
(1994) 02 GAU CK 0015
In the Gauhati High Court
Case No : Writ Appeal No. 284 of 1993

Union of India (UOI) and Another

APPELLANT

Vs

Dhirendra Chandra Sutradhar

RESPONDENT

Date of Decision : 07-02-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1994) 1 GLR 490

Hon'ble Judges : S.N. Phukan, Acting C.J.; A.K. Patnaik, J

Bench : Division Bench

Advocate : K.N. Choudhury, CGSC, for the Appellant; A.M. Mazumdar, S.S. Dey and M. Nath, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—In this writ appeal, the Appellants, namely the Union of India and the Secretary, Brahmaputra Board, Guwahati, have challenged to Judgment and order dated 18.3.92 of the learned single Judge delivered in Civil Rule No. 873 of 1987.

2. The facts relevant for the purpose of this writ appeal are that Sri Dhirendra Chandra Sutradhar, Respondent, was originally appointed as a Lower Division Assistant in the office of the Executive Engineer, Goalpara E&D Division of the Flood Control Department with effect from 27.3.65 and was subsequently promoted to the rank of Upper Division Assistant in the year 1971. In 1978, he was promoted to the rank of Divisional Head Assistant and was posted in the office of the Executive Engineer, Goalpara Investigation Division of the Flood Control Department. In the year 1981, he was promoted as Supervisory Assistant and posted in the Gossaigaon Investigation Division of the Flood Control Department. In the meanwhile, the Brahmaputra Board was enacted in 1980 and by a notification dated 27.4.82 the Government of Assam in the Flood Control Department placed several Circles, Divisions and Sub-Divisions including the Gossaigaon Investigation Division alongwith the employees of the said Circles,

Divisions and Sub-Division under the disposal of the Brahmaputra Board (for short, "the Board") with effect from 1.4.82. Since the Respondent was then working as Supervisory Assistant in the Gossaigaon Investigation Division which was subsequently renamed as Gauhati Division, his services were also placed at the disposal of the Board alongwith other employees of his Division with effect from 1.4.82 and he was posted as a Divisional Head Assistant under the Board. While serving under the Board, the Respondent was appointed to the post of Assistant Grade-I and posted in the office of the Secretary of the Board in December, 1982.

3. But it was only on 31.8.85, that by a notification (Annexure-3 to the writ petition), the Government of Assam, Flood Control Department, it was stated that the services of the employees of the Department named in the notification including the Respondent (whose services were transferred on as is where is basis) were placed at the disposal of the Board with effect from the date of their joining in the Board on Foreign Service terms and conditions as laid down in Government Office Memorandum No. FEG. 29/74/100 of 25.1.57 without any deputation allowance. After about 5 years of service under the Board, the Respondent was reverted to his parent department of the Government of Assam by order dated 30.7.87 of the Board. Against such reversion, the Respondent submitted representations to the General Manager of the Board and the Secretary of the Flood Control Department, Assam. The Deputy Secretary to the Government of Assam, Flood Control Department, by his letter dated 11.8.87 to the Secretary of the Board stated that unless the post of Head Assistant held by the Respondent alongwith the Division from which he was deputed was retransferred to the Flood Control Department by the Board, it would not be possible to accommodate the Respondent in any other Division of the Flood Control Department of the Government of Assam Accordingly, in the said letter, the Deputy Secretary to the Government of Assam, Flood Control Department requested the Secretary of the Board to retain the Respondent in the Board by extending his deputation terms.

4. When no relief was granted by the authorities, the Respondent filed writ petition being Civil Rule No. 873 of 1987 challenging the order dated 30.7.87 of the Board reverting him to his parent department. By virtue of several interim orders passed by this Court, the Respondent continued to work under the Board. Finally, by Judgment and order dated 18.3.93, the learned single Judge disposed of Civil Rule No. 873 of 1987 with directions to the board to absorb the Respondent and not to give effect to the order of the Board dated 30.7.87 reverting the Respondent to the Flood Control Department of the Government of Assam. Aggrieved by the said Judgment and order dated 18.3.93 of the learned single Judge, the Appellants have filed this writ appeal.

5. Mr. K.N. Choudhury, learned Senior Central Govt. Standing Counsel, submits on behalf of the Appellants that the notification dated 31.8.85 of the Government of Assam of the Flood Control Department (Annexure-2 to the Writ petition)

expressly makes it clear that only those employees who had rendered less than 5 years of service in the Flood Control Department of the Government of Assam at the time their services were placed under the disposal of the Board would be deemed to have been absorbed as employees of the Board and other employees such as the Respondent who had completed more than 5 years of service under the Flood Control Department of the Government of Assam at the time their services were placed at the disposal of the Board were to be on deputation with the Board. Mr. Choudhury also brought to our notice the notification dated 5.2.87 of the Board annexed to the writ appeal as Annexure-4 wherein it was clarified of the Government of Assam such as the Respondent had been appointed in the Board on deputation terms for a period of 5 years from the date of joining in the Board as per terms and conditions of deputation. He further submitted that on expiry of the period of deputation the Respondent was liable to be reverted to his parent cadre and he can not claim any right to be absorbed in the post in which he was deputed. IN support of his contention he cited before as a decision of the Supreme Court in the case of Ratilal B. Soni and Ors. v. State of Gujarat reported in (1990) Suppl SCC 343 wherein the Supreme Court has held that since a deputationist had no right to be absorbed in a deputation post he can be reverted to his parent cadre. Mr. Choudhury further contended that the fact that the Respondent while serving on deputation was promoted to the post of Assistant Grade-I of the Board would not confer any right on the Respondent to continue in the Board. In support of this contention, he cited the decision of Supreme Court in the case of D.M. Bharati v. L.M. Sud reported in (1991) Suppl 2 SCC 162.

6. Mr. S.S. Dey, Advocate for the Respondent, agrees with the settled position of law that a deputationist is liable to be reverted to his parent cadre on the expiry of the term of his deputation and that he cannot claim as of right to be absorbed in the post in which he was serving on deputation. He, however, submits that the Respondent was not just sent on deputation from the Flood Control Department of the Government of Assam to the Board, but the entire Gossaigaon Investigation Division (subsequently renamed as the Gauhati Division) was transferred to the Board on "as is where is" basis with effect from 1.4.82 and more than 3 years thereafter it was notified on 31.8.85 that the services of the Respondent and the other employees with more than 5 years of service under the Flood Control Department of the Government of Assam as on 1.4.82 were placed under the disposal of the Board on deputation terms without any deputation allowance. The Respondent does not dispute the interpretation of the said notification dated 31.8.85 given by the Appellants to the effect that his services under the Board were on deputation terms but makes a grievance that while the entire Gossaigaon Investigation Division (subsequently renamed as the Gauhati Division) and several employees with more than 5 years of service in Flood Control Department prior to their deputation in the Board had been retained by the Board, the Respondent had been singled out by the Board for reversion to the Government of Assam as a result of which his seniority and

promotional prospects are in jeopardy. Alongwith an additional affidavit filed by the Respondent in Civil Rule No. 873 of 1987, an office order dated 8.5.85 of the Board was also annexed as Annexure-8 to show that 13 other employees with more than 5 years of service under the Government of Assam, Flood Control Department, prior to their deputation in the Board had been absorbed by the Board, while the Respondent was being reverted on the ground that he had more than 5 years service under the Government of Assam under the Flood Control department prior to his deputation to the Board. On these facts, Mr. Dey submits that the action of the Board in reverting the Respondent to the parent department in the order dated 30.7.87 and in not absorbing him in the Board is discriminatory and violative of his rights under Articles 14 and 16 of the Constitution of India.

7. In reply, Mr. Choudhury submitted that the 13 employee who had been absorbed by the Board by office order dated 8.5.85 fell into a category different from the Respondent inasmuch as they belonged to the erstwhile Brahmaputra Flood Control Board of the Government of Assam, while the Respondent belonged to Gossaigaon Investigation Division of the Flood Control Department of the Government of Assam. Mr. Choudhury has filed several additional documents in course of hearing of this writ appeal to show that the said 13 employees of the erstwhile Brahmaputra Flood Control Board were to constitute the skeleton staff of the Board at its initial stage and were accordingly appointed and absorbed directly under the Board by the office order dated 8.5.85. Mr. Choudhury accordingly submitted that the Respondent cannot be treated on the same footing as the said 13 employees of the Board even though they had completed 5 years service under the Government of Assam as on 1.4.82.

8. Mr. Choudhury may be right in his submission that the Respondent and other 13 employees of the erstwhile Brahmaputra Flood Control Board fell into two different classes of employees, but we are of the opinion that the Respondent could not be singled out from the entire Gossaigaon Investigation Division (Subsequently renamed as the Gauhati Division) and treated differently and reverted to the parent department of the Government of Assam when the entire Gauhati Division was retained by the Board and none of the employees of the said division have been reverted to the parent department of the Government of Assam, The only reason given by the Board in sinking out the Respondent out of the entire Gauhati Division is that the Respondent had completed 5 years service under the Government of Assam as on 1.4.82 and was thus a deputationist in terms of the notification dated 31.8.85 and, therefore, could not be retained and absorbed by the Board after his deputation period. This reason has not found favour with the learned single Judge who has said in Para 9 of his Judgment that the Board has in fact absorbed 13 other employees who had completed more than 5 years service under the Government, of Assam as on 1.4.82 by office order dated 8.5.85, the notification dated 31.5.85 on which the Board relied cannot possibly stand on the way of the Board absorbing the Respondent only for the reason that he has completed 5 years service under the government of

Assam as on 1.4.82. It is difficult for us to find any error in the aforesaid finding of the learned single Judge, and we cannot set aside the said finding on the ground that while the Respondent was a deputationist, the said 13 employees had become employees of the Board. In the two decisions cited by Mr. Choudhury, the Supreme Court was not confronted, as in the present case, with a case of deputationist who had been singled out of an entire division for reversion to his parent department and the difficulties that the parent department was facing to accommodate such a deputationist on reversion, which we now propose to indicate.

9. We find from a copy of a letter dated 20.7.87 of the General Manager of the Board to the Secretary to the Government of Assam, Flood Control Department, filed in the Civil Rule as well as in the appeal that the Board had proposed to retransfer to the Government of Assam one Circle and three other Divisions with all its work, staff and infrastructure, whereas in the case of the Gauhati Division only the Respondent was sought to be reverted from the Board to the Government of Assam by the order dated 30.7.87. As a result, the Flood Control Department of the Government of Assam faced difficulties in accommodating the Respondent out of the entire division as pointed out by the Deputy Secretary to the Government of Assam, Flood Control Department, in his letter dated 11.8.87 to the Secretary of the Board. As a matter of fact, we also find from the impugned Judgment and order dated 18.3.87 that on reversion of the Respondent by the Board by the order dated 30.7.87 when the Government ultimately accommodated him as a Head Assistant in the office of the Superintending Engineer, Investigation Circle, Guwahati, against the vacancy caused due to retirement of Shri S. Bora, Head Assistant of that Circle by order dated 16.5.91, Shri P.N. Thakur of the said Investigation Circle challenged the said order dated 16.5.91 in this Court in Civil Rule No. 2922 of 1991 contending that he was the senior most Upper Division Assistant of that circle who had been promoted and appointed in the said vacant post of Head Assistant on 1.2.91 after the retirement of Shri S. Bora and in the said Civil Rule No. 2922 of 1991 this Court passed interim orders, on 25.5.91 staying the operation of the said order dated 16.5.91. As a solution for all these difficulties and to protect the rights regarding seniority and promotion of the Respondent and the ministerial staff of the Division or Circle to which the Respondent was proposed, to be reverted, the learned single Judge by the impugned Judgment and order dated 18.3.93 directed the Board to absorb the Respondent and not to give effect to order dated 30.7.87 reverting him to Flood Control Department of the Government of Assam.

10. In the peculiar facts and circumstance of the case, we do not find any infirmity in the aforesaid Judgment dated 18.3.93 of the learned single Judge. Accordingly, the Judgment of the learned single Judge in Civil Rule No. 873 of 1987 is confirmed and the Board is directed to give immediate effect to the directions of the learned single Judge in the said Judgment. The appeal fails and is dismissed.