

Mohammad Ali Vs. the State of Uttar Pradesh and ors.

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Court : Allahabad

Decided On : Dec-11-1957

Reported in : AIR1958All681

Judge : D.N. Roy and ;J.N. Takru, JJ.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Municipalities Act, 1916 - Sections 68(2) and 69

Appeal No. : Special Appeal No. 283 of 1957

Appellant : Mohammad Ali

Respondent : The State of Uttar Pradesh and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : M.H. Beg, Adv.

Disposition : Appeal dismissed

Judgement :

D.N. Roy, J.

1. This special appeal is directed against an order dated 22-11-1957 passed by a learned Single Judge of this Court by which Civil Miscellaneous Writ Petition No. 3023 of 1957 had been rejected. The appellant was employed by the Municipal

Board of Maunath Bhanjari in the district of Azamgarh as an overseer. Under the provisions of Section 68(2) of the U. P. Municipalities Act the appointment and the salary and other conditions attached thereto are required to be subjected to the approval of the State Government. The matter in the present case appears never to have been sent up to the State Government for approval. It came to the notice of the District Magistrate of Azamgarh that the appellant was performing duties as an overseer without the approval of the State Government. Consequently he brought it to the notice of the State Government.

The State Government after carefully considering the matter refused to approve of the appointment and sent a direction to the District Magistrate with a copy to the President of the Municipal Board, Maunath Bhanjan, that the retention of the appellant was wholly unjustified and that his services may be terminated at once. In compliance with the instructions of the Government the President of the Board passed an order on 19-11-1957 terminating the services of the appellant with immediate effect; and that order was communicated to the appellant by the officiating Secretary of the Board on 20-11-1957. In the writ petition two prayers had been made. The first prayer was that a writ in the nature of certiorari be issued quashing the decision of the President of the Board and that of the State Government.

The second prayer was that a writ in the nature of mandamus be issued directing the State Government to accord recognition and approval to the appointment of the appellant as overseer. So far as the second prayer is concerned Mr. M. H. Beg, appearing on behalf of the appellant, has conceded that such a writ in the nature of mandamus cannot be issued to the State Government. We are therefore concerned with the first prayer enunciated above. For the disposal of the matter we have got to look to Section 68 of the U. P. Municipalities Act. That section says that a Board may, and, if so required by the State Government shall by a special resolution appoint the principal officers of its technical departments such as a qualified overseer or sub-Overseer Sub-clause (2) of that section says that each such appointment and the salary and other conditions attached thereto shall be subject to the approval of the State Government.

The view taken by the learned Single Judge was that since the approval of the State Government was not obtained by the Board at the time of appointing the appellant and when the matter came to their knowledge they refused to approve the appointment, there was in fact no valid appointment of the appellant and the result was that the appointment was automatically terminated by the refusal of the State Government to give its approval. The learned Single Judge was further of the opinion that what was done by the President and by the Secretary under the orders of the President was not to dismiss or punish the appellant so as to bring into picture the operation of Section 69 of the U. P. Municipalities Act, but to inform the appellant that in view of the refusal by the State Government to approve of his appointment the appointment had lapsed. In our opinion the view taken by the learned Single Judge was correct.

When a person is employed under a power which is to be exercised subject to the approval of a higher authority or the Government, the appointment holds good so long as the higher authority or the Government has not disapproved of it. There is a distinction between an appointment with the permission of a higher authority or the Government, and an appointment subject to the approval of the higher authority or the Government. An appointment which is to be made with the permission of a higher authority or the Government cannot be made unless the permission is first obtained, but an appointment which can be made subject to the approval of a higher authority or the Government may be made and will be rendered invalid only when it is disapproved by the higher authority. This distinction was pointed out by a Full Bench of this Court in *Shakir Hu-sain v. Chandoolal* : AIR1931 All567 . Sir Shah Sulaiman, Acting Chief Justice, as he then was, observed :

'Ordinarily the difference between the approval and permission is that in the first the act holds good until disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently obtained may all the same validate the previous act.'

2. But as the appointment is subject to the approval of the higher authority or the Government the appointment though valid till it is dis-approved is nebulous and

cannot be deemed to be perfect and binding. In the case of such appointment the appointing authority must ordinarily have the power of rescinding the appointment before it has been approved by the higher authority. In our judgment the provisions of Section 69 of the U. P. Municipalities Act do not apply to such nebulous appointment, and, in the present case, the State Government having disapproved of the appointment of the appellant, the appellant cannot be heard to say that the order passed by the State Government should be quashed by issuing an order in the nature of a writ.

3. The appeal, in our opinion, has no force and it is dismissed.

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