

(2019) 08 UK CK 0139

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 341 Of 2019

Prabodh Kumar Sharma

APPELLANT

Vs

Chairman-Cum-Managing Director THDC India Ltd. Anjd
Another

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 08 UK CK 0139

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Rakesh Thapliyal, Xitij Kaushik, Shobhit Saharia

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Rakesh Thapliyal, learned Senior Counsel assisted by Sri Xitij Kaushik, learned counsel for the petitioner and Sri Shobhit Saharia, learned counsel for the respondent-Corporation.

2. The petitioner has invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, to quash the order dated 02.07.2013 passed by the respondents; and for a mandamus directing the respondents to restore all benefits, including the consequential benefits as well as future promotion of the petitioner by holding a review DPC, after treating the petitioner as Senior Manager (designated as Deputy General Manager) with effect from 02.05.2010.

3. Facts, to the limited extent necessary, are that, when the petitioner was working as a Manager in E-5 Grade, he sought permission of the respondent-Corporation to forward his application to the National Highways Authority of India (for short 'NHAI') to be appointed in the post of General Manager (Technical) on deputation. By proceedings dated 05.02.2009, his application was forwarded to NHAI. By letter dated 26.10.2009, the respondent-Corporation informed NHAI

that they had no objection for the petitioner to be appointed to the said post. It was, however, made clear that, in the event of his selection, his relieving would be in accordance with the rules of the Corporation.

4. While matter stood thus, a Departmental Promotion Committee was convened on 05.02.2010 to consider the candidature of Managers in E-5 Grade for promotion to the post of Senior Managers in E-6 Grade. On the petitioner being found fit for promotion, office order dated 06.02.2009 was issued promoting him to the post of Senior Manager in E-6 Grade in the Pay Scale of Rs. 18,500-23,900 with effect from 06.02.2010. The petitioner was informed that he would be on probation for a period of one year from the date of issuance of the order which may be extended if found necessary. In terms of the said office order dated 06.02.2010, the petitioner was to remain on probation for a period of one year i.e. upto 05.02.2011.

5. Subsequently, by proceedings dated 22.04.2010, the petitioner was informed that, since he was under probation till 05.02.2011, in the normal course his case could not be considered for deputation; in order to consider his case, the petitioner would have to forego his promotion to the post of Senior Manager with effect from 06.02.2010 in writing; and, in any case, the petitioner would have to maintain a lien against the regular / permanent post held by him of Manager. As noted hereinabove, while the post of Manager is in E-5 Grade, the post of Senior Manager is in E-6 Grade. The petitioner was asked to comply with this requirement so that approval of the competent Authority could be obtained to send him on deputation.

6. By proceedings dated 23.04.2010, the petitioner was informed that, since he was on probation till 05.02.2011, in the normal course his case could not be considered; however, to consider his case he would have to forego his promotion to the post of Senior Manager with effect from 06.02.2010 in writing; further he would have to maintain a lien against the regular / permanent post held by him i.e. of a Manager; and he should comply and intimate accordingly.

7. The petitioner, vide letter dated 29.04.2010, informed the respondent-Corporation regarding his being relieved from the respondent-Corporation for appointment to the post of General Manager (Technical) on deputation in NHAI. In the said letter, he stated that he was promoted as Senior Manager on 06.02.2010 pursuant to an interview held on 05.02.2010; and the purpose / meaning of lien in the said letters could not be understood as not applicable in the case of deputation. The petitioner requested for a judicious decision in the matter, but stated that, if no other option was available for his immediate relieving against his appointment on deputation in NHAI as per the offer obtained from NHAI, then he agreed to forego his promotion. It is pursuant thereto that, by letter dated 28/29.05.2010, the petitioner was relieved from the respondent-Corporation to join duty with NHAI subject to the terms and conditions mentioned therein, which included that the petitioner had foregone his last promotion to the post of Senior Manager with effect from 06.02.2010; the period

of deputation would be for a period of two years; and the petitioner would have to make efforts to get himself absorbed in NHAI, failing which extension of deputation would not be granted beyond two years. Again by proceedings dated 03/04.06.2010, the petitioner was informed that he may be relieved with immediate effect with the terms in the said letter, which included that he had foregone his last promotion to the post of Senior Manager with effect from 06.02.2010; his period of deputation would be of two years; and he would have to make efforts to get himself absorbed in NHAI, failing which extension of deputation would not be granted beyond two years.

8. By his letter dated 04.06.2010, the petitioner informed the respondent-Corporation that he had categorically mentioned, in his earlier letter, that he had agreed to forego his promotion as Senior Manager as a last option only if he was relieved for the post of General Manager (Technical) in NHAI on deputation for a period of five years, and not for a period of merely two years; since he had applied for the post of General Manager (Technical) on deputation, there was no question of his absorption in NHAI; his deputation period may be reviewed in the interest of justice; he did not agree to forego his promotion and would be serving as Senior Manager in THDC India Limited if he was not considered for being relieved on deputation in accordance with the offer letter received from NHAI i.e. for a period of five years. In reply thereto, the petitioner was informed, by letter dated 22.06.2010, that his request for deputation for a period of five years could not be considered; and the tenure of deputation would be as per the standard terms and conditions of deputation of the Corporation.

9. The petitioner was relieved by office order dated 17.07.2010, and was informed that, while on deputation, he would be governed by the THDC India Ltd. Standard Terms and Conditions of Deputation. A copy of the said terms and conditions was enclosed. The petitioner joined NHAI on deputation for a period of two years. On completion of the two year period of deputation, the petitioner joined duty with the respondent-Corporation on 25.01.2013. He was posted in the Planning and Monitoring Department, and was directed to report to the Senior Manager (P&M). The petitioner was thereafter informed, by office order dated 02.07.2013, that, in view of his selection on deputation to NHAI during his probation period, he had foregone his promotion to the post of Senior Manager by his letter dated 29.04.2010; and the promotion order dated 06.02.2010, by which he was promoted to the post of Senior Manager, stood cancelled and withdrawn. It is this office-order dated 02.07.2013 which is impugned in this writ petition.

10. Sri Rakesh Thapliyal, learned Senior Counsel appearing on behalf of the petitioner, would question the said order on the following grounds: (a) what the petitioner had foregone was only his future promotion i.e. promotion to the higher post in E-7 Grade onwards; (b) his letter dated 29.04.2010 cannot be construed as his having accepted to forego his promotion to the post of Senior Manager in E-6 Grade; (c) in any event, no action was taken by the respondent-

Corporation to cancel his promotion when he was sent to NHAI on deputation; (d) it is nearly six months' after he joined duty, with the respondent-Corporation on 25.01.2013, that his promotion order was cancelled; (e) since the petitioner was on probation when he was sent on deputation to NHAI, the respondent-Corporation could have, at best, placed him on probation after he rejoined the respondent-Corporation; and (f) the petitioner's right to hold the post of Senior Manager in E-6 Grade cannot be set at naught merely on the basis of a conditional option exercised by him to forego promotion. Learned Senior Counsel would further submit that, since the petitioner has been making repeated representations to the authorities, the petitioner cannot be non-suited on the ground of delay and laches.

11. On the other hand, Sri Shobhit Saharia, learned Standing Counsel for the respondent-THDC, would draw our attention to the THDC General Terms and Conditions of Service, more particularly to Clause 23 thereof in support of his submission that no employee can be sent on deputation during the period of his probation; it is in such circumstances that the petitioner was informed that, while he could be sent on deputation treating him as holding the regular post of Manager in E-5 Grade, he could not be sent on deputation as an Officer in E-6 Grade, since he was still on probation during that period; and since the action of the respondent-Corporation, in informing that he could be relieved with immediate effect, if he foregoes his promotion to the post of Senior Manager with effect from 06.02.2010, is in accordance with the General Terms and Conditions of Service of THDC, the action of the respondent-Corporation cannot be faulted in this regard. Learned Standing Counsel would further state that the impugned order dated 02.07.2013 is being questioned by way of the present writ petition filed more than six years thereafter on 13.07.2019; and the writ petition is also liable to be dismissed on the ground of inordinate delay and laches.

12. Clause 23 of the General Terms and Conditions of Service reads as under:

"23.0 FORWARDING OF APPLICATIONS

23.1 For employment outside the Corporation

23.1.1. All applications by Corporation employees for employment outside the Corporation are required to be forwarded through proper channel.

23.1.2. During probation period, normally no application will be forwarded for employment on deputation. After completion of probation and confirmation, there will be no restriction for forwarding of application for outside employment in case of employees in E-5 grade & above and in case of employees below E-5 level, two applications per year may be forwarded.

23.1.3 Subject to Rule 23.1.2 after an employee has been promoted, no application will be forwarded during the first year after promotion. Thereafter applications may be forwarded as proposed at para 23.1.2 above.

No application will be forwarded during the Bond period as given in clause No.

4.0 of Scheme & Facilities for Higher Studies, in respect of the employees who have undergone Internal / Foreign Training for periods as specified in the Scheme. However, on depositing the specified / proportionate Bond amount, application can be forwarded as proposed at para 23.1.2 above.

23.1.4 Regular employees of the Corporation who are selected for appointment in other Government / Public Sector Organisations against applications duly forwarded by the Corporation may, on specific request be permitted at the discretion of the Management to retain lien in the Corporation for a period of one year, subject to the condition that leave salary contribution and CPF contribution (both the employee's and employer's share) are paid to THDCIL either by the employee himself or by the new employer."

13. Clause 23.1.2 makes it clear that, during the probation period, normally no application would be forwarded for employment on deputation. It is only after completion of probation and confirmation, is there no restriction for forwarding of applications, for outside employment, in the case of employees in E-5 Grade and above. Since the petitioner was on probation, when he sought that he be sent on deputation to NHA, Clause 23.1.2 did not obligate the respondent-Corporation to forward his application for employment on deputation. Further, in terms of Clause 23.1.3, no application could be forwarded during the first year after an employee is promoted. Since the petitioner was promoted, as a Senior Manager in E-6 Grade on 06.02.2010, and the first year after his promotion was to expire only on 05.02.2011, he could not have been sent on deputation during the intervening period. It is in such circumstances that the petitioner was informed that he could only be sent on deputation if he was willing to forego his promotion to the post of Senior Manager in E-6 Grade, since there was no restriction in the General Terms and Conditions of Service for an employee to be sent on deputation while holding his regular and substantive post of Manager in E-5 Grade.

14. No employee can claim, as of right, that he should be sent on deputation to another organization since, during the period of deputation, he continues to hold a lien on his post with the parent Department. The service of an employee on deputation, in another department, is treated by the rule as equivalent to service in the parent department. (State of Mysore Vs. M.H. Bellary: AIR 1965 SC 868). When an employee is sent on deputation, the post held by him in the respondent-Corporation is required not to be filled-up, since the deputed employee continues to hold a lien over the said post. No employee can claim, as a matter of right, that he should be sent on deputation.

15. The parent organization merely lends the services of its employees to the Organisation to which they are deputed; and, in spite of their deputation, the relationship of master and servant between the parent organisation and its employees does not stand terminated. (State of Punjab and Ors. Vs. Inder Singh and Ors: (1997) 8 SCC 372 and C. Rangaswamaiah and Ors. Vs. Karnataka Lokayukta and Ors: (1998) 6 SCC 66). Employees sent on deputation can be

reverted to their parent cadre at any time. (Ratilal B. Soni and Ors. Vs. State of Gujarat : (2004) 2 SCC 65).

16. The basic principle underlying deputation is that the person concerned can always, and at any time, be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments, and there is no vested right in such a person to continue for long on deputation. (Kunal Nanda Vs. Union of India (UOI) and Ors: (2000) 5 SCC 362). An employee of the parent organisation sent on deputation, on his own request, to work as an employee in another department/organisation would still maintain his lien with the parent organization even if he has been allowed to continue on deputation for several years. (Nishant Puri Vs. State of Himachal Pradesh and Ors: AIR 1999 SC 27).

17. An employee can be sent on deputation only with the consent of the parent organization, the borrowing organization and the employee himself. In the present case, the respondent-Corporation was willing, in accordance with the General Terms and Conditions of Service, to send the petitioner on deputation only as an officer in E-5 Grade, and not as a Senior Manager in E-6 Grade. Since the petitioner was on probation during the relevant period, it was open to him to refuse to go on deputation, and to continue to remain with the respondent-Corporation, if he was of the view that he should not be deprived of his promotion to the higher post of Senior Manager in E-6 Grade. Having chosen to be relieved in accordance with the General Terms and Conditions of Service of the Corporation as an officer in E-5 Grade, and having completed his deputation period of two years with NHAH on such terms and conditions, the petitioner cannot now turn around and contend that he ought to have been sent on deputation only as an officer in E-6 Grade (notwithstanding the conditions stipulated in the General Terms and Conditions of Service of the respondent-Corporation), and not as an officer in E-5 Grade.

18. The petitioner's contention that what he had foregone was his next promotion to E-7 Grade, and not his promotion to E-6 Grade, needs only to be noted to be rejected. The petitioner was informed, by proceedings dated 23.04.2010, that, in order to consider his case for deputation, he would have to forego his promotion to the post of Senior Manager with effect from 06.02.2010 in writing; and in that case, he would maintain his lien against regular / permanent post i.e. of Manager. The petitioner was well aware that what the respondent-Corporation had asked him to forego was his promotion to E-6 Grade and, since his letter dated 29.04.2010 is in reply to the earlier letters issued by the respondent-Corporation, it is evident that the petitioner had agreed to forego his promotion as a Senior Manager in E-6 Grade, and not his future promotion in E-7 Grade. As the petitioner had informed the respondent-Corporation, by his letter dated 04.06.2010, that he had categorically mentioned in his earlier letter that he had agreed to forego his promotion as Senior Manager as a last option, the contention that he had agreed to forego his future promotions alone is not

tenable.

19. The contention that he must be taken back on probation in E-6 Grade, on his completing his deputation period with the NHAI, does not also merit acceptance. The petitioner was sent on deputation as an officer in E-5 Grade, after foregoing his promotion as a Senior Manager in E-6 Grade. On completion of his deputation period of two years, he was required to be posted as a Manager in the respondent-Corporation only in E-5 Grade. As the Rules and the Regulations disable an employee to be sent on deputation during the period of probation, and for a period of one year from the date of his promotion, the petitioner could only have been sent on deputation as a Manager in E-5 Grade, and not during his probationary period, and within one year of his promotion, as a Senior Manager in E-6 Grade.

20. That the order of promotion dated 06.02.2010 was subsequently cancelled by proceedings dated 02.07.2013 matters little, for the petitioner was sent on deputation only on his foregoing his promotion as a Senior Manager in E-6 Grade. Even otherwise, the writ petition is hit by inordinate delay and laches. The order cancelling the petitioner's promotion is dated 02.07.2013, and it is this order which has been subjected to challenge, more than six years thereafter, by way of the present writ petition filed on 13.07.2019. In *State of M.P.Vs. Nandlal Jaiswal*: (1986) 4 SCC 566, the Supreme Court observed:

".....Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent of the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction....."(emphasis supplied)

21. The contention that the petitioner has been making repeated representations would not, by itself and without anything more, justify the inordinate delay in invoking the jurisdiction of this Court. Both on merits, and on the ground of inordinate delay and laches, the writ petition is liable to be, and is accordingly, dismissed. No costs.