

(2015) 02 DEL CK 0353

In the Delhi High Court

Case No : Writ Petition (C) 4826/2014

Union of India and Others

APPELLANT

Vs

Devender Kumar

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 3 AD 257

Hon'ble Judges : I.S. Mehta, J.;Kailash Gambhir, J.

Bench : Division Bench

Advocate : Anuj Aggarwal, for the Appellant; Pradeep Kumar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the order dated 21.02.2014 passed by learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 179/2011 whereby the learned Tribunal has allowed the Original Application preferred by the respondent.

2. Assailing the order dated 21.02.2014, the learned counsel for the petitioner submits that the learned Tribunal has failed to appreciate the fact that the respondent was engaged as part time casual labourer and therefore he had no vested right to occupy this post. He further submits that the complete ban was imposed by the petitioners for appointing casual labourers after 1.9.1993 and the instructions to this effect were not being followed at certain Post Offices and realising this fact, the Postal Directorate had issued fresh directions vide letter No. 4-4/2009/PCC dated 19.11.2010 thereby notifying a complete ban on the engagement of casual labourers w.e.f. 1.12.2010. It is in compliance of the said directions of Postal Directorate, he submits that the services of the respondent were dispensed with on 10.4.2011. The learned counsel for the petitioner thus submits that it was the policy decision taken by the Government putting a

complete ban on engagement of casual labourer on or after 1.9.1993, based on which fresh instructions were issued by the Postal Directorate on 19.11.2010 and therefore, the petitioners had rightly taken a decision to dispense with the services of the respondent on the post of part time casual labourer. He further submits that the learned Tribunal has failed to appreciate the fact that the respondent can not take the benefit of the error committed by the petitioner department which was subsequently rectified by the Department by issuing a fresh notification dated 19.11.2010. He also argued that the respondent has no legal right to claim appointment on the post of Gramin Dak Sewak when he had no right to continue on the same.

3. We have heard the submissions made on behalf of both the parties and given our thoughtful consideration to the arguments advanced by them.

4. The respondent was initially engaged as part time casual labourer in Krishna Nagar Head Post Office (KNHPO for short) w.e.f. 15.1.1996. While he was working in the said capacity, Chief Post Master KNHPO had issued an Employment Notice dated 15.09.2008 inviting applications from casual labourers/part time employees of the KNHPO, who were willing to be appointed against two vacant posts of Gramin Dak Sewak. The conditions which were required to be fulfilled for such an appointment are reproduced herein:-

"i) Applicant should have rendered service as Casual Labourer/Part Time Casual Labour for complete one year;

ii) Applicant's engagement should have been made through Employment Exchange; and

iii) Applicant should possess the educational qualification of VIIIth pass. But the applicant with Xth class qualification will be prepared. (SIC)"

5. The respondent fulfilled the aforesaid conditions and applied for one of two vacant posts of Gramin Dak Sewak vide his application dated 22.09.2008. This respondent was selected on the said post. On his selection, the senior post master, Krishna Nagar, he got all the pre-appointment formalities of verification of character, antecedents and medical examination done during March 2009. The concerned Deputy Commissioner of Police had verified his character antecedents and certified the same to be satisfactory. Before giving an appointment to the respondent on the said post, the Senior Postmaster vide his letter dated 29.04.2009 sought the approval of SSPOs. In this letter, the senior postmaster stated that due to shortage of Group D staff, office was facing lot of hardship. Again, the Senior Postmaster KNHPO vide his letter dated 03.07.2010 addressed to the Assistant Director in the Recruitment Office of the CPMG Delhi Circle stated that as per letter received from DPS(P), permission for filling up of two posts of Gramin Dak Sewak was given vide Estt./MISC-01/DA-IV/06 dated 17.05.2007. It is thus not in dispute that the respondent was duly selected on the post of Gramin Dak Sewak and he had fulfilled all the pre-appointment formalities but the appointment letter could not be issued in his favour for want

of approval of the Competent Authority. The respondent had thus filed the application before the learned Central Administrative Tribunal raising the grievance that the petitioners have illegally and arbitrarily not issued the appointment letter after he was duly selected for the post of Gramin Dak Sewak.

6. On appreciation of the contentions raised by both the parties, learned Tribunal took a view that the termination of the respondent as a part time casual labourer is absolutely illegal and arbitrary. Before taking this view the learned Tribunal had considered the legal principles laid down by the Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and State of Uttaranchal and Another Vs. Sunil Kumar Singh Negi, and Rajendra Vs. State of Maharashtra and Others, .

7. With regard to the other claim of the respondent regarding his appointment as Gramin Dak Sewak/ packer is concerned, the learned Tribunal directed the petitioners to offer him an appointment to the said post immediately as the respondent had already completed the pre-appointment formalities. The learned Tribunal also directed that in case there are no vacancies of Gramin Dak Sewak packers in Laxmi Nagar Post Office under the Krishna Nagar Head Office, he can be appointed against any other existing vacancy under the Senior Postmaster, Krishna Nagar Head Office.

8. As far as the contentions raised by the learned counsel for the petitioner are is concerned, the same are in fact reiteration of the arguments raised by the petitioner before the learned Tribunal. Indisputably, the respondent was appointed as a part time casual labourer w.e.f. 15.1.1996 and he remained in service on the said post till 10.04.2011 when his services were sought to be terminated. This order of termination was issued by the petitioner without even serving a show cause notice or disclosing any reasons to terminate the respondent. To say that the petitioner became wise in the year 2010 to realise that there was a complete ban put up by the Government to engage part time casual labourer, by notification issued in the year 1993 would amount to putting at risk the entire service career of the respondent, who was nowhere at fault and remained in uninterrupted service for a period of more than fifteen years. It is a settled legal position that abrupt cancellation of appointment without giving reasons and without hearing the concerned is violative of principles of natural justice. In this context the learned tribunal has rightly placed reliance on the decision of this Court in the matter of State of Uttaranchal Vs. Sunil Kumar Singh Negi (Supra), wherein it has been held by the Hon''ble supreme Court that one of the statutory requirement of natural justice is to spell out the reasons for the order made. The relevant part of the said judgment reads as under:-

"11. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made." 9. Again, in Rajendra Vs. State of Maharashtra

(Supra), the Hon"ble Supreme Court held as under:-

It is really strange that it should have dawned on the second respondent that the approval granted earlier was wrongly given only after 17 months. It was not as if the appointment was made keeping the second respondent in dark about it. The second respondent was informed by the letter dated 7.2.2001 about the advertisement given as also the appointment made. Along with this communication dated 7.2.2001, the Managing Committee had sent the proposal in the proper form and the other papers regarding the whole selection process starting from the advertisement to the list of employees. This also included a copy of the roster which would have given the complete idea to the second respondent about the nature of the post as also the manner in which the appellant came to be selected. In pursuance of the above communication the approval came to be granted by the second respondent by its order dated 17.3.2000. Therefore, the action taken after about 17 months on 30.5.2002 of withdrawing the approval appears to be high handed. The only reason given in the communication dated 30.5.2002 is that the appointment made on 17.3.2001 is unlawful and is completely against the settled position of law and, therefore, it stood cancelled. In our opinion this is a totally incorrect action on the part of the authorities. No reasons have been given in this order. Very strangely even the subsequent letters sent on behalf of the appellant and the Managing Committee of the school were also not replied to nor were the reasons informed. We totally disapprove of this abrupt action and that too without hearing the petitioner and further not giving the reasons for the same" 10. The learned Tribunal is thus correct in taking a view that since the aforesaid termination was without any notice to him and was in flagrant violation of principles of natural justice, therefore he was entitled to all consequential benefits including back wages from the date of his termination from the date of his retirement. We find no infirmity in the reasoning given by learned Central Administrative Tribunal.

11. Even with regard to the second relief claimed by the respondent which was allowed by learned Tribunal, we find no tangible reason to interfere with the same. One of the conditions for appointment to the said post of Gramin Dak Sewak was that the applicant should have rendered service as a casual labourer/ part time casual labourer for complete one year and despite fulfilling other conditions, this condition was duly fulfilled by the respondent. Not only this, the respondent had also completed all the pre-appointment formalities before being appointed on the said post of Gramin Dak Sewak, and he was also medically certified to be fit to be appointed on the said post. The petitioner has not come forward to give any reason much less the cogent one as to why the respondent was not given an appointment letter on the said post when he had fulfilled all the eligibility conditions and other formalities for appointment to the said post of Gramin Dak Sewak.

12. In view of the aforesaid discussion, we find no merit in the present petition and the same is accordingly dismissed. Resultantly, the petitioners are directed

to comply with the directions given by learned Central Administrative Tribunal in the impugned order dated 21.02.2014 within a period of two months from the date of this order.

13. With aforesaid directions, the present petition stands disposed of.