
(1999) 04 DEL CK 0006

In the Delhi High Court

Case No : Civil Writ No"s. 5786 and 6604 of 1998

Union of India

APPELLANT

Vs

Balwant Rai Mittal and Others

RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Citation : (1999) 4 AD 497 : (1999) 49 DRJ 589

Hon'ble Judges : Devinder Gupta, Acting C.J.;Kripa Shankar Gupta, J

Bench : Division Bench

Advocate : Mr. C.S. Vaidyanathan, Additional Solicitor General and Mr. V.S.R. Krishan, Advocat, for the Appellant; Mr. R. Venkataraman , Mr. P.C. Jain, Mr. Suman Doval and Ms. Meera Chibber, for the Respondent

Judgement

Devinder Gupta, ACJ.

1. The question arising for determination being same and similar, Therefore, we are disposing of these petitions together.

2. In C.W. No. 5786/98 order passed by the Central Administrative Tribunal, Principal Bench, New Delhi on 6.11.1998 is under challenge by which order four Misc. Applications (MA. 2151/98 in OA.1917/98; MA.2153/98 in OA.1918/98;MA.2152/98 in OA.1923/98; MA.2154/98 in OA.1924/98 and MA.2155/98 in OA.1944/98) seeking vacation of the interim order of maintenance of status quo passed on 5/6.10.1998 have been dismissed. Five Judicial and Accountant Members of Income Tax Appellate Tribunal approached the Tribunal apprehending termination order being served upon them. The Tribunal on 5/6.10.1998 passed orders directing status quo being maintained. The petitioner Union of India applied for vacation of the stay order. The said applications have been dismissed.

3. C.W. 6604/98 is against the order passed on 13.11.1998 by the Tribunal directing the petitioner Union of India to restore status quo ante, which existed prior to the serving of the impugned termination order dated 5.10.1998 on the

respondent Shri Praveen Kumar Bansal, Member of Income Tax Appellate Tribunal.

4. Some of the relevant facts in brief are that in the month of September, 1996 an advertisement was issued inviting applications for filling up of 8 posts of Judicial Members and 10 posts of Accountant Members in Income tax Appellate Tribunal. Out of 8 posts of Judicial Members, two were reserved for Scheduled Castes; one for Scheduled Tribes and one for O.B.C. Out of 10 posts of Accountant Members, two were reserved for Scheduled Castes; two for Scheduled Tribes and one for O.B.C. Advertisement published in daily newspapers on 9.9.1996 also mentioned that number of vacancies indicated were approximate and liable to alteration. The Selection Board considered the candidature of 91 and 45 candidates respectively for 8 posts of Judicial Members and 10 posts of Accountant Members. The Board recommended 14 candidates in the main select list under different categories against the fixed number of advertised vacancies of 18 Members. It could not find suitable candidates in respect of four reserved categories in the category of Accountant Members and as such these vacancies were required to be carried forward to the next recruitment year. In addition the Selection Board also recommended names of 11 candidates in the waiting list under different categories. In the meanwhile, the Government had proposed to set up additional, benches of the Income Tax Appellate Tribunal. Cabinet's approval was also accorded on 1.4.1997 for creation of additional Benches. Thus sanction for 29 additional posts of the members was granted on 1.4.1997 and second advertisement was issued for filling up the posts on 27.9.1997.

5. Pursuant to the first advertisement selections were made but while filling up vacancies appointment letters were also issued to 9 candidates in excess of the advertised vacancies. At that stage President of the Income Tax Appellate Tribunal appears to have made a representation to the Government objecting the appointment of members in excess of the advertised number of vacancies, which led to the Government taking a decision about nine candidates, who had been appointed in excess of advertised vacancies that their services deserve to be terminated. Those appointees having come to know of the likely termination, approached the Central Administrative Tribunal, Principal Bench, New Delhi by filing petitions. On 5/6.10.1998 an ex parte interim orders were passed for maintenance of status quo. Short reply thereafter was filed by the petitioner along with applications for vacation of stay. The Tribunal heard those applications but dismissed the same by the impugned order. It came to the conclusion that there was strong prima facie case in favor of the appointees and at this stage it was not a fit case for vacation of stay orders because the loss likely to be suffered by the applicants cannot be compensated in terms of money. The Tribunal also observed that it may not go into the details as to what will happen to the legality of the orders that would be passed by the applicants while working as Members of the Tribunal. In the case of Praveen Kumar Bansal termination order dated 30.9.1998 was received by him on 5.10.1998, but he approached

the Tribunal on 7.10.1998. Ex parte order was not granted but after hearing parties impugned order was passed for restoration of the applicant status quo ante the receipt of termination order, which had the effect of putting him back as member of the Tribunal.

6. We heard learned Counsel for the parties at length.

7. It was contended by learned Counsel for the petitioner that neither there was any prima facie case made out in favor of the respondents, nor it was a case of any irreparable loss or injury being caused to the respondents in case of non-grant of injunction. Moreover, the balance of convenience did not lay in grant of injunction, on which aspects Central Administrative Tribunal acted with material irregularity in exercise of its jurisdiction. Appointment of persons in excess of notified vacancies is unconstitutional and once it had come to the notice of the Government of review of the position on the legality of the appointments in the light of the observation of the Supreme Court in *Ashok Kumar and Others Vs. Chairman, Banking Services Recruitment Board and Others* JT 1995(5) S.C. 276=II (1996) BC 250 (SC) orders were issued on 30.9.1998 terminating services of nine persons, who were found to be in excess. It was urged that petitions were still pending and have not been disposed of finally. Passing of the impugned order virtually has the effect of almost deciding the petitions. In the event of the ultimate success of the respondents' petitions, they could very well be compensated in terms of money by grant of compensation but these were not the case where order of stay ought to have been continued particularly mandatory injunction in favor of Shri Praveen Kumar Bansal, in whose case, status quo ante was directed to be restored, which is in violation of the settled principles of law.

8. There is no dispute amongst the parties that appointments were made in excess of the advertised number of vacancies. Though the advertisement stated that the number of vacancies indicated in the advertisement was approximate and was liable to alteration, but the question is yet to be decided in the main petition that whether or not appointments made in excess of the advertised posts were legal, valid and binding on the Union of India. The Tribunal did make reference to the decisions of the Supreme Court in *Ashok Kumar & Others Vs. Chairman, Banking Service Recruitment Board & others* (supra); *R.S. Mittal Vs. Union of India* AIR 1995 S.C. 2044; *Prem Singh and Others Vs. Haryana State Electricity Board and Others*, ; *Benny T.D. & Others etc. Vs. Registrar of Co-operative Societies* JT 1998(3) S.C. 363; and *Roshni Devi & Others etc. Vs. State of Haryana and Others* JT 1998(6) 459 and observed that before the process of selection on the first advertisement could be completed additional posts were sanctioned and the same were also advertised. Considering that next Selection Board might take considerable time in finalising the selection, the Government appears to have taken a conscious decision "to operate the present panel of names (to the extent candidates are available) for filling up newly created vacancies also". As such it being a case where number of vacancies available and

anticipated having been wrongly estimated, conscious and definite decision right up to highest level was taken to absorb the entire panel, including those in the select list to the extent candidates were available to fill up even the newly created vacancies, which had the blessing of Cabinet Secretariat also. Thus there was a strong prima facie case made out at this stage in favor of appointees.

9. We may not go into the rival case urged before us about the legality and validity of the appointments in excess of the advertised posts. This is a matter, which will have to be decided by the Tribunal on merits. But the question here is about grant of interim relief in the form in which it has been issued that whether it could be issued merely on satisfaction of one of the necessary ingredients of there being a strong prima facie case without considering the question of the balance of convenience whether it lay in grant of injunction and that whether it was a case in which compensation in terms of money would not be appropriate.

10. Assuming that at one stage it was a conscious decision taken at one stage by the Government for making appointments but on review of the situation it was realised by the Competent Authority that in view of the settled position in law, it was not advisable to have made appointments in excess of the advertised posts and there was a mistake committed in making such appointments in excess of the advertised posts. Decision thereafter was taken to rectify the mistake and thereby revoke the appointments by service notices of termination. On these circumstances alone the Tribunal was not justified in assuming that on the facts as placed before it, there was strong prima facie case that ad interim injunction ought to continue. The question which would stare at the face would be that the appointees as Members of Tribunal, in case ultimately are found not to be entitled to posts, would continue to hold the post on the basis of the impugned orders. In the meanwhile they would have decided number of matters affecting valuable rights of the parties thereby exposing those orders to a risk of being challenged on the ground that the same are null and void having been passed by a person, who in law is not entitled to hold the post.

11. In case of non-grant of injunction loss or damage likely to be suffered in the event of applicants ultimately succeeding could be compensated in terms of money. To the contrary allowing a person to continue on the post on the basis of the impugned orders, in the event of main petition being dismissed would result in chaos and will rather amount to conferring a benefit on the person to hold the post to which he would otherwise not be entitled. Both the principles, namely, balance of convenience and irreparable loss cannot be said to be in favor of the respondents thereby justifying continuance of the order of injunction. In the case of one of the members, namely, Shri Parveen Kumar Bansal who had already been served with the order of termination and whose services stood terminated vide order dated 30.9.1998 was granted mandatory injunction of putting the clock back to a date prior to 5.10.1998 that he should be put back and restored the position which he occupied prior to the date of his termination. Order of termination had already worked out. On settled principles of law, as enunciated

in *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, , it was not a case for grant of mandatory injunction. We may refer to a decision of Division Bench of this Court in *Ranbir Chandra Vs. Union of India and Others* (1978) II Delhi 241 on the principle for grant of interim stay in case of holders of a post. It is the general rule in writ petitions filed by civil servants that the impugned administrative action of the Government is set aside if the writ petition succeeds. The balance of convenience is in favor of not suspending the operation of the Government order. For, the individual writ petitioner can always be given the appropriate relief if his writ petition succeeds. The Government is a Government of law. It always implements the decisions of the Courts giving such reliefs to the writ petitioners. But it is extremely unusual for this Court to stop the operation of a Government order merely because the writ petitioner seems to make out a prima facie case. Applying the above principle, we are of the view that the Tribunal acted contrary to well settled principles of law and for that reason the impugned orders are liable to be quashed and set aside. Accordingly we allow the petition and set aside the impugned orders making it clear that observations made by us will not effect the merits of the petitions before the Tribunal.

Petition allowed.