommendations of P.E.S.B. are not binding. The Central Vigilance Commission also, in this case, has not given clearance. The Respondents therein had placed original file relating to the extension of the term of the Petitioner as C.M.D. The Court perused the confidential notes. It was found that the Petitioner had no right for extension of the tenure of his service.

17. Learned Counsel for the Petitioner emphasised that during the five years tenure the B.P.C.L. earned profits with the result the outstanding losses were made out. It was for the period between 1993-1998. The term of the Petitioner was, however, extended six times for three months each time, with the result the Petitioner continued to work for two years more and in these two years the B.P.C.L. suffered heavy losses. In the year 1988-89 the loss suffered was 12.91 crores of rupees and in the year 1999-2000, 16.26 crores of rupees and subsequently the matter was referred to the B.F.I.R. The Petitioner has not denied this fact but his explanation is that it was a period of recession and secondly due to uncertainty of his tenure, administrative and managerial disorder started. In para nine of the amendment application he stated:

That subsequent to the expiry of his tenure on account of uncertainty in his continuance in addition to the general industrial recession administrative and managerial disorder started creeping in and subordinate staff started taking liberty as a result of which downward turn was again started.

18. It is not necessary to examine this aspect as to what were the reasons for the loss of the company. The B.P.C.L. is alleged to have earned the profit of about 10 crores of rupees during the last five years between 1993 to 1998 but during the extension period of the Petitioner, the company suffered the loss to the tune of about 29 crores and ultimately the matter has been referred to the B.F.I.R.

19. Another version of the Respondents in the counter-affidavit is that D.G.M. (F) of B.P.C.L. conducted audit of utilisation of capital funds received from the Government of India showing that the funds were sanctioned under B.F.I.R. scheme but they were diverted by the Petitioner to achieve better results to strengthen his case for extension of tenure. The Petitioner denied that he received such amount and the question of diversion never arose. It is not necessary to go into details and make inquiry in this aspect. Suffice it to say that if the appointing authority is not satisfied in regard to the work and conduct of an employee, he may not be compelled to extend the tenure of his employee after expiry of the period on which he is appointed.

20. In view of the above the writ petition fails and is hereby dismissed.

The parties shall, however, bear their own costs.

