

(2017) 03 SC CK 0132

In the Supreme Court Of India

Case No : Civil Appeal No. 5491 of 2007 with C.A. No. 3652 of 2017 and C.A. No. 3653 of 2017

U.P. Co-Op. Spinning Mills Fedn. Ltd.

APPELLANT

Vs

Amar Nath Dwivedi

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Constitution Of India, 1950 — Article 133

Citation : (2017) 2 LLJ 380 : (2018) 16 SCC 451

Hon'ble Judges : Adarsh Kumar Goel, J;Uday Umesh Lalit, J

Bench : Division Bench

Advocate : Rakesh Uttamchandra Upadhyay, Ms. Aarti Upadhyay, P.N. Mishra, Sr. Advocate, Ms. Alka Sinha, Anuvrat Sharma, Advocates, for the Appellants; Fakkrudin, Sr. Advocate, Bharat Bhushan, Naresh Kumar, Anuvrat Sharma and K.S. Rana, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. Respondent No. 1 was appointed on "contractual basis" on the post of a Training Officer in the U.P. Co-operative Spinning Mills Federation Limited vide letter of Appointment dated 07.09.1998. As per agreement, the contract of appointment was for a period of one year from 25.09.1998 to 24.09.1999, which stood terminated on 24.09.1999.

2. After being relieved from service, the Respondent Ro.1 filed the Civil Misc. Writ Petition No. 35625 of 2000 before the High Court of Allahabad which was dismissed on 17.01.2002. However, the order of the learned Single Judge was set aside by the Division Bench in Special Appeal No. 282 of 2002 vide order dated 05.07.2002 and the matter was remanded to the learned Single Judge for a fresh consideration. Thereafter, the learned Single Judge allowed the writ petition of the respondent and reinstated him in service with back wages vide order dated 16.07.2002. It was held that the conditions in the appointment letter of the respondent, treating the appointment as contractual was arbitrary. This

view has been upheld by the Division Bench by the impugned judgment.

3. While issuing notice on 20.11.2006, this Court stayed the operation of the impugned order which was continued while granting leave.

4. We have heard learned counsel for the parties.

5. It is clear from the letter of appointment dated 07.09.1998 that the appointment of the respondent was on contractual basis and in terms of Agreement dated 25.09.1988 the contract of appointment was for a period of one year which was never extended. There is nothing on record to show that there was any sanctioned post of permanent nature against which the respondent was appointed on permanent basis. Thus, the direction contained in the impugned order cannot be sustained and the impugned order is set aside.

The appeal is, accordingly, allowed.

Civil Appeal No. 3652/2017 (@ Special Leave Petition (civil) NO. 34308 of 2014)

Leave granted.

6. This appeal has been preferred by the State of U.P. against the direction in the impugned order to the effect that employees working on deputation belonging to Public Sector Undertakings, (which had become sick) were required to be protected. The respondent claimed to have been sent on deputation to the State of U.P. by the U.P. Co-operative Spinning Mills Federation Limited. According to the respondent his appointment with the U.P. Co-operative Spinning Mills as of permanent nature which claim was accepted by the High Court in its judgment dated 08.08.2007. The said judgment has been set aside in Civil Appeal No. 5491 of 2007 .

7. In view of above, the claim of the respondent that he was in permanent employment of the U.P. Co-operative Spinning Mills Federation Limited and in that capacity he was on deputation falls to the ground. On that basis his entitlement to claim absorption in the State services can not be sustained.

8. Accordingly, the impugned order of the High Court is set aside and the appeal is allowed.

Civil Appeal No. 3653/2017 (@ Special Leave Petition (Civil)

No. 1708 of 2015)

Leave granted.

9. In view of the order passed in Civil Appeal No. 3652/2017 (@ SLP(C)No. 34308/2014), this appeal is allowed and the impugned order is set aside.

10. It may, however, be noted that even though we have held that respondent-Amar Nath Dwivedi has no locus to claim employment under the State, the State is not debarred from engaging services of respondent, if the State is so advised,

on such terms and conditions, as may be found to be appropriate in accordance with law. We do not express any opinion on future course of action which the State of U.P. may adopt.