

Union of India Vs. Pradeep Kumar Sahu

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Court : Orissa

Decided On : Apr-22-2014

Appellant : Union of India

Respondent : Pradeep Kumar Sahu

Judgement :

ORISSA HIGH COURT: CUTTACK W.P.(C) No.1638 of 2006 In the matter of an application under Article 226 of the Constitution of India. _____ Union of India, represented through its Director General, Posts, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi - 110001 & others Petitioners. - Versus Sri Pradeep Kumar Sahoo For petitioner : For Opp. Party : Opposite Party. Mr. S.D.Das, Asst. Solicitor General of India M/s D.P.Dhalasamanta ----- P R E S E N T: THE HONOURABLE MR. JUSTICE I.MAHANTY AND THE HONOURABLE MR. JUSTICE B.N. MAHAPATRA Date of Judgment : 22.04.2014 B.N. Mahapatra, J.In the present writ petition, challenge has been made to the order of the Central Administrative Tribunal, Cuttack (for short, the Tribunal) dated 01.04.2005 passed in O.A. No.52 of 2004 on the ground that the said order is illegal, arbitrary and contrary to the provisions of law.

2. Petitioners case in a nutshell is that the opposite party Sri Pradeep Kumar Sahoo was appointed provisionally on 05.06.1998 as an E.D./GDS Packer-cum-Male Carrier of Sisupalagarh Branch Post Office, Bhubaneswar. On 10.06.1999, an order was passed by the Sr. 2 Superintendent of Post Offices, Bhubaneswar terminating his services with a direction that he would be entitled to claim

equivalent to the basic allowance plus D.A. for the period of notice at the same rate he was drawing immediately before passing of the order. Challenging the said order, opposite party filed O.A. No.280 of 1999 to quash the order of termination. Before the Tribunal, the respondent-Union of India filed a counter indicating the irregularities in the selection process followed by Sub-divisional Inspector, Postal, South Division, Bhubaneswar showing undue favour to the applicant by No.calling the names from the Employment Exchange. The public notice dated 24.07.1997 stated to have been issued to various authorities was, in fact, No.sent by registered post and there were other irregularities committed. The opposite party being beneficiary of such irregular appointment, his services were rightly terminated. Said O.A. No.280 of 1999 was allowed on 15.03.2000 quashing the order of termination. However, liberty was given to the present petitioners to issue show cause notice against proposed order of termination and only after considering the reply of the opposite party to take a decision in the matter as deemed fit. Pursuant to said direction, opposite party was issued with notice dated 08.01.2004 to show cause as to why his services as Gramin Dak Sevak Mail Deliverer in Sishupalagarh Branch Office, Bhubaneswar shall No.be terminated as his entry into the service was No.found congenial to the procedural Rules. On 21.01.2004, the opposite party filed his reply to the said show cause notice. However, apprehending penal action, the opposite party filed O.A. No.52 of 2004 on 3 20.02.2004 challenging the said show cause notice on the ground that he was duly selected and should No.suffer for no fault of his; secondly, show cause notice was issued belatedly and it should have been issued within six months from the date of receipt of order passed in O.A. No.280 of 1999; since show cause notice has No.been issued within six months, the respondent-petitioners are estopped from issuing such notice thereafter. After hearing the parties, learned Tribunal allowed the Original Application bearing OA No.52 of 2004. Hence, the present writ petition.

3. Mr.S.D.Das, learned Assistant Solicitor General appearing for Union of India submitted that the Tribunal has committed a jurisdictional error in holding that the respondents (present petitioners) have taken inconsistent view without application of mind. The impugned order has been passed without appreciating various submissions of the present petitioners on its proper perspective. Rather learned

Tribunal has failed to appreciate the counter filed in O.A. No.52 of 2004, which is in addition to the earlier counter filed in OA No.280 of 1999. The order dated 30.06.1998 regularizing the opposite party's appointment was issued by the Sub-Divisional Inspector, Postal in order to show undue favour to the opposite party on the date he was relieved on account of transfer to Jatni Sub-Division under Puri Division. The opposite party being the sole applicant for the post, that itself shows that there is no notification by registered post. The finding of the Tribunal that the opposite party cannot be found fault with in the matter of selection is perverse. The Tribunal erroneously relied upon the judgment in OJ.No.5254 of 1988 as well as judgment of the 4 Patna High Court. The learned Tribunal should not have drawn adverse view for issuance of notice after long lapse of time, as for such lapse and delay in issuance of notice by the concerned Officer, he has been proceeded against and punished. In the present case, scope of selection was not widened to select the most meritorious candidate but it was confined to one application for one post. Recruitment Rules mandates compulsory notification to the Employment Exchange and if such candidates are found suitable then public notification can be issued, but in the present case the proof of dispatch by registered post to the Employment Exchange and the public notifications are not available in the selection file. Therefore, the whole selection is vitiated. Thus, the Tribunal exceeded its jurisdiction, while quashing the show cause notice prematurely before any final decision is taken.

4. Mr.Dhalsamanta, learned counsel appearing for the opposite party submitted that the Sub-Divisional Inspector, Postal started selection process to fill up the post of Extra Departmental Packer-cum- Male Carrier (re-designated as DGSMF), Sisupalgarh Branch Post Office by sending requisition to the Employment Exchange, Bhubaneswar to sponsor candidates for the said post vide Memo No.A-66 dated 04.04.1997. As the Employment Exchange did not sponsor candidates within 30 days from the date of issue of such letter, public notification was issued vide Memo dated 24.07.1997, the copy of which was sent by registered post to (i) Branch Post Master, Sisupalgarh Branch Office, Bhubaneswar, (ii) Sub-Post Master, Old Town Sub-Office, Bhubaneswar, (iii) Block Development Officer, Bhubaneswar Block (iv) Tahasildar, Bhubaneswar, (v) Sarapanch, Sisupalgarh Gram Panchayat, (vi) Officer in-charge of Old Town PS, (vii) Headmaster,

Sishupalgarh, (viii) Revenue Inspector, Sishupalgarh. In response to the said public notice, the opposite party submitted his candidature along with all relevant documents within the stipulated period. The opposite party was initially appointed as EDDA (No.GDSMD), Sisupalagarh Branch Post Office provisionally on 05.06.1998 which was made regular on 30.06.1998 on the basis of due procedure of selection for the post in question. The impugned order passed by the Tribunal suffers from no illegality and is based on judicial pronouncement. Judgment dated 08.07.2004 of the Delhi High Court is No.applicable in case of opposite party as the opposite party has been selected and appointed on the basis of due procedure of selection for the post of GDSMD. Forty candidates were sponsored for the post in question on 18.08.1997 by the Employment Exchange on the basis of the requisition. The petitioners have taken inconsistent stands in their counter. The opposite party has No.committed any omission or commission insofar as selection and appointment to the post in question is concerned. The opposite party was selected and appointed through a regular selection process. Concluding his argument, Mr. Dhalsamanta prays for dismissal of the writ petition.

5. On the rival contentions of the parties, the only question arises for consideration by this Court is whether the Tribunal is justified in quashing the show cause notice and allowing OA No.52 of 2004. 6 6. The real issue involved and to be adjudicated in the present case is whether the appointment of opposite party as Extra-Departmental Mail Deliverer by Sub-Divisional Inspector is in accordance with the recruitment process.

7. Challenging the order of termination of services dated 10.06.1999, the opposite party filed O.A. No.280 of 1999 before the Tribunal praying therein to quash the order of termination. The said O.A. was disposed of vide order dated 15.03.2000 quashing the order of termination dated 10.06.1999 with the following observation/direction:We, however, make it clear that in case the applicants have No.been allowed to resume the post, they be reinstated and thereafter the respondents are at liberty to issue notices giving opportunity to the applicants to show cause, if any, against the proposed order of termination and after considering the show cause, if any, can take appropriate decision in the matter as deemed fit.

8. Pursuant to the above direction, the present petitioners issued notice dated 08.01.2004 to show cause as to why services of the opposite party as Gramin Dak Sevak Mail Deliverer, Sisupalagarh Branch Office, Bhubaneswar shall not be terminated, as his entry into the service is not found congenial to the procedural rules and regulations as envisaged in EDAs (Conduct & Service) Rules, 1964. On 21.01.2004, the present opposite party filed reply to the said show cause notice. While the said show cause reply was pending for consideration, opposite party filed O.A. No.52 of 2004 on 19.02.2004 challenging show cause notice. Learned Tribunal vide order dated 01.04.2005 allowed the said O.A. No.52 of 2004 quashing the notice to show cause issued by the Inspector of Posts, Bhubaneswar, South Division under Annexure-A/7 annexed to the O.A. Now, the question arises as to whether pending consideration of show cause reply learned Tribunal could entertain the second O.A. and quash the show cause notice. Admittedly, in the present case, show cause notice was issued to the opposite party pursuant to order dated 15.03.2000 passed by learned Tribunal in O.A. No.280 of 1999. It may be pertinent to mention here that in the said O.A., the Tribunal further directed that after considering show cause, if any, the petitioners can take appropriate decision in the matter as deemed fit.

9. In view of the above, we are of the considered opinion that the learned Tribunal is not justified to entertain the second O.A. No.52 of 2004 and quash the show cause notice pending consideration of show cause reply.

10. Otherwise also, the order of the Tribunal is not sustainable in law. The learned Tribunal has quashed the show cause notice on following three grounds: (i) Petitioner-respondents took inconsistent stands; (ii) Opposite party-applicant is in no way responsible in the matter of selection and appointment; (iii) Notice of termination was issued to opposite party-applicant after a long respondents-petitioners' lapse of time by the 8 11. It is true that the petitioners have taken inconsistent stands with regard to calling for the names from Employment Exchange, but the fact remains that the Employment Exchange had sponsored the names of 40 candidates vide letter dated 18.08.1997, which fact has not been

disputed by anybody. As per Methods of Recruitment, the candidates sponsored by the Employment Exchange should have been considered first and in case of non-availability of any eligible candidate, the vacancy should have been notified in public notice.

12. At this stage, it would be appropriate to know the relevant methods of recruitment of Extra-Departmental Agents prescribed by the Directorate, which are reproduced below. (12) Recruitment of ED Agents through Employment Exchange.- The question of recruitment of ED Agents through Employment Exchange has been under consideration of the Government for some time past. (2) It has been decided that the employment of ED Agents should be made through Employment exchanges. For this purpose the concerned recruiting authority should send a requisition to the local employment exchange, having jurisdiction over the area, requesting nomination of suitable candidates for the post, having the prescribed qualifications, within a period of 30 days from the date of sending requisition to the Employment exchange for nomination of candidates to the concerned authority. While placing requisition on the employment exchange, the competent recruiting authority should make a special mention of the following points:xx xx xx 5. In case no nominations are received from the employment exchanges regarding the candidates as per requirements within the stipulated period of 30 days or if any of the candidates sponsored by the Employment Exchange is not found suitable as per prescribed conditions of eligibility, it would be open to the competent recruiting authority to make selection from other applicants in accordance with the existing procedure. 9 6. The Heads of Circles will please issue appropriate instructions to all recruiting authorities in their jurisdiction and ensure compliance of the revised procedure for recruitment to different categories of ED Agents. [D.G., P & T., Letter No.45-22/71-SPB. I/Pen., dated the 4th September, 1982]. It was ordered above that ED Agents should be appointed through the employment exchange of the area. Several instances of nomination of only one candidate by the employment exchange have come to the notice of this Directorate. In such cases, the resultant selection process gets totally devoid of any element of completion. It has, therefore, been decided that in future sponsoring of at least three candidates by the employment exchange should be insisted upon. In case of any difficulty in this regard, the matter may be taken up

with the Director of Employment Exchange of the State Government concerned. Normally they have instruction to send a panel of candidates No.less than thrice the number of posts notified to them. In the event of the employment exchange failing to sponsor the minimum number of candidates, the vacancy should be notified through public advertisements and while making the final selection, the comparative merit of all the candidates, i.e., those who respond to the notification as also those sponsored by the employment exchange should be taken into consideration. Heads of Circles will please issue suitable instructions in this regard to their subordinate formations and ensure compliance of the above procedure for recruitment to different categories of ED Agents. [D.G. P & T., Letter No.43-233/84-Pen., dated the 1st May, 1986.]. Whenever it is proposed to appoint an ED Agent due publicity should be given to this fact. This may be done by displaying a notice giving particulars of the appointment to be made and the allowances and other conditions attached to it at the concerned post office, the police station, the panchayat office and any other public place considered suitable. [D.G. P & T., Letter No.43-40/65-Pen., dated the 19th January, 1968"]. The Directorate further observed that the method of recruitment has to be scrupulously followed while making selection of Extra 10 Departmental Agents. The learned Tribunal nowhere held that the opposite party was appointed as ED/GDS Packer following the above procedure of recruitment. On the other hand, the learned Tribunal allowed O.A. No.52 of 2004 on the ground that the opposite party is in no way responsible for his selection and appointment.

13. Law is well-settled that any appointment made in violation of the mandatory provisions of the statute would be wholly illegal. Such illegality canNo.be cured by taking recourse to regularization. [State of H.P. Vs. Suresh Kumar Verma, (1996) 7 SCC 562].. In the present case, if the appointment of opposite party has been made in violation of mandatory provisions of the statute, he has no right to continue in service. Merely because long time was elapsed to issue show cause notice, the same could No.validate the irregular appointment, if any, of the opposite party. Long continuance in service is of no consequence and equity, sympathy or generosity has no place where the original appointment is No.in accordance with the recruitment process.

14. In view of the above, the order of the Tribunal dated 01.04.2005 passed in O.A. No.52 of 2004 is set aside. The petitioner No.4-SubDivisional Inspector, (Postal), Bhubaneswar South Sub-Division, Bhubaneswar who has issued the notice to opposite party to show cause against proposed order of termination of service, is directed to consider the show cause reply already filed by the opposite party in accordance with law and pass a reasoned order without being influenced by any of the 11 observations made by the learned Tribunal in O.A. No.52 of 2004. Needless to say that if opposite party will be aggrieved by the order of petitioner No.4, it would be open for him to approach the Central Administrative Tribunal for appropriate relief, if so advised.

15. In the result, the writ petition is allowed to the extent indicated above.
B.N.Mahapatra, J.I. Mahanty, J.I agree. ... I.Mahanty, J.Orissa High Court, Cuttack
Dated 22nd April, 2014/ss/skj/bks

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