

(2005) 11 AHC CK 0214

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15566 of 2005

Suresh Chandra and Prem Chandra Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Constitution of India, 1950 — Article 309, 348
Companies Act, 1956 — Section 617

Citation : (2006) 5 AWC 5176

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Ashok Khare and V.D. Chauhan, for the Appellant; Neeraj Tiwari and C.K. Rai and S.C., for the Respondent

Judgement

Rakesh Tiwari, J.—This writ petition has been filed by Sri Suresh Chandra and Sri Prem Chandra Verma- petitioner Nos. 1 and 2 who were appointed as Clerk and muster roll clerk respectively in the U.P. State Cement Corporation Ltd., Churk, Sonbhadra (for short "Corporation"). The petitioners have sought the following reliefs in the petition:-

(i) for quashing the order dated 18.2.2005 passed by the Director, State Urban Development Agency, U.P., Lucknow repatriating the petitioners to the Corporation on account of completion of five years period of deputation in the State Urban Development Agency;

(ii) for a direction of a suitable nature commanding the respondents not to interfere in the working of the petitioners as Junior Clerk/Typist at District Urban Development Agency and to make regular payment of monthly salary;

(iii) writ, order or direction of a suitable nature commanding the respondents to treat the petitioners as absorbed on the post of Junior Clerk/Typist or to absorb the petitioners in alternative employment in Government service.

2. An advertisement dated 14.4.1999 was issued by the Director, State Urban

Development Agency, U.P., Lucknow (for short "SUDA") inviting applications for appointment on deputation. The petitioners applied and were selected. They were consequently relieved from the Corporation and joined SUDA on deputation.

3. The financial condition of the Corporation was not healthy and it deteriorated to the extent that this Court by order dated 8.12.1999 directed winding up of the Corporation and services of all the employees stood terminated on the winding up. The Official Liquidator assumed charge of the Corporation on 31.7.2001.

4. It may be mentioned here that the State of U.P. had framed rules for absorption of retrenched employees in Government establishments known as Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 (in brief "the Rules of 1991"). The aforesaid Rules of 1991 were rescinded by Government vide order dated 8.4.2002, which has been appended as Annexure 15 to the writ petition.

5. Counsel for the petitioner submits that the main prayer in the writ petition is the third prayer, which is based upon the fact that the petitioners were employees of the Corporation which has been wound up under a winding up order passed by this Court. As a consequence thereof the services of all the employees of U.P. State Cement Corporation, including the petitioners stood terminated on its closure. The Counsel further submits that the retrenched employees of the Corporation are entitled to absorption in alternate employment in any other Government establishment in the State under the Rules of 1991; and that each of the petitioners fulfills the conditions stipulated under the Rules of 1991 but have not been absorbed in any Government establishment under the respondents. It is also submitted that this Court with regard to other retrenched employees of the Corporation has issued directions for their absorption and some of such retrenched employees have already been absorbed. In support of the contentions, the petitioners' Counsel relied upon the judgment in Bageshwari Prasad Srivastava v. State of U.P. and Ors.- 1999 (3) A.W.C.1456, which has been affirmed by a Division Bench vide judgement dated 19.11.2001 in Special Appeal No. 540 of 1999 as well as Hon'ble Supreme Court vide judgment dated 18.3.2002 in Special Leave to Appeal (Civil) No. 5397 of 2002.

6. The Counsel for the petitioners then contends that the mere fact that the Rules of 1991 have been rescinded by notification dated 8.4.2003 does not have the effect of doing away with the entitlement of a person retrenched prior to such decisions in whose favour a right for absorption stands accrued under the aforesaid Rules. In support of this contention, he placed reliance upon a decision in Amar Nath and Others Vs. State of U.P. and Others,

7. It is vehemently urged that in view of citations above, the petitioners are entitled to absorption in alternative employment under the State Government itself. He urged that prayer Nos. (i) and (ii) may be considered in the light of such entitlement of the petitioners for absorption and that there can be no justification, whatsoever, for repatriation of the petitioners to an establishment

which has ceased to exist on its closure especially when there exists an independent right of absorption in alternative employment under the rules. He urged that the only appropriate course appears to be to direct the State Government to absorb the petitioners in alternative employment in any of its establishment within a period specified by this Court and during the intervening period the petitioners may be continued in SUDA as they have been serving the Agency for the past several years.

8. The Counsel for the respondents rebutting the arguments advanced on behalf of the petitioners submits that the petitioners are permanent employees of the Corporation and were working only on deputation in SUDA. He states that the petitioners could have been absorbed by the borrowing department with the consent of the lending department while on deputation. An employee on deputation is only sent by the parent department for short period with the consent of the employee concerned and he can continue on deputation in borrowing department only if he had his lien in the parent department.

9. It is submitted that in the present case, the petitioners have concealed the fact that their parent department, i.e., the Corporation had been wound up by the order of this Court and services of all its employees stood terminated upon closure of the establishment. It is submitted that the maximum period for deputation as per Government Order, which has also been adopted by SUDA is five years and on its expiry the borrowing department has repatriated the petitioners to their parent department, i.e., the Corporation as it did not want further services of the petitioner. It is urged that had the borrowing department been interested in retaining the petitioners it would have certainly made such request.

10. Counsel for the respondents has also emphasized the fact that SUDA is an autonomous body created under the Societies Registration Act, 1860 and its aim and object is only to implement different time bound central as well as State Government schemes and has no permanent establishment, i.e., no one is appointed in SUDA on permanent basis. It is urged that the order of absorption relied upon by the petitioners is not applicable to the facts and circumstances of this case and, therefore, they cannot be absorbed permanently in SUDA which, in fact, is a temporary establishment.

11. It is lastly urged that the interim order dated 9.3.2005 passed by this Court in this petition was challenged in Special Appeal No. 451 of 2005, which was allowed by the following judgement and order dated 13.4.2005 by the Division Bench of this Court holding that :-

The appeal is taken up and summarily disposed of the allegations in the stay application cannot be treated to be admitted.

In the impugned order dated 9.3.2005, pending the disposal of the writ, the Hon"ble Single Judge has stayed the operation of the order by which the petitioners were repatriated to their parent organization.

It might be that the parent organization is in doll drums or that the official liquidator has already taken over but this does not mean that the appellant is compelled to keep the writ petitioners in their payroll and by doing so in many similar cases itself become sick.

The paper book contains instances where similar stay order have already been set aside in appeal. The interim order impugned in this appeal is set aside. The writ petitions will be at liberty to pursue their remedies or obtain employment elsewhere as they might be entitled.

The appeal is allowed.

Dt. 13.4.2005 Sd/- Ajoy Nath Ray, C.J. Sd/- Ashok Bhusan, J."

12. Counsel for the respondents, in support of his contentions, placed reliance on the decisions in Kunal Nanda v. Union of India and Anr. - (2005) 5 SCC 362; Mahesh Kumar Parmar and Ors. v. S.I.G. of Police and Ors. (2002) 9 SCC 48 and State Urban Development Agency (SUDA), Lucknow v. Dinesh Chandra Saxena and Ors.- (2004) 3 UPLBEC 2963.

13. The questions for consideration in the present case are (i) whether an employee on deputation working in the borrowing department has any lien or enforceable right for absorption in the borrowing department and (ii) whether the petitioners have any legal and enforceable right under the Rules of 1991 for being absorbed in borrowing department claiming to be on deputation?

14. The absorption Rules of 1991 provide that an employee of a Government company on winding up would be a retrenched employee and he shall be entitled for absorption in Government service in accordance with orders issued from time to time. Since provisions of the Rules have been heavily relied upon by the parties in support of their case, for better understanding of the controversy they are quoted below :-

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of notification No. 1/4/90 Karmik 2 dated May 9, 1991:-

No. 3/4/90- Karmik-2

Dated May 9, 1991

15. In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules to provide for the absorption in Government service of the retrenched employees of the Government or of public Corporations:

The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991.

1. (1) These rules may be called the Uttar Pradesh Absorption of Retrenched Employees of Government of Public Corporations in Government Service Rules,

1991.

(2) They shall come into force at once.

(3) They shall apply to the posts under the rule making power of the Governor of Uttar Pradesh under the proviso to Article 309 of the constitution.

2. Unless there is anything repugnant in the subject or context, the expression -

(2) appointing authority" in relation to any post for which an employee was retrenched means the authority empowered to make appointment to such post:

(a) "Public Corporation" means a body corporate established or constituted by or under any Uttar Pradesh Act except a University or local authority constituted for the purpose of Local Self Government and includes a Government Company within the meaning of Section 617 of the Companies Act, 1956 in which the State Government has prepondering interest:

(b) "retrenched employee" means a person who was appointed on a post under the Government or a public Corporation on or before October 1, 1986 in accordance with recruitment to the post and was continuously working in any post under the Government or such Corporation upto the date of his retrenchment due to reduction in or winding up of, any establishment of Government or the public Corporation, as the case may be, and in respect of whom a certificate of being a retrenched employee has been issued by the appointing authority.

(c) "service rules" means the rules made under the proviso to Article 309 of the Constitution, and where there are no such rules, the executive instructions issued by the Government, regulating the recruitment and conditions of service of persons appointed to the relevant service.

3. (1) Notwithstanding anything to the contrary contained in any other service rules for the time being in force, the State Government may be notified order require the absorption of the retrenched employees in any post or service under the Government and may prescribe the procedure for such absorption including relaxation in various terms and conditions of recruitment in respect of such retrenched employees.

(2) The provisions contained in relevant service rules shall be deemed to have been modified to the extent of their inconsistency with the provisions made in the notified order referred to in Sub-rule (1).

By order Neera Yadav Secretary

16. The aforesaid rules for absorption remained in force for about 12 years and were rescinded by Government order dated 8.4.2003. The rescinding order is contained in Annexure 15 to the writ petition, relevant portion of the said Rules, 2003 is as under :-

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lkoZtfud fuxe esa ekSfyd gSfl;r ls iw.kZ fd;s x;s o"kksZ rd fujUrj lsok dh gks !?

17. The question of absorption of retrenched employees was considered in the case of Bageshwari Prasad Srivastava (supra) wherein the Court, after considering the question of retrenchment and its meaning as well as Rules of 1991 decided the same on the anvil of object of framing of the Rules for absorption, quashed the order and directed the respondents to absorb the petitioners of that case, who were employees of Bhadohi Woolens Limited in Government service in accordance with their qualifications in class III and IV posts forthwith. The aforesaid order was passed in the backdrop that the employees/petitioners in that case were not being issued retrenchment certificate but the Managing Director had written for absorption of all the employees to the State Government. It was not a case of employees who were working in another concern on deputation or closure of parent establishment or winding up of the same. Thus this case is not applicable to the facts and circumstance of the present case. In this backdrop, neither the decision in Bageshwari Prasad Srivastava (supra) nor subsequent decisions in consequence thereof are applicable to the present case.

18. As regards the first question as to whether an employee on deputation working in the borrowing department has any lien or enforceable right for absorption in the borrowing department, suffice it to say that deputation is tripartite settlement. Consent of the concerned employee, approval of parent department and acceptance by borrowing department are the essential ingredients for deputation. An employee, on deputation, cannot claim an enforceable right for absorption in the borrowing department. If the borrowing department feels that the services of a particular employee, on deputation, are beneficial in public interest and it desires to retain such employee permanently, it can absorb him with the consent of concerned employee and the parent department. In the present case, the borrowing department is not prepared to retain the petitioners on expiry of their period of deputation and the services of all employees, including the petitioners, in the parent department have been terminated by virtue of closure of the establishment by an order of this Court. Therefore, the petitioners, cannot claim their absorption, as a matter of right.

19. So far as second question as to whether the petitioners have any legal and enforceable right under the Rules of 1991 for being absorbed, while on deputation, is concerned, the Rules of 1991 only provide that a retrenched employee can be provided alternate employment in the State Government establishments. This does not mean that the borrowing department is bound to absorb the petitioners and in any case the Rules of 1991 now stand rescinded. In the circumstances, the petitioners have no legal enforceable right for absorption in other Government departments.

20. For the reasons stated above, the writ petition fails and is dismissed without any order as to costs.