
(2007) 06 UK CK 0029

In the Uttarakhand High Court

Case No : Writ Petition No. 739 of 2001 (S/B)

State of U.P. and Others

APPELLANT

Vs

Chandra Mani Dabral and Others

RESPONDENT

Date of Decision : 11-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6N

Citation : (2007) 3 UC 1725

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Subhash Upadhyaya, Brief Holder, for the Appellant; Pankaj Purohit, for the Respondent

Final Decision : Allowed

Judgement

J.C.S. Rawat, J.—By means of this writ petition filed under Article 226 of the Constitution of India, the Petitioners have sought the following reliefs:

(i) Issue a writ, order or direction in the nature of certiorari quashing the judgment and order dated 18-02-1982 passed by the Respondent No. 2 (Annexure No. VII to the writ petition).

(ii) Issue any further writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) Award the cost of the petition.

2. Brief facts of the case are that Chandra Mani Dabral was appointed as Seasonal Forest Guard on 01-11-1956. He was appointed on continuous service as Forest Guard on 08-11-1960 in the Forest Department. He joined the training of Forest Guard in 1966-67 and he stood first in the said training. He was given accelerated promotion to the post of Forester vide order dated 27-06-1970 passed by the Conservator of Forest. The said order dated 27-06-1970 promoting him to the post of Forester was passed on the wrong application of

G.O. No. UP.90/ XXA-475/1952 dated 26-02-1966 (Annexure-II to the writ petition). It was further alleged in the petition that the said G.O. was applicable to the case of Foresters and by the said G.O. the Foresters who stood first in training course were to be given a chance of being promoted as officiating Deputy Ranger. It has been further alleged in the petition that the said G.O. is not meant for the Forest Guard and the Respondent No. 1 -Chandra Mani Dabral was not entitled to be promoted on the post of Forester on the basis of the said G.O. The Deputy Chief Conservator of Forest (Planning), UP. vide letter dated 24-11 -1970 clarified that the said G.O. dated 26-02-1966 did not apply in the case of Forest Guard. Thereafter, the Conservator of Forest reverted the Respondent No. 1 to his original post of Forest Guard vide order dated 24-12-1970. Feeling aggrieved by this, the Respondent No. 1 represented on 04-08-1977 to the Addl. Chief Conservator of Forest and claimed his promotion to the post of Forester on the basis of first position in the Forest Guard training course. On the representation of Respondent No. 1, the Addl. Chief Conservator of Forest, UP. vide order dated 19-10-1977 issued a direction to promote him to the post of Forester on the basis of getting first in the training course. In pursuance of that order, the Conservator of Forest gave an accelerated promotion to the Respondent No. 1 and the Respondent No. 1 was promoted as officiating Forester vide order dated 24-05-1978 (Annexure-V to the writ petition). Thereafter, when the Conservator of Forest (Siwalik Circle) realized that the G.O. dated 26-02-1966 was not applicable for promotion in the case of Forest Guard and that the Respondent No. 1 has been wrongly given accelerated promotion on the post of Forester, then the Conservator of Forest (Siwalik circle) passed an order dated 09-08-1978 (Annexure-VI to the writ petition) reverting the Respondent No. 1 to the post of Forest Guard. Feeling aggrieved by this, the Respondent No. 1 filed a claim petition before the Public Services Tribunal, UP., Lucknow. After hearing the parties, vide order dated 18-02-1982 the learned Tribunal has allowed the claim petition and set aside the order dated 09-08-1978 by which the Respondent No. 1 was reverted back.

3. Feeling aggrieved by order of learned Tribunal, the present petition has been filed by the Petitioners.

4. The Respondent No. 1 has filed the counter affidavit alleging therein that he was given accelerated promotion to the post of Forester. The promotion was solely based on the G.O. dated 27-02-1966 and the order of reversion was illegal and void. It was further alleged that the promotion order cannot be recalled without affording opportunity of hearing to the Respondent No. 1. It was further alleged in the counter affidavit that the writ petition is wholly misconceived. There is uniform practice prevailing in the Forest Department to promote Forest Guards topping the merit list in the training. It was further alleged that on 13-02-1974 several employees were promoted from the post of Forest Guard to the Forester because they stood first in the training.

5. Heard learned Counsel for the parties and perused the record.

6. Sri Subhash Upadhyaya learned Brief Holder for the Petitioners contended that the judgment dated 18-02-1982 passed by the Respondent No. 2-Public Service Tribunal allowing the claim petition of the Respondent No. 1 and holding that the order dated 09-08-1978 reverting the Respondent No. 1 to the post of Forest Guard was unjustified and liable to be set-aside. It was further contended that the Tribunal has erred in holding that the Respondent No. 1 ought to have been given an opportunity of hearing and showing cause before passing the reversion order. It was further contended that the promotion order dated 19-10-1977 by which the Respondent No. 1 was promoted to the post of Forester on the basis of getting first in the training course was against the G.O. under which the said promotion order was passed. It was further contended that it was well within the jurisdiction of the authority concerned to correct the mistake by passing the reversion order as the promotion order was passed in contravention of the said G.O. Learned Counsel for Respondent No. 1 refuted the contention and contended that the Respondent No. 1 stood first in the training course of Forest Guard in the year 1967 and he was promoted to the post of Forester in the year 1970. Thereafter, he was reverted back to his original post of Forest Guard. Thereafter, again the Chief Conservator of Forest, UP. vide order dated 24-05-1978 promoted the Respondent No. 1 as officiating Forester on the basis of getting first in the training course. Learned Counsel for the Respondent No. 1 further contended that he was promoted to the post of Forester for the second time on 24-05-1978 and thereafter he was again reverted back to his substantive post of forest guard without assigning any reason in the reversion order. The said reversion order would amount the reduction of the rank of Respondent No. 1, therefore, the Respondent No. 1 had a right of hearing before the competent authority.

7. Perusal of the record reveals that it has been clearly indicated in the promotion order dated 19-10-1977 (Annexure v. to the writ petition) that the Respondent No. 1 stood first in the training course of Forest Guard and as such he was promoted to the post of Forester in the higher pay-scale. The promotion order further reveals that the promotion to the post of Forester was made in an officiating capacity. Perusal of order dated 09-08-1978 (Annexure-VI of the writ petition) reveals that the Respondent No. 1 was directed to handover the charge of the post of Forester and to proceed with the new place of posting. It is also apparent from perusal of Annexure-V that the Respondent No. 1 was promoted to the post of Forester from the post of Forest Guard on the basis of that he stood first in the training course of forest guard and he was given accelerated promotion as officiating Forester. According to Article 33 of the Forest Manual, the promotion of Forest Guard to the post of Forester shall be made only on the basis of seniority. G.O. dated 26-02-1966 (Annexure-ii to the writ petition) applies in the case of those Foresters who stood first in the training course of Forester for their promotion to the post of Deputy Ranger. It is not the case of Respondent No. 1 before the Tribunal or before this Court that he was promoted under Article 33 of the Forest Manual. There is no rule or G.O. by which the

Forest Guard who stood first in the training course would get accelerated promotion. Perusal of the order dated 24-05-1978 passed by the Conservator of Forest promoting the Respondent No. 1 to the post of Forester reveals that he was given accelerated promotion as officiating Forester on the basis of G.O.26-02-1966. It is not disputed that the Respondent No. 1 was not entitled for promotion on the basis of his seniority according to the aforesaid Article 33 of the Forest Manual. The G.O. dated 26-02-1966 reads as under:

With reference to the correspondence resting with your letter No. 1860/10-30, dated October 12, 1962 on the above subject, i am directed to say that the Governor has been pleased to order that such of the Foresters as stand first in order of merit at the Forester's Training Schools should be promoted as officiating Deputy Ranger. This Officiating promotion can be given without amending the rules and will be justified on the principle of merit.

2. I am also to say that the position may be watched for one or two years before reconsidering the question whether the rules would need to be amended and provide for promotion of the forester standing first in order of merit of the Forester's Training School as Deputy Ranger in substantive capacity.

8. If the order of the Conservator of Forest promoting the Respondent No. 1 is sustained, the Forest Guards who are senior to Respondent No. 1 and are entitled for promotion on the basis of their seniority shall be deprived of their right of promotion. When the authority had come to know that the promotion of Respondent No. 1 had been made against the rules and in contravention of the G.O.s, the Conservator of Forest passed the order dated 09-08-1978 revelling the Respondent No. 1 to his original post. It was merely to correct the mistake committed by the Conservator of Forest. It has been held by the Hon"ble Supreme Court in Secretary, State of Karnataka v. Umadevi 2006 AIR SCW 1991 that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. In the case in hand, the promotion of Respondent No. 1 was not in accordance with the rules. Merely because the Respondent No. 1 was promoted in the officiating capacity, he would not be entitled to any right to be promoted on the said post without following the due process or relevant rules. The Respondent No. 1 was promoted on the officiating vacancy and he has no right to be promoted on the said post on the basis that he stood first in the training course.

9. The principles of natural justice are not rigid or immutable and hence they can not be imprisoned in a straight jacket. They must yield to and change with exigencies of situations. They must be confined within their limits and can not be allowed to run wild. While interpreting legal provisions a Court of law can not be unmindful of the hard realities of life. The approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential". In certain circumstances application of the principle of natural

justice can be modified and even excluded. It is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its object and purpose warrant exclusion of the right of hearing. Some times the principle of "audi alteram partem" can not be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency so demands. The retention of such employee even for an hour in the establishment would cause obstruction if the principle of natural justice is not excluded in such situation he would enjoy the fruits of wrongful acts for which he was not entitled for a moment. In such situation the right of hearing should be excluded.

10. In the instant case, the promotion of Respondent No. 1 was void-abinitio as his promotion order was also dehors the Government Rules and Orders. No right and title could be conferred upon him on the basis that he stood first in the training course. His promotion is nonest in the eyes of law, as such no right of hearing is required to the Respondent No. 1. We specifically asked to the learned Counsel for the Respondent No. 1 that even if a notice was given to him what would be his reply to the said notice given to the Respondent No. 1. The learned Counsel for the Respondent No. 1 stated before us that he would have taken only the plea which had been taken before this Court and he would only say that he had been promoted, as such the promotion letter could not be cancelled.

11. In the case of State of U.P. Vs. Neeraj Awasthi and Others, the market committee of the Mandi Samiti made the appointments in-excess to the sanctioned strength. A resolution was passed by the Board proposing regularization of the services of those employees who had completed 1000 days of service. The Government issued the direction regarding the services of all such employees who had been irregularly appointed during the period from 1 -4-1996 to 30-10-1997 be cancelled on last-come-first-go basis. Pursuant thereto or in furtherance of such directions issued by the State Government, the services of a large number of employees were terminated on or about 30-03-1999. Questioning the aforementioned directions of the State, an employee challenged the termination orders before the single Judge of Allahabad High Court, who allowed the same holding that the termination order issued pursuant to the orders of the State Government was illegal. In similar writ petitions filed by other dismissed employees, the Division Bench of the High Court, Lucknow Bench had put its seal of approval to the order of the learned single Judge. A writ petition filed by other person, however, was dismissed by another Division Bench of the Allahabad High Court at Lucknow upholding the order of the State Government. The learned single Judge of the Allahabad High Court while allowing the writ petition had also held that the principle of natural justice had been ignored in terminating the services of such employees and, thus, the order of terminating the services of the writ Petitioners were bad in law. When the matter came up before the Hon''ble Apex Court, it has been held that from the very inception the

provisions of the Act and regulations framed thereunder had been given a complete go-by. The provisions of the Act specifically mandate that all appointments must be made in terms of the provisions of the Regulations. The Hon"ble Apex has further held that the Board and the Market Committee of the Mandi Samities were bound by the Act, Rules and Regulations framed thereunder in making the appointments Statutory provisions as also the constitutional requirements were required to be complied with. The appointments have been made in flagrant violation of the statutory provisions. The Hon"ble Apex Court has further held that the orders passed by the learned single judge allowing the writ petitions which had been upheld by the learned division bench of the court does not lay down the law correctly and the judgment and order passed by the division bench of Lucknow Bench of the Allahabad High Court by which the order of the State Government was upheld, laid down the law correctly while dealing with the principle of natural justice. The Hon"ble Apex Court has further held as under:

47. If the employees are workmen within the purview of the U.P. Industrial Disputes Act, they are protected thereunder, Rules 42 and 43 of the U.P. Industrial Disputes Rules provide that before effecting any retrenchment in terms of the provisions of Section 6-N of the U.P Industrial Disputes Act, the employees concerned would be entitled to a notice of one month or in lieu thereof pay for one month and 15 days" wages for each completed year of service by way of compensation. If such a retrenchment is effected under the Industrial Disputes Act, the question of complying with the principles of natural justice would not arise. The principle of natural justice would be attracted only when the services of some persons are terminated by way of a punitive measure or thereby a stigma is attached. (See Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, : Karnataka Public Service Commission and others Vs. B.M. Vijaya Shankar and others, and State of M.P. v. Shyama Parthhi 1996 (7) SCC)p> 48. In Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, it was held that "The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. (See Dr. (Mrs.) Gurjeewan Garewal Vs. Dr. (Mrs.) Sumitra Dash and Others,). The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case."

49. The High Court, therefore, must be held to have erred in law in holding that the principles of natural justice were required to be complied with.

12. The Division Bench of this Court in Special Appeal No. 94 of 2004 decided on 11th August, 2006, Jagat Singh v. Director of Educations and others has followed the dictum of the Apex Court and held that if the appointment is against the government orders and rules it is void ab initio in the eyes of law. Thus, the impugned order was not passed by way of punitive measure or thereby no

stigma was attached. The Conservator of Forest only corrected his mistake bypassing the reversion order. Thus, the learned Tribunal has erred in holding that the principles of natural justice were required to be followed while passing the reversion order.

13. It was further contended on behalf of Respondent No. 1 that other persons who were promoted as Foresters from the post of Forest Guards on the ground that they stood first in the training course had not been reverted back to their original posts. On due consideration of the submission of the parties, we are of the view that if some promotions have been made without following the procedure and if some persons have been promoted in the past, it cannot be said to be a normal mode which must receive the seal of the court. Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. No equality can be claimed in illegality is now well settled. The court will have to see as to whether the promotion of other employees was within the scope of rules. If it was not within the scope of rules or G.O. then it would not create a right in favour of the Respondent No. 1 to claim the equality with them; may be, if the earlier promotions were made wrongful in favour of those persons, the same may become liable for cancellation, if permissible in law, but that would not create an enforceable right on the Respondent No. 1 to claim similar wrongful promotions in his favour.

14. In view of the foregoing discussion, we are of the view that the learned Tribunal has erred in holding that the Respondent No. 1 was entitled for an opportunity of being heard before the competent authority. We are also of the opinion that the Tribunal has erred in setting-aside the order dated 9-7-1978 (Annexure-VI to the writ petition) by which the Respondent No. 1 was reverted back to the post of Forest Guard. Therefore, the petition deserves to be allowed and is hereby allowed. The impugned judgment and order dated 18-02-1982 (Annexure-VII to the writ petition) passed by the Tribunal is set aside. No order as to costs.