(2014) 09 UK CK 0012

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 153 of 2014

Swatantra Kumar Tomar APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 11-09-2014

Acts Referred:
Uttar Pradesh Electricity Reforms Act, 1999 — Section 13, 23

Citation : (2015) LabIC 31

Hon'ble Judges : K.M. Joseph, C.J;V.K. Bist, J

Bench : Division Bench

Advocate : Manish Arora, Advocates for the Appellant; Pradeep Joshi and Vinay Kumar, Advocates for the Respondent

Judgement

K.M. Joseph, C.J.—Petitioner has been placed under suspension by the Managing Director of the 2nd respondent/Corporation. According to the petitioner, he was working as General Manager (Finance) and was also In-charge of General Manager (Finance). Petitioner was, actually, Deputy General Manager (Finance) and was In-charge of the General Manager (Finance). The only question, which is projected before us, relates the power of the Managing Director to place the petitioner under suspension. According to the learned counsel for the petitioner, the Appointing Authority of the petitioner is the Chairman and it is only the Chairman who would have placed the petitioner under suspension. In this regard, he drew our attention to page 33 of the paper-book to show that the Chairman is an Appointing Authority of Deputy General Manager. He next drew our attention to page 140 of the paper book. He also drew our attention to the U.P. Government Servant (Discipline and Appeal), Rules, 1999, Rule 4 of which provides for suspension. According to the said Rule, inter alia, it is the Appointing Authority who may place a Government servant under suspension. He next drew our attention to Rule 6, which provides for the Disciplinary Authority and it stated that the Appointing Authority of the Government servant shall be his Disciplinary Authority, who may impose any of the penalties. Therefore, according to him, petitioner has been placed under suspension by an incompetent person and, on that short ground, the suspension must be set aside. Per contra, the case of the respondents would appear to be as follows:--

The UPSEB was a Board constituted in 1959 under the Electricity Civil Supply Act, 1948. The Uttar Pradesh Electricity Reforms Act, 1999 was notified on 07.07.1999 and it came into force on 14.01.2000. Section 13 of the said Act provides that on the date of notification and operation of the said Act, the State is to form a Company by the name ''the Uttar Pradesh Power Corporation Limited'' under the Companies Act, 1956. A transfer scheme was to be notified and till such scheme is notified, assets, liabilities and interest of the Board were to be vested in the State Government. In exercise of the power under Section 23 of the Reforms Act, the Uttar Pradesh Electricity Reforms Transfer Scheme, 2000 was notified on 14.01.2000. It provided for the conditions for vesting of the property and interest of the Board in the Government and re-vesting in the Company. Reference is made of Section 63 of the Uttar Pradesh Re-organisation Act, 2000. It further, inter alia, provided that the Uttar Pradesh Power Corporation Limited was bifurcated into two entities and the Power Transmission Corporation of Uttarakhand was created and registered as a Government Company which started functioning with effect from 01.06.2004. The Corporation is governed by Articles of Association. Article 50(19) of the said Articles provides that the Board of Directors will have the power to vary and repeal bye-laws for the regulations of the business of the Company. Article 51(16) gives a power to the Board of Directors, inter alia, to suspend the officers, amongst others, General Managers and Managers. There is a reference of various complaints against the petitioner.

2. Petitioner did not file rejoinder affidavit. Therefore, the case of the respondents would appear to be as follows:--

While the learned counsel for the respondents submit that the Uttar Pradesh Government Servants Rules are applicable, it is submitted that in view of the formation of the Company, which is now headed by a Managing Director, the Managing Director becomes the Appointing Authority for the post of Deputy General Manager. Therefore, the Managing Director of the Company is competent to suspend the petitioner. He would submit that the Board has delegated the power to the Managing Director and the Managing Director thought it fit to suspend the petitioner. He would also submit that while the Chairman, under the U.P. Government Servants Rules, was the Appointing Authority after formation of the company, it is not open to the petitioner to contend that it is the Chairman who is the Appointing Authority.

3. To rebut this, the learned counsel for the petitioner drew our attention to the Board''s decision, by which the alleged delegation took place and he would submit that suspension is not a matter which falls within the delegated power of the Managing Director. In this regard, he drew our attention to the actual authority, which is delegated to the Managing Director. The same reads as follows:

"RESOLVED THAT subject to observance of the provisions of Companies Act, 1956, the Memorandum and Articles of Association of the Company, relevant directives of the State Government applicable to the Company policies, rules, regulations and budgets as may be approved by the Board of Directors from time to time and principles of financial propriety and subject to the general supervision and ultimate control by the Board of Directors, the Managing Director be and is hereby authorized to exercise all or any of the power vested in the Board for the management and administration of the company, except on matters as set out in Annexure "A" in respect of which prior approval of the Board of Directors/Government will be necessary."

And then, he would draw our attention amongst the matters, which are excluded from the delegation. The same is mentioned in item No. 5(a), which reads as under:--

"5. PERSONNEL:

(a) Framing of, and any changes in Policies, rules and Regulations relating to all personnel matter including creation of posts recruitment, training, manpower development, promotion, deputation and other terms and conditions of service and disciplinary rules and procedures, in respect of employees of the Company."

4. According to the learned counsel for the petitioner, since other terms and conditions of service and disciplinary rules and procedure are mentioned in item 5(a), that would take in suspension and, therefore, without the prior approval of the Board, which the Board has not given in this case, the suspension of the petitioner was unauthorized.

5. We are unable to see any merit in this argument. What is excepted from the Authority of the Managing Director in terms of the delegation is framing of, and any changes in policies, inter alia, and other terms and conditions of service and disciplinary rules and procedure in respect of employees of the Company. The Board of Directors has a power to suspend going by the Articles of Association of the Company. The power to suspend is delegated. Since there is a power of the Board to suspend and that power, in our view, delegated to the Managing Director, we would think that the suspension cannot be challenged on the ground that it is unauthorized. We have already noticed that after the formation of the Company, it is the Managing Director who is the Appointing Authority. So, we see no merit in the contention of the petitioner. The writ petition fails and the same is dismissed. No order as to costs.