Bramh Dev Prasad Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Oct-06-2004

Reported in : (2005)1UPLBEC659

Judge : Vineet Saran, J.

Acts : Contract Act -Sections 23; Zila Parishad (Centralised) (Transferable Cadre) Rules, 1966 - Rules 26 and 27

Appeal No. : Civil Misc. Writ Petition No. 19464 of 2004

Appellant : Bramh Dev Prasad

Respondent : State of U.P. and ors.

Advocate for Def. : P.P. Chaudhary, Adv., ;Abhinav Upadhyay, S.C. and ;C.S.C.

Advocate for Pet/Ap. : K.N. Yadav, Adv.

Judgement :

Vineet Saran, J.

1. The petitioner was appointed as Tax Inspector in Zila Parishad, Gorakhpur on 31.12.1984. After creation of new district Maharajganj, which was carved out from district Gorakhpur, the petitioner was absorbed in the services of Zila Panchayat, Maharajganj. Since the post of Tax Officer was lying vacant in Zila Panchayat,

Maharajganj, the Upper Mukhya Adhikari, Zila Panchayat, Maharajganj wrote to the State Government on 19.2.1999 for promoting the petitioner on the post of Tax Officer. By its order dated 23.8.2000 (filed as Annexure-3 to the writ petition) passed by the State Government, permission was accorded to the Zila Panchayat, Maharajganj to take work of Tax Officer from the petitioner as a, stop gap arrangement and on temporary basis with the condition that the petitioner Brahm Dev Prasad shall not be entitled for payment of any additional amount for working as Tax Officer on such basis. Thereafter the petitioner was admittedly given additional charge of Tax Officer. After taking charge the petitioner filed representations before the State Government for being promoted as Tax Officer and also to be paid his salary on such post.

2. By the impugned order dated 28.4.2004 passed by the State Government on the report having been received from the Chairman, Zila Panchayat, Maharajganj the permission given by the State Government on 23.8.2000 to take work of Tax Officer from the petitioner has been withdrawn. The petitioner has thus filed this writ petition praying for quashing the order dated 28.4.2004 passed by respondent No. 1. A further prayer has been made for a direction to the respondents to pay the petitioner his regular monthly salary of Tax Officer.

3. Having heard Sri Krishna Nath Yadav, learned Counsel appearing for the petitioner as well as Sri Abhinav Upadhyay, learned Standing Counsel appearing for respondent Nos. 1 and 2 and Sri P.P. Chaudhary, learned Counsel appearing for respondent Nos. 3 and 4 and considering the facts and circumstances of this case, I am of the view that no interference is called for with the impugned order dated 28.4.2004 passed by respondent No. 1. However, in the given facts, the petitioner may be entitled to payment of salary of Tax Officer for the period during which he officiated as Tax Officer, Zila Panchayat, Maharajganj.

4. Promotion to the post of Tax Officer is to be made in accordance with the Zila Parishad (Centralised) (Transferable Cadre) Rules, 1966. Rule 26 provides that the post of Kar Adhikari shall be filed up by promotion or by direct recruitment as the State Government may decide. Rule 27 lays down the procedure for filing up regular vacancies by promotion which is to be done by the State Government after

receiving the recommendations from the State Public Service Commission.

5. The contention of the petitioner is that he is senior most Tax Inspector in Zila Panchayat, Maharajganj and has put in more than 10 years of service as Tax Inspector and thus is eligible for promotion as Tax Officer. Be that as it may, the post of Tax Officer being of centralised service, the seniority of the petitioner is to be considered at the State level, list of which has to be sent by the State Government to the Commission alongwith the necessary papers to enable the State Public Service Commission to make its recommendations for such promotion. Since such procedure has not been followed the petitioner cannot claim for promotion merely because he is the senior most Tax Inspector at Zila Panchayat. Maharajganj and on the basis of permission having been granted to the petitioner to officiate as Tax Officer purely on temporary basis as a stop gap arrangement.

6. Accordingly, since I am of the view that the petitioner had not right to continue on the post of Tax Officer and his right was only on the post of Tax Inspector, in the circumstances of this case, I do not find any good ground for interference with the impugned order by which permission for being given additional charge has been withdrawn and the petitioner has been asked to continue on his original post of Tax Inspector.

7. As regards payment of salary to the petitioner on the post of Tax Officer for the period during which he officiated on such post, learned Counsel for the petitioner has placed reliance on a decision of the Apex Court rendered in the case of Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma AIR 1998 S.C. 2909. In the said case the employer was given charge of Junior Engineer on temporary basis as a stop gap arrangement on his undertaking that on the basis of such stop gap arrangement, he would not claim any benefit pertaining to that post, On such facts the Supreme Court held that 'an agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section

23 of the Contract Act'.

8. In the present case the petitioner was asked to officiate as Tax Officer only after the permission had been accorded by the State Government. Although a condition had been imposed while granting such promotion that the petitioner would not claim any benefit for officiating as Tax Officer but in view of the aforesaid decision of the Supreme Court such condition would not be legal and would be unenforceable.

9. In such view of the matter I am of the view that the petitioner would be entitled to higher salary on the post of Tax Officer for the period during which he worked on such post with the concurrence of the State Government. Thus, it is directed that the respondents shall pay to the petitioner salary on the post of Tax Officer for the period during which he worked as Tax Officer with the permission of the State Government i.e. from the date he joined as Tax Officer after the passing of the order dated 23.8.2000 and till the passing of the impugned order dated 28.4.2004. The respondents shall pay to the petitioner difference of salary that he may be found entitled to within a period of three months from the date of filing of a certified copy of this order before respondent No. 4, the Upper Mukhya Adhikari, Zila Panchayat, Maharajganj.

10. For the foregoing reasons and with the aforesaid directions, this writ petition is partly allowed. No order as to costs.