
(2006) 09 UK CK 0026

In the Uttarakhand High Court

Case No : Writ Petition No. 131 (S/B) of 2004

V.S. Thapliyal

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Citation : (2007) 2 UC 1086

Hon'ble Judges : Rajeev Gupta, C.J.;Rajesh Tandon, J

Bench : Division Bench

Advocate : B.P. Nautiyal and Hari Mohan Bhatia, for the Appellant; Sudhanshu Dhulia assisted by, Pooja Banga, for Respondents Nos. 2 and 3, U.K. Uniyal assisted by, Sobhit Saharia and Learned Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Heard Sri B.P. Nautiyal and Hari Mohan Bhatia, Counsel for the Petitioner and Sri Sudhanshu Dhulia, Sr. Advocate, assisted by Ms. Pooja Banga, Counsel for the Respondents No. 2 and 3 Sri U.K. Uniyal, Sr. Advocate, assisted by Sri Sobhit Saharia, Counsel for the Respondent No. 4 and Standing Counsel for the Respondent No. 1.

2. By the present writ petition, initially the Petitioner has sought following reliefs:

A. Issue a writ, order or direction in the nature of certiorari quashing the order dated 14-05-2004 (Annexure No. 3) passed by Respondent No. 2 and resolution No. 2 passed by the Respondent No. 3 on 15-4-2004 (Annexure No. 2).

B. Issue a writ, order or direction in the nature of mandamus commanding the Respondents not to give effect to order dated 14-5-2004 (Annexure No. 3) and resolution No. 2 passed by the Respondent No. 3 on 15-4-2004 (Annexure No. 2).

C. Issue any other or further order which this Hon''bie Court may deem fit and proper in the circumstances of the case.

D. Award the cost of the petition to the Petitioner.

3. Thereafter by amendment dated 14th September, 2004, the Petitioner has added one more relief as BB to the following effect:

BB- Issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 1 to 3 not fill up the post of District Manager Uttaranchal Tea Board, in pursuance of the advisement dated 2-9-2004 as the same being held by the Petitioner.

4. Briefly stated, the Petitioner was initially serving with Garhwal Mandal Vikas Nigam since 1978 as a Shift Supervisor. Thereafter on 4th September, 1996, the Petitioner along with other three employees was attached with the Uttaranchal Tea Development Scheme. While attaching the Petitioner, it was made clear that the lien of the Petitioner shall remain with the parent department i.e. Garhwal Mandal Vikas Nigam and there shall not be any change in the cadre of the Petitioner and in case, their work is not found satisfactory, they shall be repatriated to the parent department. The note to this effect along with attachment order with the Uttaranchal Tea Development Scheme is quoted below:

“The Petitioner is being attached with the Uttaranchal Tea Development Scheme on a temporary basis. It is made clear that the lien of the Petitioner shall remain with the parent department i.e. Garhwal Mandal Vikas Nigam and there shall not be any change in the cadre of the Petitioner and in case, their work is not found satisfactory, they shall be repatriated to the parent department. The note to this effect along with attachment order with the Uttaranchal Tea Development Scheme is quoted below:

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5. On 11th February, 2004 a Government Order/Office Memorandum No. 159/Va.Gra.Vi/338/2003 was issued, whereby Uttaranchal Tea Development Board was created and the services of the employees working in the said department were directed to be merged with the Uttaranchal Tea Board. Paragraphs No. 3 and 4 of the said G.O. are quoted below:

3. “The Petitioner is being attached with the Uttaranchal Tea Development Scheme on a temporary basis. It is made clear that the lien of the Petitioner shall remain with the parent department i.e. Garhwal Mandal Vikas Nigam and there shall not be any change in the cadre of the Petitioner and in case, their work is not found satisfactory, they shall be repatriated to the parent department. The note to this effect along with attachment order with the Uttaranchal Tea Development Scheme is quoted below:

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6. On 14th May, 2004, another development has taken place by which the Petitioner was repatriated to his parent department (i.e. Garhwal Mandal Vikas Nigam) and the Petitioner was asked to handover the charge to Sri P.C.S. Rautela/Field Assistant. The contents of the order passed on 14th May, 2004 are reproduced as under:

“The Petitioner is being attached with the Uttaranchal Tea Development Scheme on a temporary basis. It is made clear that the lien of the Petitioner shall remain with the parent department i.e. Garhwal Mandal Vikas Nigam and there shall not be any change in the cadre of the Petitioner and in case, their work is not found satisfactory, they shall be repatriated to the parent department. The note to this effect along with attachment order with the Uttaranchal Tea Development Scheme is quoted below:

7. Counsel for the Petitioner Sri B.P. Nautiyal has submitted the following submissions:

1. Clause 4 of the Government Order dated 11th February, 2004 by which the Uttaranchal Tea Development Board was constituted of the aforesaid Government Order provides the scheme of absorption of the employees, who are working in the department.

2. The Petitioner, therefore, by virtue of the creation of the Uttaranchal Tea Development Board has been ceased to be the employee of Garhwal Mandal Vikas Nigam and as such he is entitled for all the benefits as available to the employees of Uttaranchal Tea Development Board constituted by virtue of Government Order dated 11th February, 2004.

7. Since both the aforesaid submissions are connected together and therefore, they are dealt together.

8. Sri B.P. Nautiyal, Counsel for the Petitioner has submitted that as per G.O. dated 11th February, 2004, the Petitioner has been permanently absorbed with the Uttaranchal Tea Development Board and the action of the Respondent while passing the order for repatriation is wholly illegal.

9. A counter affidavit has been filed by Sri R.S. Adhikari on behalf of the Tea Board, where it has been specifically mentioned in paragraph 3 (i) that the Petitioner was working in its parent department i.e. Garhwal Mandal Vikas Nigam, Dehradun was sent on deputation in Uttaranchal Tea Development Project in the year, 1996. In paragraph No. 3 (iv), it has been stated that in meeting dated 15-04-2004 the Board decided to merge services of the ten employees out of 11 employees and stated that the services of remaining employee including the Petitioner B.S. Thapliyal, are not being merged and he is being reverted back to his parent department as the enquiry is going on against the Petitioner.

10. A counter affidavit has been filed by Sri M.P. Balodi on behalf of the Garhwal Mandal Vikas Nigam Limited, Dehradun. In paragraph 11, it has been stated as under:

11. That the contents of paragraph No. 14-A of the writ petition are not admitted the manner they have been made and hence denied. It is submitted that the Petitioner was sent on deputation in the year, 1996 to the Respondent No. 3 (as it is now) for maximum period of 5 years. It is further submitted that the Respondent No. 3 vide its order dated 14-5-2004 ordered the transferring of the Petitioner to his parent department i.e. the answering Respondent and in continuation of the same vide order No. 14/2-Stha/04 dated 27-5-2004 the Petitioner was relieved from the Respondent No. 3 department and ordered to give his joining in the office of Respondent No. 4, however, the Petitioner failed to join his duties in the parent department i.e. answering Respondent up to 2-6-2004 and the answering Respondent was constrained to pass an order dated 2-6-2004 through which the Petitioner was asked to join his duties without any delay in the parent department and order was also sent by hand to the Petitioners, which the Petitioner refused to accept.

11. A rejoinder affidavit has also been filed by the Petitioner, where he has stated that the services of the Petitioner have already been absorbed and he cannot be reverted back to the Garhwal Mandal Vikas Nigam.

12. A perusal of the attachment letter of the Petitioner in the Uttaranchal Tea Development Scheme dated 4th September, 1996 shows that the Petitioner was sent on deputation and there was no change in the lien of the Petitioner and the same shall continue with the parent department as will appear from the note mentioned below:

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13. Admittedly, the Petitioner was sent on deputation and the lien of the Petitioner continues with his parent department.

14. In Kunal Nanda v. Union of India and Anr. 2000 LAB I.C. 1992 (SC), the Division Bench of the Apex Court has held as under:

It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.

15. In Ratilal B. Soni and Ors. v. State of Gujarat and Ors. AIR SC 1132, it has been held by the Apex Court that the deputationist does not get any right to be absorbed on the deputation post. The observations are quoted below:

5. The Appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post.

16. In Mahesh Chand Bhargawa and Others Vs. Union of India (UOI) and Others, , the apex court has observed as under:

That part, if the Appellants all along had been borne in the cadre of Loco Shed and had been deputed on temporary basis to the Commercial Department when they were declared surplus, retaining a lien in the Loco Shed and even drawing their salary from the Loco Shed for all practical purposes, they had been borne all along in the cadre of Loco Shed and therefore they cannot claim a right of permanent absorption in the Commercial Department. By the impugned order dated 30-10-1992, the Railway Administration has repatriated them to their parent organization and has directed absorption in the TRS/TRD Department which cannot be held to be violative of any provisions of the circular nor does it affect any right of the Appellants.

17. In Mahesh Kumar K. Parmar and Others Vs. S.I.G. of Police and Others, , the Apex Court has observed as under:

When the Government decided to set up a separate organization to be called as Intelligence Bureau, these Petitioners were drafted into that Bureau way back in the year 1991 by way of deputation.... The Petitioners were permitted to continue in the Intelligence Bureau even after the enforcement of the Rules till 1999 and then were repatriated to their parent organization. The Petitioners grievance is that since they could be brought into the Intelligence Bureau by way of transfer in accordance with the Rules, that have been framed in exercise of power Clause (b) of Section 5 of the Bombay Police Act and since they have already rendered services in the Bureau from 1991 till the date of their repatriation, they must be held to have acquired a right to be permanently absorbed in the Bureau or at least a legitimate expectation to be absorbed. The aforesaid grievance of the Petitioners not having been acceded to by the competent authority, they approached the High court. The High Court having dismissed the writ petition, they have approached this Court.... Mr. Dholakia, the learned Senior Counsel appearing for the State, on the other hand, submitted that the Rules never contemplated a permanent absorption of the existing employees on deputation and therefore since the nature of their tenure in the Bureau was that of a deputation, the employer has always a right to repatriate the deputationist to the parent organization and consequently, the question of issuing a mandamus for their permanent absorption does not arise. Having considered the rival submissions and also the relevant provisions of the Rules, we do not see any enforceable right with the Petitioners for being permanently absorbed though we see sufficient force in the contention of Dr. Dhavan that the appropriate Government would be well advised to consider the retention of these Petitioner permanently in the Bureau having regard to the case that they have already rendered services from 1991 till 1999 and that the Rules themselves contemplate to man the post on transfer. While, therefore, we are unable to issue any mandamus to the State Government requiring them to permanently absorb these Petitioners in the Bureau, we would observe that the State Government may consider the case of these Petitioners for absorption on transfer in accordance with the Rules, if they are found otherwise suitable.

18. In Ram Ganga Command Area Development Authority and Another Vs. Sheetal Kumar Vaish and Others, , the Apex Court has observed as under:

10. ... One thing is clear that from the beginning the employee and the Milk Board as well as the Authority proceeded on the footing that the employee was on deputation. This becomes clear from the stand taken by the employee asserting that he was on deputation. That was also his positive stand before the Tribunal.

11. In view of materials available from the documents referred to above, the inevitable conclusion is that the employee was on deputation from the Milk Board and appointment on temporary basis with the Authority can, by no stretch of

imagination, be considered to be substantive appointment.

19. As will appear from the aforesaid dictum of the Apex Court that a deputationist has no right to be absorbed permanently more so when the order was passed on 14th May, 2004 repatriating the Petitioner to his parent department. Therefore, the order dated 14th May, 2004 by which the Petitioner was repatriated to the original department coupled with the order by which the Petitioner was sent on deputation shows that his lien shall continue on the parent department and the cadre will not be changed and the said order is sufficient, to come to the conclusion that there has been no order absorbing the Petitioner, who is a deputationist, in the Urtaranchal Tea Development Board and as such the submission of the Petitioner being devoid of merit, we accordingly reject the same.

20. So far as the submission of the Petitioner with regard to the benefit of Clause 4 of the G.O. dated 11th February, 2004 is concerned, it does not provide any such condition for absorption of the Petitioner, who is a deputationist and the G.O. relates only for those who are already working there and the G.O. is meant to absorb them on the vacant post and those who will not opt for the Board shall be considered to be placed in various departments of the Kumaon Mandai Vikas Nigam.

21. There is no mention of either deputationist or the employees of the Government of the Garhwal Mandai Vikas Nigam and as such aforesaid G.O. has no application to the Petitioner. Further the said G.O. cannot be made applicable to the Petitioner in view of the attachment order that the lien of the Petitioner shall remain with the parent department and the parent department has never consented for the absorption of the Petitioner in the Urtaranchal Tea Development Board.

22. We, therefore, reject the arguments of the Petitioner so far as the benefit of G.O. dated 11th February, 2004 is concerned.

23. In view of the aforesaid, writ petition is devoid of merit and is dismissed. No order as to costs.