

**Pankaj and Another Vs. State of U.P.**

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**Court :** Allahabad

**Decided On :** Feb-07-2013

**Judge :** Amreshwar Pratap Sahi

**Appeal No. :** Writ - A No..7119 of 2013

**Appellant :** Pankaj and Another

**Respondent :** State of U.P.

**Judgement :**

Heard Sri Ashok Khare, learned senior counsel, for the petitioners and learned standing counsel for the respondents.

The relief prayed for is for quashing of the order dated 24th January, 2013 issued by the Director Technical Education, U.P. and the consequential order dated 31st January, 2013 whereby the petitioners have been repatriated to their parent cadre in the Subordinate Government Institutions where they had been substantively appointed.

The contention of Sri Ashok Khare is that the orders are arbitrary and illegal and inasmuch as the petitioners belong to the same cadre of employees and are governed by the same set of rules, namely, the Uttar Pradesh Technical Education Department, Ministerial Service Rules, 1986 and, therefore, there was no occasion for having passed the impugned order. He further submits that the petitioners have already been absorbed at the Directorate in the year 2005 under a valid order

dated 18.3.2005 passed by the State Government itself which should be read as a relaxation in favour of the petitioner in terms of Rule 32 of 1986 Rules. It is urged that everything being same, the posting of the petitioners and their absorption at the Directorate did not require any interference.

That last submission of Sri Khare is that even assuming for the sake of argument that such an order could have been passed it could not have been done without giving any notice or opportunity to the petitioners and since the impugned orders are in violation of principles of natural justice, they deserve to be set aside.

The learned standing counsel had been called upon to obtain instructions during the day time itself who submits that the finding recorded is categorically to the effect that the petitioners were appointed in the cadre of the Subordinate Educational Institution, namely, Polytechnics. He contends that they do not belong to the cadre of Class-III employees at the Directorate level. Their inclusion at the Directorate has disturbed the cadre at that level and, therefore, it had become necessary to repatriate them to their parent cadre in the respective institutions.

On hearing learned counsel for the parties and on a perusal of the 1986 Rules, copy whereof have been filed as annexure-1 to the writ petition, it is evident that under the same rules there are separate provisions for the posts at the Head Office of the Directorate and the posts at Subordinate Government Institutions. This cadre of service has been defined in Rule 4 and the bifurcation is provided for in the source of recruitment in Rule 5. Separate qualifications and the separate mode of recruitment has been provided in relation to both sets of employees. It is, therefore, clear that the appointment in a Subordinate Government Institution is on a different footing and is under the control of the Directorate of Technical Education as defined in Rule 3 (k) of 1986 Rules. The posts at the head office are that of junior clerk, junior accounts clerks, senior clerk of budget, assistant cashier, senior assistant, office superintendent grade-II, stenographer lower scale and higher scale. The head office also has a audit and accounts branch and plant and statistics branch with different posts enumerated therein.

The posts at the Subordinate Government Institutions are that of junior clerk, junior accounts clerk, senior clerk, auditor, stenographer lower scale and other posts

with the qualifications prescribed against them.

It is thus clear that those who are appointed in a Subordinate Government Institution have a separate status from that of such employees who are appointed at the head office. The contention, therefore, that both set of employees, belong to the same stream, cannot be accepted.

Coming to the absorption order, as pointed out by Sri Khare, of March, 2005 suffice it to say that no rule could be pointed out according to which the said absorption was made permissible only in respect of two clerks who are petitioners herein. The recital contained in the order of absorption is that this was being done keeping in view the previous illustrations in the department. It is thus clear that there was no rule permitting absorption thereby providing a different source of recruitment that was not provided for in the rules. On the aforesaid facts it is clear that the petitioners were appointed in the Subordinate Government Institutions which was their parent stream and, therefore, the director has not committed any error in repatriating them back to the Polytechnics where they were appointed. The consequential order, also in relation to seniority, does not require any interference.

Learned counsel had urged that the orders were passed in violation of principles of natural justice. This Court has given full opportunity to the petitioners to explain their status and there being nothing to the contrary to take a different view from the impugned order, the opportunity of hearing to the petitioners before the authority would be an empty formality. The petitioners have failed to establish as to how they can be retained at the head office in the Directorate or have any vested right. In the absence of any such material, the aforesaid plea also does not require any further deliberation. The writ petition lacks merit and is accordingly dismissed.

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