

(2008) 02 AHC CK 0202
In the Allahabad High Court

Narendra Kumar Misra

APPELLANT

Vs

U.P. Power Corporation Limited and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Citation : (2008) 02 AHC CK 0202

Hon'ble Judges : U.K. Dhaon, J;Devi Prasad Singh, J

Bench : Division Bench

Judgement

1. Heard Sri P.K. Srivastava, learned Counsel for the petitioner and Sri Sandeep Dixit, learned Counsel for the opposite parties 1 and 2 who prays for and is granted four weeks" time to file counter affidavit.

2. Issue notice to opposite party No. 3.

3. The learned Counsel for the petitioner submits that the petitioner joined his duties at Chitrakoot on 11.09.2007 and from 13.09.2007 to 18.09.2007 the petitioner was on official duty at Agra. He further submits that the petitioner is an employee of Dakshinanchal Vidyut Vitran Nigam Limited which is a company registered under the Companies Act. He further submits that the impugned suspension order has been passed by the Managing Director U.P. Power Corporation Limited who has no jurisdiction to place the petitioner under suspension as the appointing authority of the petitioner is the Chairman of Dakshinanchal Vidyut Vitran Nigam Limited. He further submits that under Rule 4 Sub-rules 3, 4, 7 and 9 of the Scheme dated 12.08.2003, the Distribution Companies have all administrative and disciplinary control over the personnel transferred to them and the Managing Director of the U.P. Power Corporation Limited has no authority to pass the impugned suspension order. He further submits that Sri Ramesh Chandra Dwivedi and other members of Checking Squad have not been placed under suspension.

4. Sri Sandeep Dixit, learned Counsel appearing on behalf of the opposite parties No. 1 and 2 submits that the Scheme was published on 12.08.2003 and in the

Scheme the period of twelve months have been substituted by fifty six months and during this fifty six months, the petitioner is a provisional employee of the Dakshinanchal Vidyut Vitran Nigam Limited and till date the disciplinary authority of the petitioner is the Managing Director of the U.P. Power Corporation Limited in view of the fact that Rule 4 Sub-rule 4 was amended on 12.08.2004 and the words disciplinary control have been deleted. He further submits that Rule 4 Sub-rule 7 will not apply so long as the petitioner is a provisional employee of the company.

5. We have considered the submissions made by the learned Counsel for the parties and gone through the record.

6. It is admitted case of the parties that the Scheme known as U.P. Transfer to Distribution Undertaking Scheme 2003 was published by the State Government in the official Gazette on 12.08.2003. The petitioner has alleged that he has moved an application for his absorption in Dakshinanchal Vidyut Vitran Nigam Limited, and since the formation of the company he has worked there. It is also admitted case of the parties that the petitioner has submitted his option for absorption in Dakshinanchal Vidyut Vitran Nigam Limited.

7. Rule 4 Sub-rules 3, 7 and 9 are as under:

(3) On such transfer and subject to the provisions of the Act and other provisions of this Scheme, the personnel shall form a part of the services of the respective Distribution Companies, as the case may be but their rank, scale of pay and inter se seniority as existing in the UPPCL on the effective date of transfer shall be maintained.

(7) In respect of all statutory and other Schemes and employment related matters including the provident fund, gratuity fund, pension and any other superannuation fund or any other special fund created or existing for the benefit of the personnel , the relevant transferee shall stand substituted for the UPPCL for all purposes and all the rights, powers and obligations of the UPPCL in relation to any and all such matters shall become those of the Transferee concerned and the services of the personnel shall be treated as having been continuous for the purpose of the application of this sub-rule.

(9) All proceedings including disciplinary proceedings pending against the personnel prior to the effective date of transfer from the UPPCL to Transferees or from Transferees to other Transferees, as the case may be, or which may relate to misconduct, lapses or Acts of Commission or omission committed before the effective date of transfer shall not abate and will be continued with the Transferee consistent with the applicable Service Regulations.

8. In Sub-rules 3, 7 and 9 of Rule 4 there is no mention that so long as an employee is not absorbed in the company, the disciplinary authority shall remain the Managing Director of the U.P. Power Corporation Limited. The Scheme has been implemented on 12.08.2003 when it was published in the official Gazatee.

Prima facie, it appears that the impugned order passed by the Managing Director, U.P. Power Corporation Limited is without jurisdiction.

9. We, therefore, stay the operation and enforcement of the impugned suspension order dated 20.11.2007 passed by the Managing Director, U.P. Power Corporation Limited, a copy of which has been annexed as Annexure No. 1 to the writ petition. However it will be open for the competent authority to pass a fresh order in accordance with law.