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Court : Allahabad

Decided On : Mar-23-1998

Reported in : 1998(2)AWC1292

Judge : D.S. Sinha and; M.C. Agarwal, JJ.

Appeal No. : C.M.W.P. No. 24230 of 1993

Appellant : Vishnu Dutt Sharma

Respondent : New Okhla Industrial Development Authority, Ghaziabad and Others

Advocate for Def. : U.S. Awasthi, Adv.

Advocate for Pet/Ap. : Ajeet Kumar, Adv.

Judgement :

D.S. Sinha, J.

1. Heard Sri Yasharth, holding brief of Sri Ajeet Kumar, learned counsel of the petitioner, and Sri U. S. Awasthi, learned counsel representing the respondents.

2. The twin Principal reliefs claimed by the petitioner are that :

(i) the orders dated 27th March, 1993 and 5th March, 1993 passed by the Chairman-cum-Chief Executive Officer, N.O.I.D.A., Ghaziabad, the respondent No. 2, appended to the petition as Annexures-'30' and '32' respectively be quashed ;

(ii) the respondents be restrained from demoting the petitioner from the post of Deputy Director or interfering with the petitioner's work as Deputy Director/Director.

3. The order dated 5th March. 1993 is, in fact, a letter addressed to Secretary. New Delhi Municipal Corporation. Patika Bhawan. Parliament Street.New Delhi, intimating him that New Okhla Industrial Development Authority requires the services of Horticulturist on deputation for development of Horticulture particularly for plantation, development and maintenance of parks and green belts, and requesting him to send the names of three Horticulturists of the rank of the Deputy Director along with their five years A.C.Rs. for selection of a suitable officer. By the order dated 27th March. 1993, the motor-vehicle attached to Deputy Director (Horticulture) has been withdrawn and placed at the disposal of the Special Executive Officer (R) of New Okhla Industrial Development Authority.

4. The learned counsel appearing for the petitioner has not been able to point out any right, statutory or otherwise, to the continuance of the attachment of the motor-vehicle with the Deputy Director (Horticulture). The order is purely an administrative order based on exigencies of the administration and challenge to the order by the petitioner is totally misconceived.

5. Communication dated 5th March, 1993, impugned herein, does 'not furnish any cause of action to the petitioner to maintain the petition. How a post shall be filled in absence of any statutory rule is a matter to be decided by the employer. New Okhla Industrial Development Authority, in absence of any statutory requirement or other prohibition in that regard, is fully competent and well within jurisdiction to decide the manner in which the post of Horticulturist is to be filled. It committed no illegality in addressing the Impugned letter dated 5th March, 1993 to the Secretary. New Delhi Municipal Corporation Inviting the names of three Horticulturists of the rank of Deputy Director for considering the appointment on the post of agriculturist.

The petitioner has no say in the matter and cannot take any umbrage.

6. Coming to the second prayer of the petitioner for issuance of a writ of mandamus commanding the respondents not to demote him from the post of Deputy Director and not to interfere with his working as Deputy Director/Directorn the Court is of the opinion that the petitioner has no legally cognizable and judicially enforceable right to sustain the prayer. A perusal of the order dated 29th June. 1988, a copy whereof is Annexure-'13' to the petition, Indicates that the petitioner, an Assistant Director (Horticulture), was given officiating charge of office of the Deputy Director (Horticulture) till further orders. An incumbent given officiating charge of any office does not acquire any right to the post. Thus, the petitioner cannot claim any immunity from deprivation of the officiating charge of the office of Deputy Director (Horticulture). Apart from the fact that the petitioner has no right to continue to hold the charge of the office of Deputy Director (Horticulture), the Court does not find any material which may form basis of his apprehension of reversion. Indeed, no order reverting the petitioner from the post of Deputy Director has been passed. The apprehension being unfounded, the second prayer is totally misconceived.

7. The other prayers, for regularisation on the post of Deputy Director, fixation of pay and grant of arrears also do not have any legal basis.

8. All told, in the opinion of the Court, the petition lacks merit. Consequently, it is dismissed summarily. The interim order dated 12th July, 1993, as extended by order dated 10th September. 1993 shall stand discharged.