

(2006) 02 DEL CK 0130
In the Delhi High Court
Case No : LPA 398 of 2003

Sh. A.N. Gupta

APPELLANT

Vs

Public Enterprises Selection Board (PESB) and Others

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Citation : (2006) 02 DEL CK 0130

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : K.K. Rai and A.P. Sinha, for the Appellant; Rajendra Dhawan, for R-2 and Rajeev Sharma, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This Writ Appeal has been filed against the impugned judgment dated 08.05.2003 of the learned Single Judge by which he has dismissed the Writ Petition.

2. Heard learned counsels for the parties and perused the record.

3. The facts of the case have been set out in detail in the impugned judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. The Petitioner/Appellant was appointed as Director (Finance) of Housing Urban Development Corporation Ltd. (HUDCO), which is a Corporation wholly owned by the President of India. True copy of the Appointment Order dated 08.01.2001 (Annexure P1) states as under:-

No. A-12026/2/99-HI

Government of India

Ministry of Urban Development and Poverty Alleviation

Dept. of Urban Employment and Poverty Alleviation

Nirman Bhavan, New Delhi

Dated 08 January 2001

To

Shri A. N. Gupta

C-127, Sector19, NOIDA

Distt. Gautam Budh Nagar

U.P.-201301

Subject: Appointment to the post of Director (Finance) in Housing and Urban Development Corporation (HUDCO) Ltd. regarding.

Sir,

I am directed to state that in exercise of the power conferred upon him by virtue of the Memorandum and Articles of Association of the Housing and Urban Development Corporation (HUDCO) Ltd., the President is pleased to appoint you to the post of Director (Finance) in HUDCO in Schedule C scale of pay of Rest.22500-600-27300 (Revised) in IDA pattern on immediate absorption basis, for a period of 5 (five) years from the date you take over charge of the post or till the date of superannuation, whichever is earlier.

2. The appointing Authority shall have the option to terminate your services with three months notice or on payment of three months salary in lieu thereof.

3. Formal orders giving the details of the terms and conditions of appointment shall be issued in due course in consultation with Department of Public Enterprises (DPE).

4. If the offer is acceptable to you, you may report immediately to the Chairman-cum-Managing Director, Housing and Urban Development Corporation (HUDCO) Ltd., India Habitat Centre, Lodhi Road, New Delhi under intimation to this Ministry.

Yours faithfully

(Hazari Lal)

Deputy Secretary to Government of India

Tel: 3018294

Copy to:

1. Chairman and Managing Director, Housing and Urban Development Corporation (HUDCO) Ltd., the date on which Shri A. N. Gupta takes charge may be intimated to this Ministry.

2. Office of the Establishment Officer (Attn. Shri Bharat Prasad, Under 26(10) EO/2000(ACC) dated 27.12.2000.

3. Secretary, PESB, CGO Complex, Lodi Road, New Delhi with reference to their U.O.; reference No. 7/96/99-PESB dated 04.8.2000.

4. CVO, Ministry of Urban Development and Poverty Alleviation.

5. Office Order file.

(Hazari Lal)

Deputy Secretary to Government of India

Tel: 3018294

5. A perusal of the appointment order shows that the petitioners service was for a period of 5 years from the date he took over charge or till the date of superannuation, whichever is earlier. However, the appointing authority had the option to terminate the petitioners service with three months notice or on payment of three months salary in lieu thereof.

6. Since the petitioner was completing 58 years on 20.7.2004, he would have retired on 20.07.2004 .

7. By order dated 15.10.2001, copy of which is Annexure P2, the petitioner was informed that after the expiry of first year his performance will be reviewed to enable the Government to take a view regarding continuance or otherwise for the balance period of his tenure.

8. It is alleged in para 6 of the writ petition that the clause of review of the performance has been incorporated in terms of the guidelines issued by the Bureau of Public Enterprises dated 8.2.1978 which has been quoted in para 6 of the writ petition. Those guidelines state that the government should be able to assess the work at the end of a year in a five years contract and terminate the contract if his performance is not found satisfactory.

9. It is alleged in para 10 of the writ petition that the petitioner understands that the then Secretary, in the Ministry after appraising the performance of the petitioner as Director (Finance) despite the recommendation to the contrary given by the then Chairman V. Suresh recommended for his continuance. It is alleged that the Secretary, being the Reviewing Authority could take a view contrary to that of the Reporting Officer and, Therefore, his recommendation should be regarded as final. It is alleged that the petitioner was not given any adverse communication.

10. It is alleged in para 22 of the writ petition that the petitioner was asked to proceed on forced leave vide letter dated 4.10.2002, copy of which is Annexure P11 to the writ petition. Against that, the petitioner filed the CWP No. 6533 of 2002 in which the petitioner was granted a Stay Order dated 09.10.02 vide Annexure P12.

11. It is alleged in Para 23 of the writ petition that the petitioner reliably learnt that after the stay order of this Court, the respondents No. 2 and 3 were going to invoke the termination of the contract clause of the appointment, upon which he made the representation to respondent on 11.10.2002. It is alleged in para 24 of the writ petition that peeved with the stay granted by this Hon"ble Court the respondents have now resorted to illegal appraisal of the petitioner. The petitioner received a letter in the evening of 21.10.2002 from the Joint Secretary, Govt. of India, copy of which is Annexure P14 to the writ petition, asking him to appear before the respondent No. 1 on 22.10.2002. The petitioner sent a representation stating that he is on leave on 21st and 22nd October, 2002 for some personal work vide Annexure P15. However, it is alleged that no communication in reply was sent to him.

12. A counter-affidavit was filed in the writ petition by the Deputy Secretary, Ministry of Urban Development, and we have perused the same. It is stated therein that after the expiry of the first year the performance of the petitioner could be reviewed to enable the government to take a view regarding continuance or otherwise for the balance period of tenure. Moreover, Clause 1 of the appointment letter clearly stated that the petitioners appointment could be terminated by giving three months notice or salary in lieu thereof.

13. In Para 6 of the counter-affidavit it is stated that appraisal is done by the PESB, which is an independent body and final decision on the recommendation of the PESB is taken by the Appointments Committee of the Cabinet.

14. By an amendment to the writ petition, it appears that the petitioner appeared for the appraisal on 5.11.2002 and his service was terminated on 14.12.2002 vide Annexure P22 to the amended writ petition.

15. In the reply of Respondent No. 3 to the amended writ petition, it has been stated that after the first year of service, the Special Performance Appraisal Report was initiated by the then CMD, and as part of that Special Appraisal Report, certain remarks were recorded by the CMD on 23.3.2002 and certain over all remarks were allotted to the petitioner. The Special Performance Appraisal Report was communicated by the CMD to the Ministry of Urban Development vide letter dated 22.3.2002, Annexure A to the reply. The over all remarks recorded by the CMD, who is the Reporting Authority, were put to the Reviewing Authority, i.e., Ministry of Urban Development and Poverty Alleviation. The Secretary made his own assessment and thereafter the matter was placed before the Accepting Authority. The Accepting Authority, on the basis of the comments recorded by the Reporting and Reviewing Authority as well as his own assessment, came to the conclusion that the continuation of the petitioner in the responsible post of Director (Finance) would not be in the interest of HUDCO.

16. It is further stated in para 8 of the reply that whenever a term of the Chief Executive/Director is not proposed to be continued in terms of the Clause for review after 1 year, an appraisal of such officer by the concerned Ministry/

Department, in consultation with PESB is required. Accordingly, vide letter dated 11.10.2002 the matter was referred to the PESB. From time to time, vide various letters, a number of documents / information was sought by PSEB, which were duly supplied. Subsequently, the PSEB gave detailed hearings to the petitioner on 5th and 13th November, 2002.

17. After detailed consideration of the documents furnished by the Department of Urban Development, including Special Performance Appraisal Report given by the CMD, the views of the former Secretary of the Department and documents/views given by the present Secretary and various oral/written submissions of the Appellant, the PSEB came to the conclusion that it would not be in the interest of HUDCO to continue the petitioner as Director (Finance). The matter was then accordingly referred to the Appointments Committee of the Cabinet and on 14.12.2002 a communication was received from the Appointments Committee of the Cabinet that it had approved the proposal for non-continuance of the service of the petitioner.

18. From the facts stated above, it is evident that the case of the petitioner was dealt with strictly in accordance with the rules and it was considered by the higher authorities, and then a decision was taken not to continue his service. We cannot say on these facts that there was any arbitrariness or non- application of mind.

19. On these facts, we are of the opinion that no illegality has been committed and the view taken by the learned Single Judge in his impugned judgment calls for no interference, and hence this Appeal is dismissed.