
(2011) 05 UK CK 0100

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1261 of 2006

Subhash Ram

APPELLANT

Vs

State of Uttaranchal and Non Conventional Energy
Development Agency (NEDA)

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2011) 05 UK CK 0100

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—On 26th June, 1992, Petitioner was appointed by Respondent No. 3 as a Junior Engineer. Respondent No. 3 is a Society registered under the Societies Registration Act. Respondent No. 3 is also an authority within the meaning of Article 12 of the Constitution of India, inasmuch as, affairs of Respondent No. 3 are directly controlled and managed by the Government of the State of Uttar Pradesh and funded by the State of Uttar Pradesh as well as the Central Government. Respondent No. 3 discharges diverse public functions. Institutions akin to Respondent No. 3 have not been dealt with by the Uttar Pradesh Reorganization Act, 2000, whereby and under, carving out a part of the State of Uttar Pradesh, State of Uttarakhand was created.

2. Before the State of Uttarakhand was created, the territories of Uttar Pradesh, which after creation of Uttarakhand became part of Uttarakhand, were being served by Respondent No. 3 and, accordingly, had establishments thereat. As on the date of creation of the State of Uttarakhand, Petitioner was working at an establishment of Respondent No. 3 at Pauri, which became part of the territory of the State of Uttarakhand. Subsequent thereto, Respondent No. 2 were created as a Society under the Societies Registration Act to discharge those functions of Respondent No. 3 in the territories which became part of the State of Uttarakhand. By a mutual agreement between Respondent Nos. 2 & 3,

Respondent No. 2 took over those establishments of Respondent No. 3 which were located in the territory of the State of Uttarakhand along with their assets and liabilities. Respondent Nos. 2 & 3 thereupon agreed that employees of Respondent No. 3, if opting to become employees of Respondent No. 2, Respondent No. 2 would take them as its employees. Accordingly, Respondent No. 3 invited options from amongst its employees. Petitioner opted to remain with Respondent No. 3 on the ground that the State of Uttar Pradesh is his home State. His home is 1100 miles away from where he was serving than in the State of Uttarakhand, and that, the climate of Uttarakhand does not suit him and he apprehends that he may suffer prolong illness for the climatic condition of the State of Uttarakhand. By the said option, therefore, Petitioner made it absolutely clear that he would not opt to become an employee of Respondent No. 2. Options of the employees of Respondent No. 3, who had opted to become employees of Respondent No. 2, were considered by Respondent Nos. 2 & 3 at a meeting held on 21st July, 2001, when it was decided that six optees for Respondent No. 2 will become employees of Respondent No. 2. It was also indicated that few others, including the Petitioner, will remain in the establishments of Respondent No. 2 in the State of Uttarakhand as deputationists. After this decision was taken, Petitioner, on 9th June, 2002 purported to alter his option by writing a letter to Respondent No. 2, a copy whereof, it is claimed, were also marked to Respondent No. 3. In this letter, it was represented by the Petitioner that his children are not habituated with warm weather of the State of Uttar Pradesh, and that, his medical advisor has advised that prolong stay of his children in the State of Uttar Pradesh may affect their health. According to the Petitioner, this altered option has not been considered. According to the Petitioner, even on 14th August, 2003 discussions amongst Respondent Nos. 2 & 3 were afoot pertaining to allocation of employees of Respondent No. 3 to Respondent No. 2, but ultimately the request of the Petitioner to be allocated to Respondent No. 2 were not considered. It appears that subsequent thereto Respondent No. 2 agreed to bring to an end the deputation of the Petitioner with the said Respondent on the condition that he shall be put at the bottom of the seniority list of Junior Engineers of Respondent No. 2. Being aggrieved thereby, present writ petition has been filed.

3. Petitioner wants to sail in the same boat, by which six Junior Engineers of Respondent No. 3 were taken as employees of Respondent No. 2, as is evident from the minutes of the meeting of Respondent Nos. 2 and 3, held on 21st July, 2001, inasmuch as, those six persons have been shown in the seniority list, higher up than persons who were directly recruited by Respondent No. 2 as Junior Engineers. The fact remains that as on 21st July, 2001, Petitioner had not indicated any inclination to be an employee of Respondent No. 2 and, accordingly, he missed the boat through which those six persons sailed. Petitioner, accordingly, cannot compare himself with those six persons. Petitioner, in terms of the said decision of Respondent Nos. 2 and 3 dated 21st July, 2001, was treated as a deputationist with Respondent No. 2. A deputationist, in

accordance with law, on returning to his parent department / employer, gains back all that he is entitled to as an employee of the department / employer, but if the deputationist is absorbed in the department / employer, where he has been deputed, in accordance with law, he becomes an employee of the new employer on the date he is absorbed and acquires his seniority from that date and, accordingly, goes to the bottom of the seniority list. In the circumstances, there is no scope of this Court, interfering with the offer that Respondent No. 2 have given to the Petitioner.

4. We, accordingly, dispose of this writ petition by permitting the Petitioner to accept the offer given by Respondent No. 2 to him, that the deputation of the Petitioner with Respondent No. 2 shall come to an end and the Petitioner shall become an employee of Respondent No. 2, but his seniority shall count only from the date he is so treated as an employee of Respondent No. 2 or the Petitioner may go back to Respondent No. 3. Petitioner is directed to choose either of them in writing, if he chooses the first option, to Respondent No. 2 and if he chooses the second option, to Respondent No. 3 within a period of three months from today. The interim order, passed by this Court, shall continue for a period of four months from today.