

Rajendra Singh Vs. UOI and Others

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Court : Delhi

Decided On : Jan-04-2016

Judge : V. Kameswar Rao

Appeal No. : W.P.(C) Nos. 5594 of 2007 & CM Nos. 10377 of 2007, 11634 of 2009

Appellant : Rajendra Singh

Respondent : UOI and Others

Judgement :

W.P.(C) 5594/2007

1. The present petition has been filed by the petitioner seeking the following reliefs:-

(i) Issue notice to the respondents to show cause as to why the impugned order be not quashed by a writ of mandamus or any other appropriate writ or direction.

(ii) To direct the respondent No.2 to produce the relevant records pertaining to the present case at the time of hearing of the petition.

(iii) Upon return of the notice and after hearing the parties to the present proceeding and upon perusal of the relevant records, may be pleased to allow the present writ petition.

(iv) Promote the petitioner to the post of Deputy Director in the respondent federation with effect from 09.01.2003.

(v) Quash the impugned order of promotion dated 08.06.2006 and promote the petitioner to the post of Director in the respondent federation with effect from 01.06.2006. (vi) Quash any document which in terms or otherwise appoints or purports to appoint respondent No.3 as Managing Director or authorizes him to act or function as the Managing Director or to discharge the duties or responsibilities of the said post in any manner whatsoever and direct respondent No.2 to consider the petitioner for appointment to the post of Managing Director in the respondent federation with effect from 29.08.2006, in accordance with Rule 28(1) of the Byelaws of the respondent federation.

(vii) Allow exemplary costs of the present writ petition to the petitioner against the respondents. ?

2. As is seen from the reliefs prayed for, the challenge also includes to two orders dated June 08, 2006 and May 06, 2008. Vide order dated June 08, 2006, the respondent No.2 has restored the position of Director to respondent No.3 namely B.K. Mishra, who at the relevant time was working as Assistant Director with effect from January 01, 2006 subject to finalization of departmental enquiry against him. Insofar as order dated May 06, 2008 is concerned, vide the said order the respondent No.2 had appointed the respondent No.3 to the post of Managing Director of the respondent No.2 organisation.

3. Some of the facts are, the petitioner joined the respondent No.2 on June 21, 1985 as Stenographer, Grade-II. He was absorbed in the respondent No.2 on July 27, 1986. He was later promoted as Stenographer, Grade-I vide order dated February 01, 1991. On March 15, 1994 he was promoted as Assistant Director in the pre-revised scale of Rs.2200-4000 and later as Deputy Director in the pre-revised scale of Rs.10000-15200 vide order dated July 27, 2006.

4. It is the case of the petitioner that a charge-sheet was issued to the respondent No.3 while he was working as Deputy Director on substantive basis and Director In-Charge, which resulted in a penalty of reversion of the respondent No.3 to the

post of Assistant Director vide order dated January 08, 2003. The said order had attained finality as the respondent No.3 neither preferred any departmental appeal nor challenged the said order of penalty in any Court of law. Instead, he accepted the same by joining the reverted post on October 09, 2003. It is his case that insofar as he is concerned he was designated as Assistant Director on June 17, 1993 and was regularised on the said post on March 15, 1994. In other words, having appointed as Assistant Director much before the respondent No.3 he was senior to him. It is his case that Clause 33(A) of the Byelaws of the respondent federation, which is in conformity with Section 51 of the Multi-State Cooperative Societies Act, empowers the Board of Directors of the Society to appoint Chief Executive by whatever designation, who shall be a full time employee of the Society. The mode of recruitment to the respondent federation is regulated by Clauses 6 to 9 of the Staff Regulations. A conjoint reading of the aforesaid clauses reveal that the permissible modes of appointment to various posts in the respondent federation are direct recruitment, promotion, deputation, appointment by limited competitive tests as per rules, by direct and on adhoc daily wage basis and contingent appointment. However, the restoration of the position of the respondent No.3 as Director and further his appointment as Managing Director, it is not clear which mode of appointment has been invoked. The post of Managing Director needs to be filled on the basis of advertisement. According to him he being senior to respondent No.3 should have been appointed as Deputy Director initially and later Director because of creation of vacancy on the reversion of respondent No.3.

5. Mr.Sanjay Das, learned counsel appearing for the petitioner would submit that the order of penalty dated January 08, 2003 passed against the respondent No.3 was never recalled by the respondent No.2 in the capacity of disciplinary authority of the respondent No.3. His order of penalty dated January 08, 2003 still holds good. Under the Scheme of the Act of 2002, the byelaws of the federation and the staff regulation, no inherent power has been conferred upon the respondent federation to recall the penalty order passed pursuant to the disciplinary proceedings. He states that even assuming such a power exists, the power could not have been exercised without recalling the penalty order dated January 08, 2003. Rather it is a case where the respondent No.3 having failed to obey the

order dated April 12, 2004 transferring him to Bhubaneswar was not a fit person for being given the responsibility of the higher post. Even otherwise, it is his submission that the appointment of the respondent No.3 as Managing Director overlooking the entire selection procedure without notifying the vacancy by way of suitable advertisement recommending the name of the respondent No.3 is illegal. Such an act of the respondents is overlooking the fact that the petitioner was ten years senior to the respondent No.3 and had deprived the petitioner and other senior officials the consideration for the post of Managing Director, which is a fundamental right guaranteed under Article 14 and 16 of the Constitution of India. Such an act is an abuse of process of law. Hence, the appointment of the respondent No.3 is nonest in the eyes of law and need to be set aside.

6. On the other hand, it is the case of the respondent Nos.2 to 4 that the Departmental Promotion Committee dated January 15, 2007 constituted by the Resolution of the Board of Directors promoted the petitioner from the post of Assistant Director to the post of Deputy Director, whereas the respondent No.3 to the post of Director on the basis of internal assessment. The post of Managing Director is a selection post and the respondent No.3 has been appointed on the basis of recommendation of the Board of Directors and on the approval of the respondent No.1 i.e. Ministry of Agriculture, Government of India. It is their case that the necessary parties have not been impleaded. In other words, according to the respondents the petitioner was only a Deputy Director. There were two other senior officers to him in line, one Mr.Rajendra Prasad, Director and another Mr.A.K. Tiwari, In-Charge Director. According to the respondents, in the absence of they being parties in the proceedings, no relief can be granted to the petitioner.

7. It is also their case that the petitioner stands dismissed from the service twice. He cannot claim as a matter of right the posts in question.

8. It is also the stand of respondent Nos.2 to 4 that the petitioner is neither aspirant nor qualified, nor even eligible to the post of Managing Director and therefore, he has no locus to make a challenge in the present case. According to them, it is just a roving and fishing expedition.

9. Learned counsel for respondent Nos.2 to 4 would justify the action of the respondents. According to him, the Board being the ultimate authority and having the prerogative to select a person of integrity, experience, qualification and competence for the post of Managing Director, it is a fair, transparent and justified decision, which has been approved by the respondent No.1, Ministry of Agriculture, Government of India.

10. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is whether the petitioner has locus to challenge the restoration of the position of Director to the respondent No.3 and his consequent promotion to the post of Managing Director. There is no doubt to the fact that an enquiry was instituted against the respondent No.3 which was conducted ex-parte which resulted in a penalty order dated January 08, 2003 whereby he was reverted to the post of Assistant Director. It is also not disputed that the respondent No.3 had actually joined the post of Assistant Director on his reversion. The penalty having attained finality by his own conduct, the respondent No.3 was an Assistant Director for all purposes, at the relevant time. The order dated June 01, 2006 by which the respondent No.3 was restored to the post of Director reads as under:-

FISHCOPFED/ADMN/BKM/2006-07

Dated 8.06.2006

ORDER

Subject: Restoration of position of Director in FISHCOPFED-Reg.

The representation of Shri B.K. Mishra, Assistant Director on the above subject was considered. The President is pleased to restore the position of Shri B.K. Mishra, Assistant Director to the post of DIRECTOR, FISHCOPFED w.e.f. 1.06.2006, subject to finalization of pending Departmental Inquiry against him.

(M.M. TEWARY)

Managing Director ?

11. A perusal of the above order would show that the restoration of respondent No.3 was done on the representation made by respondent No.3. The date of representation is not given. Whether such a representation was by way of a statutory remedy available to the respondent No.3 is also not clear. During the course of his submission, Mr. Khan had placed before me a letter dated November 6, 2003 of the Ministry of Agriculture, Department of Animal Husbandry and Dairying addressed to the Managing Director of the respondent No.2, wherein the following was stated:-

Shri B.K. Mishra, Ex-Director (EP), has submitted a representation to Secretary, AH&D that he has been reverted to the post of Assistant Director in gross violation of the principle of natural justice and without following the prescribed procedure as a result of which he is now drawing the same pay which he was drawing in 1987. You are, therefore, requested to let us know detailed facts of the case as well as the procedure followed for imposing the said penalty on Shri Mishra. The existing procedure for imposing such a penalty on any individual in the organization may also be spelled out clearly. ?

It is not known how a representation of the year 2003, resulted in the order of June 8, 2006 that is three years after the grievance, if any was raised. Mr. Das is right in his plea that till the penalty is set aside, the respondent No.3 could not have been restored to the post of Director. No doubt, the petitioner may have a locus to challenge the order dated June 08, 2006 restoring the respondent No.3 to the post of Director as on his reversion the respondent No.3 had become junior to the petitioner and the restoration of the respondent No.3 to the post of Director has the effect of respondent No.3 superseding the petitioner, that too by two grades, (i) Deputy Director; (ii) Director, when there were no recruitment rules in place at the relevant time. A further question which would arise is whether the petitioner would be entitled to the reliefs as prayed for. There is no dispute that two officers namely Rajendra Prasad and A.K.Tiwari were working as Director and Director (I/C) respectively on the date when the respondent No.3 was restored to the post of Director vide order dated June 08, 2006. Unfortunately, they have not challenged the restoration of the respondent No.3 to the position of Director. If they have not challenged it, rather they have accepted the restoration, the petitioner cannot be

given a reliefs overlooking their prior right against their supersession by the respondent No.3, so also the appointment to the post of Managing Director. Infact, I note that the said persons have not been made parties in this petition. That apart, it is noted that the order of restoration is dated June 08, 2006, whereas the respondent No.3 was given the charge of Managing Director in the month of August,2006 and appointed on permanent basis on May 06, 2008. The petition was filed on July 30, 2007, much after the respondent No.3 was given the charge of the post of Managing Director. In other words, the restoration order was not challenged till July, 2007 and the same was challenged after the respondent No.3 was given the charge of Managing Director in August, 2006. It is apparent that the same was an afterthought. Be that as it may, as this Court has concluded that in the absence of A.K. Tiwari and Rajendra Prasad being party respondents in this petition, who were admittedly seniors to the petitioner, no relief can be granted to the petitioner. It is also noted, that the petitioner has attained the age of superannuation as on date.

12. Insofar as the relief of granting promotion to the post of Deputy Director to the petitioner with effect from January 09, 2003 when the respondent No.3 was reverted to the post of Assistant Director is concerned, suffice to state, such a relief prayed for the first time in the year 2007 would be hit by delay and laches. Learned counsel for the petitioner concedes to the fact that on the reversion of respondent No.3 there was a post of Deputy Director vacant and the petitioner even though made representation did not approach this Court seeking the relief which is sought in the present petition. In the absence of any explanation, the relief is hit by delay and laches and such a relief cannot be granted. In view of my discussion above, it is clear that the present petition filed by the petitioner is without any merit and liable to be dismissed.

13. The petition is accordingly dismissed without any order as to costs.

C.M Nos.10377/2007 and 11634/2009

In view of the order passed in the writ petition, the present applications are dismissed as infructuous.