

Mohammad Ishrat Vs. State of U.P. and anr.

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SooperKanoon Citation : sooperkanoon.com/486993

Court : Allahabad

Decided On : Dec-18-2003

Reported in : 2004(2)AWC1232

Judge : M. Katju and ;Umeshwar Pandey, JJ.

Acts : Uttar Pradesh Absorption of Government Servants in Public Undertakings Rules, 1984 - Rule 5 and 5(1); New Okhla Industrial Development Authority Service Regulations, 1981 - Regulation 16(1)

Appeal No. : C.M.W.P. No. 14506 of 1998

Appellant : Mohammad Ishrat

Respondent : State of U.P. and anr.

Advocate for Def. : U.S. Awasthi, Adv. and ;S.C.

Advocate for Pet/Ap. : Ashok Khare, ;Dinesh Dwivedi, ;A.P. Sahi, ;G.K. Singh, ;V.D. Chauhan and ;S.A. Murtuza, Advs.

Disposition : Petition allowed

Judgement :

M. Katju, J.

1. This writ petition has been filed against the impugned order dated 6.4.1998 Annexure-1 to the writ petition passed by the State Government respondent No. 1. By that order the petitioner's absorption on the post of Assistant Project Engineer in New Okhala Industrial Development Authority (hereinafter referred to as N.O.I.D.A.) has been cancelled.

2. Prior to 2.7.1994 the petitioner was functioning as Assistant Project Engineer in the Rural Engineering Service of the State of U, P. By means of order dated 2.7.1994 the petitioner was appointed as Assistant Project Engineer on deputation in N.O.I.D.A. by the State Government. This appointment of the petitioner on deputation was made under the New Okhala Development Authority Service Regulations 1981. Regulation 16 of the said Regulations states :

'Sources of Recruitment 16 (I):

Recruitment to any post under the Authority may be made from any of the sources :

(a) by direct recruitment ;

(b) by promotion from amongst the employees occupying posts carrying lower scale through a departmental test or an Interview or selection or in any other manner specified by the Authority ;

(c) by deputation or re-employment or on contractual basis ;

(d) from any other source as approved by the Authority.

(2) (i) Sixty six per cent of Group 'A' posts shall be filled in by direct recruitment and the remaining thirty four per cent posts shall be filled in by promotion from amongst the employees upon the basis of seniority subject to the rejection of the unfit and fulfilment of the requisite qualifications and also subject to the condition of the particular employee having worked for at least a period of two years on a post carrying scale of pay next below. If at any time it is found that sufficient number of employees are not available for filling in the percentage prescribed for promotion such posts may be filled in by direct recruitment.

(ii) Various posts falling under Group 'B' will be filled in such a way as to ensure that fifty per cent of the posts are filled in by promotion from amongst the employees and such promotion shall be made on the basis of seniority subject to the rejection of the unfit and fulfilment of the requisite qualifications and also subject to the condition of the particular employee having worked on a post carrying the scale of pay next below for a period of at least two years ;'

3. A perusal of Regulation 16 shows that Regulation 16 (1) (c) permits appointment on deputation in NOIDA and the petitioner was appointed by State Government under that provision.

4. Thereafter the petitioner moved an application dated 17.9.1994 for permanent absorption in NOIDA and this application was recommended by the respondent No. 2 the Chief Executive Officer, NOIDA by his order dated 14.12.1994. This recommendation was followed by reminder of the respondent No. 2 dated 14.9.1995 in which it was specifically mentioned that there are 40 posts of Assistant Project Engineers in NOIDA out of which eight posts are lying vacant and on one of these posts the petitioner can be absorbed suitably. Reference to this recommendation has been made in para 9 of the writ petition.

5. In para 10 of the petition it is mentioned that on the above recommendation the State Government issued direction to NOIDA and accordingly the respondent No. 2 passed an order dated 30.3.1998 permanently absorbing the petitioner in NOIDA with immediate effect in the pay scale of Rs. 2,200-4,000. It is mentioned in para 10 of the petition that when the petitioner was in U. P. Government Service he was in the scale of Rs. 3,000-4,500. However, for the purpose of absorption he had been down graded in the scale and was absorbed permanently in accordance with the provisions of the U. P. Absorption of Government Servants in Public Undertakings Rules, 1984 (hereinafter referred to as 1984 Rules). The relevant extracts of the order issued by the NOIDA relating to Engineer Cadre specifying the method of recruitment is Annexure-2. The petitioner was absorbed accordingly and it is alleged that no objection was raised from any quarter with regard to his absorption.

6. It is alleged in para 12 of the petition that the 1984 Rules have been framed under Article 309 of the Constitution. The expression 'Public Undertaking' has been defined in the 1984 Rules to include a statutory body incorporated under the U. P. Act or a Central Act, as well as a local authority. NOIDA is both a local authority as well as a statutory body incorporated under the U. P. Industrial Area Development Act, 1976. Hence, it is alleged that the 1984 Rules applied to persons working on deputation in NOIDA. We agree with this submission. Under Rule 5 of the 1984 Rules it is provided that the State Government can pass an order of absorption of an employee in the authority. It is alleged in para 12 of the petition that the petitioner had applied for absorption within the time prescribed in the Rules, i.e. before expiry of three years and before attaining the age specified under Rule 5 (1). His claim was recommended and thereafter the State Government passed an order in accordance with Rule 6 of the 1984 Rules finally absorbing the petitioner in the service of NOIDA. The Rules provide that on the absorption in NOIDA his lien in the original parent department ceases to exist. A true copy of the absorption order dated 30.3.1998 is Annexure-3. A perusal of the order dated 30.3.1998 shows that it has been issued by the Upper Mukhya Karya Palak Adhikari, NOIDA on the direction of the State Government. On the basis of this order the petitioner has ceased to have his lien in his original service in U.P. It is alleged in para 15 of the petition that on the absorption of the petitioner various employees of NOIDA agitated against his absorption to pressurise the respondents not to give effect to the order of absorption in respect of the petitioner. It is alleged that these employees gheraoed the Chief Executive Officer, NOIDA who under pressure sent a letter to the State Government for withdrawing the absorption as is evident from the news paper report published in Amar Ujala dated 1.4.1998 vide Annexure-4 to the petition. It is alleged in para 16 of the petition that the petitioner's absorption has been cancelled only under pressure exerted by other employees of NOIDA and respondent No. 2 succumbed to this pressure and agitation. It is alleged that the petitioners' initial order of appointment on deputation and thereafter his absorption was all in accordance with the relevant rules and based on the recommendation of NOIDA authority itself. It is alleged that once absorption has been done it could not be cancelled because there is no power of review except in the case of fraud or mis-representation. In the present

case there is no allegation of fraud or mis-representation by the petitioner for getting his absorption in NOIDA. It is alleged in para 18 of the petition that the cancellation of the petitioners' absorption is wholly illegal particularly when he has ceased to have his lien in his parent department. It is alleged in para 20 of the petition that the petitioner was not given any opportunity of hearing before passing the impugned order and no reason has been given why the petitioner's absorption has been cancelled. In fact the petitioner is totally in the dark about this. It is alleged in para 26 of the petition that there was no complaint against the petitioner's working in NOIDA. The petitioner has never been reprimanded nor is there any complaint of any authority or respondent against his functioning. Hence there was no justification to cancel his absorption.

7. A counter-affidavit has been filed by the respondent No. 2 NOIDA. In para 7 it is alleged that cancellation of the absorption was not wrong. It is alleged that respondent No. 1 was informed by respondent No. 2 about certain shortcomings in the absorption order issued by the respondent No. 1 and requested for a direction to temporarily stay the absorption order issued on 30.3.1998. It is alleged in para 9 that under the absorption Rules only a confirmed employee of the parent department who has served on deputation for last three years can be considered for absorption. In para 19 it is admitted that Chief Executive Officer, NOIDA wrote a letter to the State Government but it is alleged that he did not write the same under any pressure. He has simply brought the feelings of various associations to the knowledge of State Government. In para 20 it is alleged that the absorption order was withdrawn after taking permission from the State Government. It is denied that the withdrawal of the absorption order was under pressure of employees association.

8. A supplementary counter-affidavit has also been filed by the respondent No. 2. In para 3 it is stated that the absorption order dated 30.3.1998 was cancelled by NOIDA authority on administrative reasons and not under pressure of the Engineers' Association. It is alleged that the petitioner has again been taken back on deputation as per communication dated 20.8.1998 from his parent department.

9. We have also perused the rejoinder-affidavit. It is alleged in para 4 that the petitioner has been regularised in his parent department vide order dated 14.12.1989 vide Annexure-R.A, 1 to the rejoinder-affidavit. Hence the petitioner was a confirmed employee in his parent department. In the circumstances, the stand of the respondents in para 9 of the counter-affidavit wholly untenable. In fact after his regularisation in Rural Engineering Service the petitioner was also granted selection grade by order dated 10.3.1993 on his successful completion of three years of satisfactory service vide Annexure-R.A. 2. Hence by no stretch of Imagination can be It said that the petitioner was not a confirmed employee of the U. P. Government. He was recruited in the service of U. P. Government in 1985 and was regularised by order dated 14.12.1989. Hence he became a confirmed employee of the U. P. Government from 14.12.1989.

10. It may be seen from the order dated 14.12.1989 that it regularised the service of ad hoc appointees who were appointed after 31.12.1976 but on or before 1.10.1986 after a selection by a Selection Committee. The petitioner comes within this category.

11. Hence in our opinion the petitioner is certainly a confirmed employee and the stand taken in para 9 of the counter-affidavit is incorrect.

12. It may be mentioned that under Rule 5 (1) of the 1984 Rules an employee can be considered for absorption if he applied for absorption within three years of his appointment on deputation and the recommendation is also made by the Government within three years. In the present case the petitioner was appointed on deputation in NOIDA on 2.7.1994 and he made an application praying for permanent absorption on 17.9.1994 which was well within three years from 2.7.1994. Also the recommendation for his permanent absorption was made by the NOIDA on 4.12.1994 which too is well within three years from 2.7.1994. Hence the petitioner was fully eligible for absorption in NOIDA under Rule 5 (1) of the 1984 Rules. The State Government was also agreeable to the absorption. In fact it was on the direction of the State Government that the respondent No. 2 passed the order dated 30.3.1998 permanently absorbing the petitioner in NOIDA.

13. Thus, the stand taken by the respondents in para 9 of the counter-affidavit is wholly arbitrary and illegal and the petitioner was rightly absorbed in NOIDA on 30.3.1998. The cancellation of his absorption was, therefore, wholly arbitrary and illegal and has proceeded on the presumption stated, in para 9 of the counter-affidavit that the petitioner was not a confirmed employee of his parent department.

14. Apart from the above the impugned order neither gives any reason nor was any opportunity as hearing given to the petitioner before passing of the said order as stated in paras 3 (a), 20 and 22 of the writ petition. The said order has civil consequences. We are satisfied that the Impugned order was arbitrary and illegal and seems to have been passed due to pressure exercised by certain other employees who were against the petitioner's absorption in NOIDA, It is well settled that an order which has civil consequences cannot be passed without giving opportunity of hearing.

15. In the circumstances the petition is allowed. The Impugned order dated 6.4.1998 is quashed. No order as to costs.