SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Uoi Vs. K.L.Bablani

Uoi Vs. K.L.Bablani

SooperKanoon Citation : sooperkanoon.com/957962

Court : Delhi

Decided On : Jan-08-2013

Judge : Pradeep Nandrajog

Appellant : Uoi

Respondent : K.L.Bablani

Judgement :
$~8 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: January 08, 2013 + W.P.(C) 1132/2012 UOI ..... Petitioner Represented by: Mr.Anuj Aggarwal, Advocate. versus K.L.BABLANI ..... Respondent Represented by: Mr.A.K.Behera, Advocate. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE VEENA BIRBAL PRADEEP NANDRAJOG, J.

(Oral) WP(C) No.1132/2012 1. Heard learned counsel for the parties.

2. The respondent was selected to be appointed as a member of the Customs and Central Excise Settlement Commission and for which letter offering appointment was issued to him on April 16, 2010 indicating therein that if he accepts the same he would have to join as a member of the Settlement Commission at its Kolkata Bench within 30 days i.e. by May 16, 2010.

3. Being a member of the Indian Revenue Service (Custom & Central Excise) and eligible for the next increment on July 01, 2010, and if he would have earned an

increment the future pension would be affected, respondent made a request that joining time be extended and he be permitted to join on August 2, 2010 (August 01, 2010 being a Sunday).

4. Rejecting the request as per communication dated May 25, 2010, respondent was directed to join on or before May 31, 2010 which he did not and as a result the benefit of being selected to serve as a Member of the Commission was lost to the respondent resulting in he filing OA No.640/2011 laying a challenge to the denial of joining time being extended.

5. Inter alia, respondent pointed out that he was discriminated on account of the fact that joining time was extended to one Hari Om Tiwari, M.Dwivedi and N.Shashidharan.

6. The writ petitioner opposed the Original Application by placing reliance upon a memorandum dated July 16, 2009, which has been noted by the Tribunal in para 6 of the impugned decision. The office memorandum reads as under:OFFICE MEMORANDUM Instances of candidates who are selected and then approved by the ACC for appointment in Autonomous Bodies/Statutory Organisation/Regulatory Bodies after submission of their consent to join the said post but, not joining eventually, has increased.

2. It has, therefore, been decided that following procedure should be followed in such appointment(s) by the Ministry/Department (a) In case of appointments to autonomous Bodies/Statutory Organisations/Regulatory Bodies, the administrative Ministry/Department would take consent from selected candidates before sending the ACC proposal to this Secretariat. (b) On receipt of the ACC approval to the proposal, the administrative Department/Ministry would issue offer of appointment giving the candidates 30 days time to join. (c) If the candidate does not join within 30 days, the administrative Department/Ministry would issue a 15 days notice to either join or to face debarment, clearly spelling out the consequences of debarment. (d) If the candidate does not join even after that or submits unwillingness the case would be put up to the ACC for approval, before issuing debarment orders. (e) The period of debarment would be 3 years. The candidate would be debarred for consideration for appointment in all Autonomous

Bodies/Statutory Bodies/Regulatory Bodies or this period, except in the organization to which (s)he belongs. (f) The concerned Ministry/Department and ACC Secretariat would maintain a list of such debarred candidates.

7. Though not very clearly stated, the reasoning of the Tribunal appears to be that notwithstanding the office memorandum not expressly conferring a power to grant time to join being extended, it did not negatively withdraw such a power. The Tribunal has noted time being extended for others to join and no valid reason assigned qua the request made by the respondent.

8. Same contention which was urged before the Tribunal by the writ petitioner, which has not merited acceptance before the Tribunal, has been urged before us today.

9. It is settled law that issues pertaining to joining time are administrative in nature and the source of administrative power has not to be found in any express Rule. Inherent as an administrative power in an administrator would be the power to pass orders of administrative nature.

10. The matter can be looked at differently. If there is no power to grant extension of time, learned counsel for the petitioner is at a loss to explain as to in exercise of what power time was extended for Hari Om Tiwari, M.Dwivedi and N.Shashidharan to join as Members of the Commission.

11. Faced with aforesaid, learned counsel for the petitioner concedes that an administrative power to extend the joining time has to be read as available.

12. Now, it is settled law that if a power exists and a circumstance warranting a request made to exercise the power comes into being, the authority empowered has to take a call and consider the relevant facts and take a decision. The authority cannot say that it would not even consider the relevant facts.

13. Learned counsel for the writ petitioner would then urge that time was extended for Hari Om Tiwari, M.Dwivedi and N.Shashidharan to join as Members of the Commission inasmuch as they had submitted voluntary retirement applications which were deferred because in the exigencies of service where the three

gentlemen were working it was found that they were indispensable.

14. Well, it may be a good reason to extend the joining date to a government servant if his services cannot be dispensed with in an existing department, but that would not mean that where a government servant who has been selected to serve as a Member of a Commission prays that even his joining time be extended by three months so that he can earn an increment which would impact his pension for all times to come should not even be considered.

15. We highlight that the wrong committed by the writ petitioner is to not even consider the request to defer joining time by taking note of the facts on which the request was premised.

16. Faced with aforesaid learned counsel for the petitioner urges that under clause (c) of para 2 of the office memorandum dated July 16, 2009 if a candidate does not join within 30 days, a 15 days notice to join or face debarment had to follow, but immediately attempted to retrace the argument when faced with the situation that the petitioner never issued said notice granting 15 days joining time. We highlight that on May 25, 2010, giving only 6 days time, the department intimated the respondent that if he did not join by May 31, 2010 the letter of offer would be withdrawn.

17. Agreeing with the view taken by the Tribunal we would only highlight that as of today hardly any tenure would be left for the respondent to join and serve as a Member of the Settlement Commission at its Bench in Kolkata, as conceded to by learned counsel for the respondent, but we are upholding the decision of the Tribunal for the reason an issue of law needs to be settled by us and secondly the effect of the order impugned before the Tribunal was a permanent debarment of the respondent, as per clause (c) of para 2 of the office memorandum to be considered in future for appointment to any Autonomous Body, Statutory Organization or a Regulatory Body.

18. The writ petition is dismissed but without any order as to costs. CM No.2456/2012 Since the writ petition stands disposed of, instant application seeking stay of the impugned order till disposal of the writ petition stands disposed

of as infructuous. (PRADEEP NANDRAJOG) JUDGE (VEENA BIRBAL) JUDGE JANUARY 08 2013//dkb//

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com