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(2015) 05 AHC CK 0004

In the Allahabad High Court

Case No : Writ-A No. 46455 of 2005

Surendra Bahadur Singh — APPELLANT

Vs

State of Uttar Pradesh and Others — RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

Citation : (2015) 5 ADJ 566 : (2015) 4 AWC 3343 : (2015) 2 UPLBEC 1599

Hon'ble Judges : Manoj Kumar Gupta, J

Bench : Single Bench

Advocate : Siddharth Singh, Amit Singh and Shree Prakash Singh, for the Appellant; G. Dwivedi, G.S. Dwivedi, I.M. Kushwaha, S.K. Rai and Salil Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Manoj Kumar Gupta, J.—The petitioner, by means of instant writ petition, has challenged the order dated 14.6.2005 passed by the State Government through Secretary Revenue and Relief Commissioner, Lucknow holding that the deputation of the petitioner as Stenographer Grade II in the office of the fourth respondent (District Magistrate), Siddharth Nagar, his absorption in the regular cadre of Stenographer Grade II and his promotion to the post of Stenographer Grade I, were all illegal and dehors the provisions of the Rules.

2. One of the main contentions of the petitioner in the writ petition is that the impugned order has been passed without any notice and opportunity of hearing to him and is thus against all canons of natural justice. On 28.6.2006, when the writ petition was entertained, the following order was passed:--

"Heard Sri Naveen Sinha, Senior Advocate, assisted by Sri Siddharth Singh. Sri Salil Kumar Rai has appeared for caveator. He prays for and is granted two weeks'' time to file impleadment application and counter affidavit. Learned Standing Counsel shall also file the Counter affidavit within the aforesaid period of two weeks.

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The contention of the petitioner is that the impugned order dated 14.6.2005 has been passed without affording any opportunity of hearing and without confronting him with the documents on the basis of which it has been passed. A perusal of the impugned order dated 14.6.2005 prima facie demonstrates that the petitioner was neither given any opportunity prior to the passing of the impugned order by the respondent No. 2 nor the material which was relied upon for passing the impugned order.

In view of the aforesaid facts, the petitioner has made out a prima facie case for grant of stay order. The operation of the impugned order dated 14.6.2005 passed by the respondent No. 2, shall remain stayed until further orders of this Court. It shall, however, be open to the respondent No. 2 to pass a fresh order after giving opportunity to the petitioner in accordance with law as expeditiously as possible preferably within a period of six weeks from the date of presentation of the certified copy of this order before him."

3. In pursuance of the liberty granted by the order of this Court dated 28 June 2006, the State Government through its Under Secretary, Revenue Department, Lucknow had passed a fresh order dated 15.9.2006, by which the stand taken in the earlier order has been reiterated to be correct and the fourth respondent was required to proceed in accordance with the directions contained in the previous order dated 14.6.2005. The order dated 15.9.2006 passed by the State Government has also been subjected to challenge by amending the writ petition.

4. The facts in brief are that in the year 1988-89 a new district Siddharth Nagar was carved out of district Basti. At that time, the petitioner was working as Stenographer Grade II with the Project Director, District Rural Development Agency1, Basti. There was an urgent need of a stenographer in the newly created district and, therefore, on request of District Magistrate, Siddharth Nagar, the petitioner was sent on deputation for a period of one year to district Siddharth Nagar by an order dated 4.1.1989 passed by the President, D.R.D.A., Basti. Meanwhile, a regular post in the cadre of stenographer was sanctioned by Government Order dated 13.9.1989 in district Siddharth Nagar. The petitioner was absorbed on the newly created post on the basis of option given by him by an order of District Magistrate, Siddharth Nagar dated 5.1.1990. The petitioner was directed to be placed at the bottom of the seniority list of the stenographers Grade II working in the Collectorate since before. On 6.1.1990 a Selection Committee comprising of District Magistrate, Siddharth Nagar, and two other officers of the rank of Deputy Collector nominated by the District Magistrate conducted the exercise for filling up the only post of Stenographer Grade II. The proceedings of the Selection Committee discloses that Sri Prem Kumar Singh-the fifth respondent, who was working in the Collectorate on the post of Stenographer Grade II alongwith Munni Lal, Mohd. Hasim, Barsati Lal, Bal Dauji Sharma, were given opportunity to appear in the examination for selection to the post of Stenographer Grade I. It is recorded in the proceedings of the Selection Committee that the fifth respondent did not appear in the written examination,

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although other persons appeared in the examination. The Selection Committee, after examining respective merit of various candidates, found the petitioner to be most suitable for the post of Stenographer Grade I and recommended for his appointment in accordance with Rule 20 of the Uttar Pradesh District Offices (Collectorates) Ministerial Service Rules, 19802 on probation for a period of two years. On the same date, an order for his promotion on the post of Stenographer Grade I was issued by the fourth respondent.

5. It seems that after six years of promotion of the petitioner, the fifth respondent approached this Court in a writ petition3 raising grievance against the absorption of the petitioner in the regular cadre of Stenographers in the Collectorate and his promotion to the post of Stenographer Grade I. The writ petition was disposed of by an order dated 9.12.1997, requiring the Commissioner, Gorakhpur to decide the representation filed in that regard by the fifth respondent. The Commissioner, Gorakhpur, on being apprised of the order of this Court, being of the opinion that the matter comes under the jurisdiction of the Commissioner, Basti, forwarded the documents to him and requested for a decision in the matter. Consequently, the Commissioner, Basti by a detailed order dated 20.7.1998 rejected the representation of the fifth respondent after recording the following findings:--

"(i) the fifth respondent did not challenge the absorption of the petitioner in the regular cadre and his selection on the post of Stenographer Grade I for a considerable period. It is held that even according to the fifth respondent, the first representation was allegedly made by him on 15.4.1994, virtually after four years.

(ii) the proceedings of the Selection Committee indicate that the fifth respondent despite being given opportunity to participate in the selection process, did not appear in the written examination. An affidavit filed by the fifth respondent to the effect that he had no knowledge of the selection, was disbelieved on the ground that it has been filed for the first time after seven and a half years since the date the selection was made.

(iii) the plea raised by the fifth respondent that he had no knowledge of the selection proceedings and, therefore, could not challenge the same immediately, was disbelieved by holding that the fifth respondent was working in the same establishment and it is impossible that the promotion of the petitioner would not be in his knowledge.

(iv) before the impugned selection, four attempts were made in the past to fill up the post by direct recruitment, in which the fifth respondent was also given opportunity, but no one was found suitable. It is thus held that no ground was made out to annul the selection and appointment of the petitioner on the post of Stenographer Grade I."

6. The fifth respondent aggrieved by the order of the Commissioner, Basti Division approached the Board of Revenue, which is the head of the department,

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as per Rule 3(i) of the Service Rules. The Board of Revenue considered the representation filed by the fifth respondent and passed a detailed order on 8.6.2000 rejecting the representation filed by the fifth respondent. The findings recorded by the Commissioner, Basti were upheld.

7. The fifth respondent being still not satisfied, approached the State Government. The State Government also did not find any ground to interfere with the order of the Commissioner, Basti and the Board of Revenue and rejected the representation filed by the fifth respondent by an order dated 20.2.2002.

8. The fifth respondent did not challenge the orders passed by the Commissioner, Basti Division, Basti, the Board of Revenue and the State Government and permitted these orders to attain finality.

9. It seems that the fifth respondent on intervention of a State Minister succeeded in getting the controversy reopened, when the Government by a letter dated 27.10.2004 called for a fresh report from the District Magistrate, Siddharth Nagar. The District Magistrate, Siddharth Nagar by a communication dated 8.12.2004 informed the State Government that the controversy stands settled by order of the Commissioner Basti Division, Basti, the order of the Board of Revenue and the order of the State Government and thus, he is not in a position to make any comment in relation to these orders. However, the State Government revisited the entire controversy by an order dated 14 June 2005 and came to the conclusion that the deputation and absorption of the petitioner in the regular cadre of Stenographer Grade II in the Collectorate, as well as his promotion as Stenographer Grade I were all illegal and, therefore, cancelled the previous order of the State Government dated 20.2.2002, the order of the Board of Revenue dated 8.6.2000 and the order of the Commissioner Basti Division dated 20.7.1998. It was further held that the absorption of the petitioner in the regular cadre by itself was illegal. However, being of the opinion that certain rights have accrued in favour of the petitioner, as a result of his absorption in the District Establishment, the order of absorption was not cancelled, but the District Magistrate was required to pass the necessary orders, after providing the petitioner with an opportunity of hearing. It is in the aforesaid background that the instant writ petition came to be filed.

10. The parties have exchanged their pleadings and with their consent, the matter was heard finally.

11. The contentions of Sri Ashok Khare, Senior Advocate appearing on behalf of the petitioner are as under:--

"(i) The challenge led to the absorption of the petitioner in the regular cadre of Stenographer Grade II and his promotion to Stenographer Grade I stood concluded with the rejection of the representation filed by the fifth respondent by the Commissioner Basti Division, Board of Revenue and by the State Government. The State Government was not having the power to review its previous order dated 20.2.2002.

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(ii) The fifth respondent, who was working in the same office did not challenge the absorption and the promotion of the petitioner for more than four years. It was a valid consideration on account of which the Commissioner, Basti, Board of Revenue and the State Government did not interfere with the absorption and promotion granted to the petitioner, while rejecting the representation, earlier filed by the fifth respondent. The said aspect has not been considered by the State Government while passing the order dated 15.9.2006 despite the fact that the petitioner in his written submissions before the State Government and also at the time of hearing, specifically raised the said plea.

(iii) The lien of the petitioner at D.R.D.A. had come to an end on 6.1.1991 and the same is specifically noted in the note sheet prepared by the second respondent, who heard the parties on 28.9.2005. However, the State Government while passing the impugned order dated 15.9.2006 had not adverted to the same.

(iv) The second respondent after hearing the parties on 28.9.2005 came to the conclusion that there was no illegality in the previous order of the State Government dated 20.2.2002 and recommended for cancellation of the order dated 14.6.2005. However, while passing the impugned order dated 15.9.2006, the State Government had not given any reason for not agreeing with his recommendations.

(v) The earlier order was passed by the second respondent and the Court while passing the stay order dated 28.6.2005 granted liberty to the second respondent to pass fresh order after affording opportunity of hearing to the petitioner. In pursuance of the said order, the hearing took place before the second respondent on 28.9.2005, who, as noted above, made recommendations in favour of the petitioner. However, on the intervention of the minister of the concerned department, the impugned order dated 15.9.2006 had been issued under signatures of Under Secretary, Sri Vimal Kishor Khanna. He is an officer subordinate to second respondent and was not competent to pass the impugned order.

(vi) The order dated 15.9.2006 is a non speaking order. It does not deal with the submissions and contentions raised by the petitioner in this written submissions and at the time of hearing. Such an order is not sustainable in the eyes of law and is liable to be quashed."

12. Learned counsel for the petitioner has placed reliance on Mansaram Vs. S.P. Pathak and Others, AIR 1983 SC 1239 : (1983) 2 SCALE 1027 : (1984) 1 SCC 125 : (1984) 1 SCR 139 , Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, AIR 1987 SC 2186 : (1987) 13 ECR 944 : (1987) 32 ELT 8 : (1987) 3 JT 670 : (1987) LabIC 1901 : (1987) 2 SCALE 667 : (1987) 4 SCC 525 : (1988) 1 SCR 357 : (1988) 1 UJ 143 , Union of India (UOI) and Others Vs. A. Durairaj (Dead) by L.Rs., AIR 2011 SC 1084 : (2011) 128 FLR 1053 : (2011) 3 JT 254 : (2011) 1 SCALE 494 : (2010) 14 SCC

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389 , State of Orissa Vs. Kanhu Charan Majhi, (2014) 140 FLR 11 : (2013) 13 SCALE 289 : (2014) 1 SCC 156 : (2014) 1 SCC(L&S) 45 : (2014) 1 SCT 309 : (2014) 2 SLJ 296 , Kalindi Pandey v. State of U.P. 2013 (11) ADJ 705 and on a judgment of this Court dated 20.11.2014 in the case of Prem Prakash Sharma v. Joint Director of Education4.

13. Per contra, learned standing counsel and Sri Salil Kumar Rai appearing on behalf of the respondents supported the orders passed by the State Government. It is contended that the petitioner being an employee of D.R.D.A. could not have been sent on deputation to a department under the State Government, nor could his services be absorbed. It is submitted that the post of Stenographer Grade II against which the petitioner was absorbed, is a post reserved for being filled up by direct recruitment and thus, the absorption of the petitioner against the same was illegal. It was further urged that the promotion of the petitioner on the post of Stenographer Grade I was also illegal as no effort was made to fill up the post initially by promotion as per the procedure prescribed under Rule 17. It is further contended that the post of Stenographer Grade I can be filled up by promotion of permanent stenographers. Under Rule 20, a person appointed against a substantive vacancy is placed on probation for a period of two years. The petitioner had not completed two years of service on the post of Stenographer Grade II on the date he was granted promotion to the post of Stenographer Grade I and thus, the entire exercise was illegal. It is vehemently contended that action of the authorities in passing an order for absorption of the petitioner in the regular cadre on 5.1.1990 and holding proceedings for selection to the post of Stenographer Grade I on 6.1.1990, the very next date and granting appointment to the petitioner on the said post on the same date was wholly motivated, illegal and dehors the Rules. In support of their contentions, Sri Salil Kumar Rai has placed reliance on Indu Shekhar Singh and Others Vs. State of U.P. and Others, AIR 2006 SC 2432 : (2006) 5 JT 260 : (2006) 5 SCALE 107 : (2006) 8 SCC 129 : (2006) SCC(L&S) 1916 : (2006) 1 SCR 497 Supp : (2006) AIRSCW 2582 : (2006) 5 Supreme 12 , Bhupendra Nath Hazarika and Another Vs. State of Assam and Others, AIR 2013 SC 234 : (2013) 136 FLR 161 : (2012) 12 JT 44 : (2013) LabIC 1375 : (2013) 1 LLN 1 : (2012) 11 SCALE 469 : (2013) 2 SCC 516 : (2013) 2 SCT 306 : (2013) AIRSCW 401 : (2012) 8 Supreme 235 , University of Kashmir and Others Vs. Dr. Mohd. Yasin and Others, AIR 1974 SC 238 : (1974) LabIC 181 : (1974) 1 LLJ 109 : (1974) 3 SCC 546 : (1974) 2 SCR 169 , Shesh Mani Shukla Vs. D.I.O.S. Deoria and Others, AIR 2010 SC 1433 : (2009) 10 JT 309 : (2009) 15 SCC 436 : (2010) 1 SCC(L&S) 533 : (2009) 12 SCR 841 : (2010) AIRSCW 615 , Municipal Corporation, Jabalpur Vs. Om Prakash Dubey, AIR 2007 SC 893 : (2007) 112 FLR 810 : (2007) 1 LLJ 1026 : (2006) 13 SCALE 266 : (2007) 1 SCC 373 : (2007) 1 SCC(L&S) 256 : (2006) 10 SCR 85 Supp : (2007) 3 SLJ 31 , Govt. of A.P. and Others Vs. K. Brahmanandam and Others, AIR 2008 SC 3170 : (2008) 1 CLT 411 : (2008) 117 FLR 1086 : (2008) 7 SCALE 685 : (2008) 5 SCC 241 : (2008) 2 SCC(L&S) 266 : (2009) 2 SLJ 323 : (2008) 1 UJ 667 : (2008) AIRSCW 5352 and Secretary, State of Karnataka and

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Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 .

14. At the time of hearing, the original records were produced before the Court. It transpired therefrom that before passing the order dated 14.6.2005, the State Government neither apprised the petitioner that the entire controversy is being re-visited by it, nor gave him any opportunity of hearing. In fact, a specific assertion in this regard has been made in paragraph 27 of the writ petition. Even in the counter affidavit filed before this Court by Under Secretary Sri V.K. Khanna on behalf of the respondents, there is no denial to the specific assertions made in this regard. Admittedly, in previous round of litigation between the parties starting with the filing of writ petition by the fifth respondent before this Court, in which order dated 9.12.1997 was passed directing the Commissioner to decide the controversy until the passing of the order by the State Government dated 20.2.2002, time and again, the absorption, appointment and promotion of the petitioner were all upheld. In the aforesaid background, it was all the necessary for the State Government to have afforded proper opportunity of hearing to the petitioner before re-visiting the controversy. Although, the concluding part of the order of the State Government dated 14.6.2005 directs the District Magistrate to take necessary action for cancelling the absorption of the petitioner after giving him an opportunity of hearing but the same, in my considered view, does not meet the requirements of the principles of natural justice. The State Government had itself entered findings on all vital issues including the issue relating to the absorption of the petitioner in the regular cadre and the fourth respondent, who has been directed to pass the orders after hearing the petitioner, would, in fact, be bound by the adjudication already made by the State Government. Thus, even if the opportunity is afforded to the petitioner on the limited issue relating to his absorption in the District Establishment, it would be an empty formality. Apart from it, as regards the promotion, the issue was finally determined by the State Government and on the said question, the order of the State Government had not contemplated for any hearing being afforded to the petitioner. Consequently, I am of the considered opinion that the impugned order dated 14.6.2005 was passed in gross violation of principles of the natural justice and is thus, void and non est in the eyes of law and is hereby quashed.

15. The issue which now remains to be considered is regarding the validity of the order passed by the Under Secretary on behalf of the State Government dated 15.9.2006 again holding the deputation, absorption and promotion of the petitioner to be illegal. The record reveals that after passing of the interim order by this Court on 28.6.2006, the petitioner made a detailed written representation before the Secretary, Revenue Department, U.P. Government. It is borne out from the record that the petitioner was heard on 28.9.2005 by the second respondent and thereafter, the second respondent prepared an office note dated December 2006, in which following findings, inter alia, were recorded:--

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"(a) The lien of the petitioner in D.R.D.A. had come to an end on 6.1.1991.

(b) Though, the petitioner being an employee of D.R.D.A., his deputation in the establishment at Collectorate was not proper, but the record reveals that on account of creation of new district Siddharth Nagar, the authorities themselves required his services and, therefore, he was posted on deputation for a period of one year in the newly created district.

(c) The fifth respondent despite being given opportunity to appear in the written examination for selection to the post of Stenographer Grade I, abstained from the same. In the past, his selection to the post of Stenographer Grade I could not be made as his short-hand speed was not found to be satisfactory.

(d) On receipt of representation from the fifth respondent and in pursuance of direction of this Court dated 9.12.1997 in the writ petition filed by him, the Commissioner, Basti by order dated 20.7.1998, the Board of Revenue by order dated 8.6.2000 and the State Government by order dated 20.2.2002 rejected the representations filed by the fifth respondent. These orders were not challenged by the fifth respondent before any court of law and have attained finality. As such, there is no occasion to review the orders passed earlier."

In the concluding part of the office note prepared by the second respondent, he made recommendation to cancel the order dated 14.6.2005 and it is to the following effect:--

16. The note sheet reveals that the file was placed before the concerned minister on 21.1.2006 and he directed that opinion of the Karmik Vibhag be taken in the matter. In pursuance thereof, the opinion of the Karmik Vibhag was obtained on 6.3.2006. It opined that the absorption, appointment and promotion of the petitioner were illegal. Thereafter, the matter was placed before the Under Secretary, Revenue Department and he directed that the opinion of Law Department be taken in the matter. However, the note sheet reveals that the Law Department refused to give any opinion in the matter on the pretext that the matter relates to a controversy pending before this Court. Thereafter, the Under Secretary, Revenue Department concurred with the opinion given by the second respondent in December 2005 by making the following note:--

17. However, the concerned minister refused to accept the opinion of the Secretaries of his own department. He held that the opinion of the Karmik Vibhag is correct and directed that action should be taken accordingly. In consequence, the impugned order dated 15.9.2006 had been passed.

18. The most striking feature discernable from the record is that the second respondent, who heard the matter on 28.9.2005, had opined in favour of the petitioner. The same view was taken by the Under Secretary in his office note dated 1.4.2006. However, on direction of the minister of the concerned department, the impugned order came to be passed. A perusal of the impugned order reveals that it does not deal with any of the contentions of the petitioner

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namely; (i) that the State Government which had decided the controversy long back by order dated 20.2.2002, had no power to review its order. (ii) that the order dated 20.2.2002 had attained finality, as it was not challenged by the fifth respondent before any court of law and thus, after lapse of three years, on an intervention of a minister, the controversy could not have been reopened. (iii) the Commissioner, Basti Division, Basti in his order dated 20.7.1998 as well as the Board of Revenue and the State Government in their orders dated 8.6.2000 and 20.2.2002 respectively had rightly concluded that the claim made by the fifth respondent is barred by latches and acquiescence and the controversy cannot be reopened at such a belated stage, especially when the lien of the petitioner in D.R.D.A. had come to an end long back on 6.1.1991. The second respondent, who afforded personal hearing to the petitioner, had opined on all these issues in favour of the petitioner. However, the impugned order now passed by the State Government through its Under Secretary dated 15.9.2006 does not deal with any of the contentions raised by the petitioner, nor does it advert to the opinion given by the second respondent, who heard the matter.

19. Though, in normal course, it is permissible for the State Government to differ with the opinion of the second respondent but in the facts of the instant case, where this Court had granted liberty to the second respondent to pass a fresh order after hearing the petitioner and in compliance whereof, hearing took place before the second respondent, his opinion carried a considerable weight. The State Government even if it was not ad-idem with the recommendations made by the second respondent, the least which was required, was that while taking a different view, it should have adverted to the reasonings given by the second respondent. It was also necessary in the facts of the instant case that the State Government should have recorded reasons, howsoever brief, for disagreeing with the recommendations made by the second respondent. However, the order of the State Government is wholly cryptic, bereft of any reason and has been passed in a perfunctory manner.

20. It is noticeable that though the State Government by order dated 15.9.2006 has re-affirmed its stand taken in the earlier order dated 14.6.2005 but even a perusal of the earlier order would show that it does not deal with the issue relating to the power of review of the State Government, the previous order having attained finality, inaction on part of the fifth respondent in raising the issue for considerable period and coming to an end of the lien of the petitioner at D.R.D.A.

21. This Court, when it granted liberty to the second respondent to pass fresh order after giving an opportunity of hearing to the petitioner, it was implicit therein that various pleas and contentions, which were raised by the petitioner, would be specifically dealt with while passing a fresh order. However, there is a complete abdication of the said legal requirement and in view of which, the order now passed by the State Government dated 15.9.2006 also cannot be sustained and is hereby quashed.

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22. As a result of the foregoing discussion, the writ petition succeeds and is allowed. However, since the orders have been quashed primarily on the ground of violation of principles of natural justice and, therefore, it shall be open to the State respondents to pass a fresh order in accordance with law, in which event, it is clarified that the petitioner shall be given a fresh opportunity of hearing.

23. No order as to costs.

1D.R.D.A.

2Service Rules

3W.P. No. 41180 of 1997

4Writ A No. 15076 of 2000

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