
(2006) 09 AHC CK 0276
In the Allahabad High Court

P.K. Kaushik and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2006) 7 AWC 7686

Hon'ble Judges : V.M. Sahai, J;Barkat Ali Zaidi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barkat Ali Zaidi, J.—The petitioners are employed in Greater Noida Industrial Development Authority (hereinafter referred to as Greater Noida) and petitioner Nos. 1 to 14 belong to Group-B Cadre, whose next promotion will be in Group-A cadre and petitioner Nos. 15 and 16 belong to Group-C cadre, whose next promotion will be in Group-B.

2. The respondent Nos. 3 to 5 are on deputation with the Greater Noida Authority and the prayer of the petitioners is for issuance of a writ of mandamus directing the respondent Nos. 1 & 2 not to absorb them on deputation and make appointments by promotion to the posts falling vacant in Group-A and B. The immediate cause of action arose because the respondent No. 2 vide letter dated 6.7.2005 recommended the absorption of the services of respondent No. 3, who is posted on the post of Senior Manager, Engineering in the Greater Noida Authority and is on deputation from the U.P. Central Authorities Services.

3. Heard Ms. Rachna Srivastava, learned Counsel for the petitioners, Sri Uma Nath Pandey, S.K. Srivastava, Pradeep Kumar and Sri U.K. Saxena for the respondent Nos. 2 to 5 and learned standing counsel for the State.

4. The contention of the petitioners is that under the Rules, the respondent Nos. 3 to 5 cannot be absorbed because they are on deputation. As regards the respondent Nos. 3, it has been mentioned hereunder in the petition;

The respondent No. 3 working as Assistant Engineer in U.P. Centralised Development Authority Services joined the Authority on 22.6.2002 on deputation as Senior Manager, which is two post higher as per cadre structure of the authority. The said deputation was in violation of Government Order dated 31.3.1994. His Period of deputation ended on 24.10.2003 when he was repatriated to his parent Department and was directed to be relieved by an order dated 24.10.2003 (Annexure- 4 to the writ petition)". " Surprisingly, respondent No. 3 by manipulations with the officers of the State Government using political influence, managed cancellation of his relieving order when an order, to cancel the order dated 24.10.2003 was issued on 28.10.2003(Annexure- 5 to the writ petition)". "After cancellation of his relieving order, he remained on deputation and completed the maximum period of 3 years on 18.5.2005

Again to the surprise of everyone in the Department, his deputation was further extended by 2 years w.e.f. 18.5.2005 vide a letter dated 27.6.2005 (Annexure-6 to the writ petition)", in violation of the Government Order dated 1.6.2002.

Before completion of his 3 years" period on deputation, the respondent No. 3 vide a letter dated 12.5.2005, submitted an application for permanent absorption/merger in the authority (Annexure-7 to the writ petition).

The petitioners have learnt that efforts are going on for absorption of persons on deputation permanently in the cadre, thereby depriving those who are entitled to promotion from their right of promotion.

5. Against the proposed absorption of respondent Nos. 3 to 5, a representation was submitted to the Chairman and Chief Executive Officer of Greater Noida Authority that they should not be absorbed in the Greater Noida Authority because it will adversely affect the promotional chances of the petitioners.

6. As mentioned in paragraph No. 5 of the writ petition, the Greater Noida Authority framed its own Regulations u/s 90 of U.P. Industrial Area Development Act,1976, namely Greater Noida Industrial Development Authorities Service Regulations, 1993. It has further been clarified in the petition that the service conditions including appointments and promotions of the employees of Greater Noida Authority are governed by these statutory Rules.

7. Rule-16 of the said Regulation referred to in paragraph No. 6 of the petition, which provides interalia, the undernoted sources of Recruitment to the various posts in the Greater Noida Authority;

(i) by Direct Recruitment,

(ii) by promotion from amongst the employees occupying lower scale of pay and;

(iii) by Deputation or on contractual basis.

8. It will prominently appear from sub Class-III of Rule-16 above that recruitment by to Greater Noida Authority can be made by deputation. The Rule is unambiguous and there seems no scope for an argument that the employees

of Greater Noida Authority cannot be recruited on deputation. It is pointed out that the Government issued an order dated 31.3.1994 banning appointments / promotions by way of deputation, and the said ban was reinforced by Government Order dated 2.5.1995, wherein, it was mentioned that even in case of relaxation on the said ban, no appointments shall be forwarded for appointment on higher posts.

In other words, the appointment on deputation could be made only by way of an exception in relaxation of the aforesaid ban but on the same post and in the same pay scale, which the deputationist held in his parent Department. The Government took serious note of the misuse of the aforesaid relaxation and vide the ibid letter dated 2.5.1995 (Annexure- 1 to the writ petition), it was directed to all concerned that in the event an employee has been appointed in violation of the Government Order dated 31.3.1994, he be repatriated to his parent Department or be appointed on the same pay scale also with the concurrence of the Personnel Department.

9. It is further said that;

The State Government issued another Government Order No. 729-77-4-2002, Au.Vi. on 1.6.2002, fixing the tenure of deputation in the Engineering Department cadre in NOIDA and Greater Noida authority for a maximum period of 3 years (Annexure-24 to the writ petition).

10. It is well settled that Government Order cannot over ride Rules framed under Article 309 of the Constitution of India. vide judgment rendered in the Case of B.N. Nagarajan and Others Vs. State of Karnataka and Others, State of U.P. v. Jai Singh Dixit 1974 A.L.J. 862 (Full Bench) and Subhash son of Shri Ram Dhonde v. State of Maharashtra and Anr. 1995 (3) Suppl. S.C.C. 332.

11. So long as, therefore, there is no violation of the Rules of the Greater Noida Authority, referred to above, the Court will refrain from interfering only because the order is not in conformity with the executive instructions. Relief could be granted to the petitioners only if the proposed absorption of the respondent Nos. 3 to 5 was in violation of the aforesaid Rules.

12. It was further stated that there is another Government Order No. 729-77-4-2002, Au. Vi Dated 16.2.2002 (Annexure - 2 to the writ petition), referred to in paragraph No. 11 of the writ petition, fixing the tenure of the deputation in the Engineering Department Cadre of Greater Noida Authority for a maximum period of 3 years.

13. What has been said above, applies to the said Government Order also and the Court will not grant relief only because this Government Order has not been followed.

14. It has been mentioned in paragraph No. 12 of the writ petition as follows:

There is no provision for absorption of any employee on deputation with the

Authority although the deputation has been considered as one of the mode of recruitment but as a last mode as provided in the Regulation 16(i).

15. The statement is in contradiction in terms because Rule-16 of the Regulation of the Greater Noida Authority provides for recruitment on deputation. Regulation-16 of the aforementioned Rules provides that Group-A posts shall be filled up promotion from Group-B to the extent of 50% and 50% vacancies in Group-B shall be filled in by promotion from amongst employees from Group-C.

16. The argument of the petitioners is that the absorption of respondent No. 3 will obliterate the chances of promotion of the employee of Group-B. The petitioners could make out a case of interference by the Court if they could show that the absorption of the respondent No. 3 will make the recruitment of employees from out side sources beyond 50%. There is no such allegation and the petition bye-passes the issue in paragraph No. 32 of the writ petition, where it has been mentioned as follows:

At present, there are seven posts of Senior Manager, four posts of Senior Managers have already been filled up by officers on deputation from other Departments. The service Regulation provide that if an officer has completed 5 years on a post in Group-B then he becomes eligible for the post of Group-A.

17. The petitioners could have shown by a simple Mathematical calculation that if petitioner No. 3 is inducted in Group-A, the recruitment of employees from outside in Group-A will exceed 50%. No such case has been made out. The same is the position with regard to respondent Nos. 4 & 5.

18. Instead of making out a clear cut case of violation of the Rules relating to the percentage of employment from out side sources, the petitioners seek resort to emotion and sentiments with the allegation that induction of outsiders will demoralize the officers of the regular cadre as has been alleged in paragraph No. 38 of the petition.

19. Sentiments and emotions have no place in a Court of law unless they are an integral part of the issue involved and cannot act as substitutes for curial dispensations.

20. The arguments that such outside recruitment is likely to cause stagnation and will reduce efficiency in the service, cannot hold ground so far as there is no violation of the Rules.

21. One of the argument from the side of the petitioners was that the respondent No. 3 has been taken on deputation on a post which is two posts higher as per cadre structure of the Greater Noida Authority and he has sought absorption on the said post. The Rules as noted above provide for recruitment in services, categorized as Group-A, B and C. There is no reference to cadre structure in the said Rules and the question whether the respondent No. 3 has been absorbed at two posts higher, is wholly irrelevant, because what has to be seen, is, whether his induction in Group-A is valid or not? The allegation in this regard is wholly

confusing and without foundation.

22. The writ petition is hereby dismissed.