

Jamil Ahmed Vs. Industrial Development Commissioner and Principal Secretary and ors.

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Court : Allahabad

Decided On : Jul-03-2002

Reported in : 2002(3)AWC2357; [2002(94)FLR821]; (2002)2UPLBEC1958

Judge : M. Katju and ;R.B. Misra, JJ.

Appeal No. : C.M.W.P. No. 25684 of 2002

Appellant : Jamil Ahmed

Respondent : industrial Development Commissioner and Principal Secretary and ors.

Advocate for Def. : Vinod Misra, A.G. and ;A.K. Misra, Adv.

Advocate for Pet/Ap. : S.M.A. Kazmi, Adv.

Disposition : Petition allowed

Judgement :

M. Katju, J.

1. The petitioner is permitted to delete the name of respondent No. 5 in the array of parties.

2. Heard Sri S. M. A. Kazmi learned counsel for the petitioner, learned Advocate General and Sri Vinod Misra for respondent Nos. 1 and 3.
3. The petitioner has challenged the two impugned orders dated 6.6.2002. Annexures-9 and 10 to the writ petition and the impugned order dated 21.6.2002, Annexure-17 to the writ petition. The petitioner was Inspector in the Railway Protection Force having been appointed on 13.3.1973 as stated in para 4 of the writ petition. It is alleged in para 8 of the writ petition that on 3.6.1992, the Chairman, NOIDA took the petitioner on deputation as Assistant Development Manager, NOIDA and it is alleged that he has performed his duties with utmost sincerity and outstanding record upto 5.1.1993. In para 9 of the writ petition, it is stated that on 5.1.1993, the petitioner came back to his original cadre. i.e., R.P.S.F.
4. In para 10 of the writ petition, it is alleged that in view of the extraordinary performance of the petitioner, a letter was issued from the then Chairman and Chief Executive Officer of NOIDA addressed to I.G., R.P.F., Railway Board, New Delhi, wherein it was contended that in view of the exceptional good record of the petitioner and his previous association with the NOIDA Export Processing Zone for over four years, his service was required in public interest in NOIDA. A true copy of the letter dated 26.2.1993. is Annexure-1 to the petition. In pursuance thereto, the I.G., R.P.F. asked the petitioner to give his response and the petitioner sent his consent of willingness to join NOIDA on 18.3.1993 as alleged in para 13 of the writ petition. It is alleged in para 14 of the petition that the consent of the petitioner for being absorbed in NOIDA was subject to his absorption on permanent basis as per letter dated 18.3.1993, vide Annexure-2 to the writ petition. By letter of NOIDA dated 13.4.1993, Annexure-3 to the petition, the I.G., R.P.S.F. informed that the application of the petitioner for permanent absorption has been accepted. It is also alleged that the petitioner was relieved from the services of R.P.F. vide Annexure-7 to writ petition. The petitioner was given letter by the Chairman, NOIDA, dated 28.4.1993 to report in his office for permanent absorption. In pursuance thereto, the petitioner joined at NOIDA on 28.4.1993. A true copy of the office memo dated 7.5.1993. is Annexure-5 to the writ petition. Since then the petitioner had been performing his duties as usual with utmost zeal, sincerity and consistently good

record without any complaint or even the slightest question with regard to his integrity, honesty and sense of duty as alleged in para 25 of the writ petition. In para 27 of the petition, it is alleged that on 6.6.2002 two orders were issued by the Secretary, NOIDA. By one order his up-gradation scale was recalled and by the other order his services from 28.4.1993 to 6.6.2002 in NOIDA, have been declared to be service on deputation and the petitioner was ordered to be relieved from NOIDA to report back to the D. G., R.P.F., Railway Board. Aggrieved by the two orders, the petitioner has filed the present writ petition.

5. It is admitted by the respondents that the impugned orders were passed without giving opportunity of hearing to the petitioner. We are of the opinion that the impugned orders should have been passed after giving opportunity of hearing to the petitioner as he had been permanently absorbed in NOIDA and this permanent absorption cannot be cancelled without giving opportunity of hearing, as such order will have civil consequences. Hence, we are allowing the writ petition on the point that the impugned orders were passed without giving opportunity of hearing to the petitioner and as such, we quash the impugned orders. However, it is open to the respondents to pass fresh orders after giving hearing to the petitioner in accordance with law. For this purpose, Secretary, Industrial Development to the State Government may sent a letter to the petitioner giving reasons for the proposed cancellation of his permanent absorption within a week and the petitioner shall reply to the same within 10 days thereafter. The petitioner will appear before the respondent No. 3 on 22.7.2002 on which date he will be heard by the said authority who may then pass appropriate orders in accordance with law. We make it clear that if the petitioner does not appear before the Secretary on 22.7.2002, it will be open to the Secretary to pass ex parte order against him.

6. With the aforesaid directions the writ petition is allowed.

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