SUPREME COURT OF INDIA

Divisional Forests Officer

Vs.

M. Ramalinga Reddy

C.A.No.1872 of 2007

(S.B. Sinha and Markandey Katju JJ.)

10.04.2007

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Five vacancies of Foresters were notified on or about 22.11.1978 to the District Employment Exchange, Nellore. Pursuant thereto names were sponsored and 49 candidates registered upto 6.09.1969 were considered for pre-submission interview. However, a request was made to the District Employment Exchange, Nellore on 22.12.1978 to sponsor names of some more candidates for the above posts. 60 candidates registered upto 11.02.1970 were initially considered and after submission interview a list of 18 candidates was sent to the employer on 9.01.1979. In the said list, the name of the respondent was also included although he got himself registered with the Employment Exchange only in the year 1976 having registration No. 2412/76. However, against his name, the registration number was stated to be 6899/69. Allegedly, he got his name enlisted in the list of candidates in connivance with one Mr. Harnadha Reddy, the then Junior Assistant of District Employment Exchange, Nellore.

3. Respondent was selected having been placed in Sl. No. 3 in the merit list. Alleged fraud played by the respondent together with the aforementioned Junior Assistant, District Employment Exchange was brought to the notice of Appellant No. 1 on 24.04.1979. As a proposal was made thereby to delete his name from the list of candidates sponsored by the District Employment Exchange on 9.01.1979 for the post of Foresters, no offer of appointment was issued in his favour.

4. Respondent, thereafter, filed an original application before the Andhra Pradesh Administrative Tribunal. By an order dated 1.04.1981, a direction was made to conduct an enquiry on the said application. During pendency of the said original application itself, he filed a writ petition wherein an interim order was passed to consider his case for appointment. On or about 23.04.1982 pursuant to or in furthermore of the said interim order, an offer of appointment was issued to the respondent. The said writ petition, however, was dismissed by the High Court in terms of an order dated 24.12.1992 opining that it had no jurisdiction in that behalf. The District Employment Officer, Nellore sent a report to Appellant No. 1 holding the respondent guilty of misconduct. He thereafter

filed an original application before the Andhra Pradesh Administrative Tribunal which was marked as O.A. No. 5409 of 1994 inter alia questioning the order passed by the District Employment Officer contained in letter dated 24.08.1993 as arbitrary and illegal and directing Appellant No. 1 to allow all service benefits to him as a Forester with effect from the date of his selection. Indisputably, during pendency of O.A. No. 5409 of 1994, a notice to show cause was issued as a why his name should not be removed from the post of Forester. The Tribunal, in terms of its order dated 5.05.1999, dismissed the said original application directing the respondent herein to submit his explanation to the said show cause notice. Aggrieved by and dissatisfied therewith, he filed a writ petition before the Andhra Pradesh High Court and by reason of the impugned judgment dated 25.4.2005, the said writ petition has been allowed directing:

"9. Accordingly, we set aside the order of the Tribunal and also the report of the 3rd respondent - District Employment Officer, Nellore dated 24.8.1993 and consequently the show cause notice termination. Petitioner shall be continued in service, as if he has been in regular appointment from 23.4.1982 and he shall be given benefit of pay as revised from time to time and he shall also be given notional increments up to the date of filing the present writ petition i.e. 19.7.1999 and thereafter fiscal monetary benefits shall be released.

10. The arrears arising out of the pay fixation shall be paid within a period of three months from the date of receipt of a copy of this order."

5. Mr. H. S. Gururaja Rao, learned senior counsel appearing on behalf of the appellants, would submit that the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that ordinarily an original application was not maintainable against a show cause notice.

6. Mr. L. Nageswara Rao, learned senior counsel appearing on behalf of the respondent, however, would submit that as the respondent had been appointed pursuant to an order passed by the High Court as far back as in 1982, this Court should not interfere with the impugned judgment.

7. The Parliament enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 to ensure equal opportunity for the unemployed people. Although there exists some controversy as to whether notification of services to an Employment Exchange is imperative in character or not, indisputably herein a requisition was made to the Employment Exchange. Names were sponsored by it keeping in view the seniority of the candidates with reference to their registration in the Employment Exchange. Respondent is said to have been registered only in the year 1976. His name, therefore, ordinarily could not have been sponsored by the Employment Exchange at the relevant point of time. Allegedly, a Junior Assistant in District Employment Exchange, Nellore had connived with the respondent in the matter of sponsoring of his name in the year 1979 although he was not entitled therefore. The Employment Exchange, therefore, sought to withdraw the sponsorship of the respondent. In absence of his name having been legally sponsored, the candidature of the respondent could not have been considered for appointment as a Forester. At least such a view appears to have been taken by the District Employment Officer, Nellore. It, as noticed hereinbefore, sent a report in that behalf.

8. Appellant No. 1 herein intended to give effect to the said report. For the said purpose, it had issued a show cause notice.

9. Whether despite the purported report of the District Employment Officer, Nellore, the name of the respondent should be struck off from the rolls or not in a matter which would fall for consideration before the appropriate authority. It is not a case where the notice was issued wholly without jurisdiction. It is also not a case where the said notice was otherwise illegal.

10. Respondent claims his right to continue in service only because he was selected. A selected candidate, it is now well settled, has no legal right to be appointed automatically.

11. The High Court in passing the impugned judgment, with respect, did not pose unto itself a right question. Pursuant to or in furtherance of the said show cause notice, the respondent was required to show cause as to why his services should not be terminated. The observations of the High Court, therefore, to the effect that he having been appointed on 23.4.1982 on the minimum scale of pay, cannot be permitted to continue to draw the same scale of pay as applicable in 1978 without any revisional increments, was wholly irrelevant.

12. It is also not a case where an order has been passed without application of mind. It is also not a case where the appellant had made up its mind and the notice had been issued only by way of a formality. [See M/s. Siemens Ltd. v. State of Maharashtra, (2006) 13 SCALE 297 The Tribunal, as noticed hereinbefore, directed the respondent to show his cause. Ordinarily, no writ petition would be maintainable at that stage.

13. In Management of Express Newspapers (Private) Ltd., Madras v. The Workers and Ors., AIR (1963) SC 569, it was opined:

"15. The High Court undoubtedly has jurisdiction to ask the Industrial Tribunal to stay its hands and to embark upon the preliminary enquiry itself. The jurisdiction of the High Court to adopt this course cannot be, and is indeed not disputed. But would it be proper for the High Court to adopt such a course unless the ends of Justice seem to make is necessary to do so? Normally, the questions of fact, though they may be jurisdictional facts the decision of which depends upon the appreciation of evidence, should be left to be tied by the Special Tribunals constituted for that purpose. If and after the Special Tribunals try the preliminary issue in respect of such jurisdictional facts, it would be, open to the aggrieved party to take that matter before the High Court by a writ petition and ask for an appropriate writ. Speaking generally, it would not be proper or appropriate that the initial jurisdiction of the Special Tribunal to deal with these jurisdictional facts should be circumvented and the decision of such a preliminary issue brought before a High Court in its writ jurisdiction.

We wish to point out that in making these observations, we do not propose to lay down any fixed or inflexible Rule; whether or not even the preliminary facts should be tried by a High Court in a writ petition, must naturally depend upon the circumstances of each case and upon the nature of the preliminary issue raised between the parties. Having regard to the circumstances of the present dispute, we think the court of appeal was right in taking the view that the preliminary issue should more appropriately be dealt with by the Tribunal. The appeal court has made it clear that any party who feels aggrieved by the finding of the Tribunal on this preliminary issue may move the high Court in accordance with law. Therefore, we are not prepared to accept Mr. Sastris argument that the Appeal court was wrong in reversing the conclusion of the trial Judge insofar as the trial Judge proceeded to deal with the question as to whether the action of the appellant was a closure or a lockout."

14. In State of Uttar Pradesh v. Brahm Datt Sharma and Anr., AIR (1987) SC 943 : [1987] 2 SCC 179, this Court held:

"9. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued probably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice."

15. This Court in Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr., [2004] 3 SCC 440 stated the law, thus:

"5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not been entertained for the mere asking and a matter of route, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even by urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose and are denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

16. This aspect of the matter has recently been considered by this Court in Union of India and Anr. v. Kunisetty Satyanarayana, (2006) 12 SCALE 262.

17. Two other aspects of the matter cannot also be lost sight of. Respondent was not appointed pursuant to selection made in his favour. No offer of appointment was issued by the appellant. He was appointed pursuant to an interim order passed by High Court. The High Court ordinarily should not have done so.

18. In Metro Marins and Anr. v. Bonus Watch Co. (P) Ltd. and Ors., [2004] 7 SCC 478, this Court held:

"9. Having considered the arguments of the learned counsel for the parties and having perused the documents produced, we are satisfied that he impugned order of the appellate court cannot be sustained either on facts or in law. As noticed by this Court, in the case of Dorab Cawasji Warden v. Coomi Sorab Warden, it has held that an interim mandatory injunction can be granted only in

exceptional cases coming within the exceptions noticed in the said judgment. In our opinion, the case of the respondent herein does not come any one of those exceptions and even on facts it is not such a case which calls for the issuance of an interim mandatory injunction directing the possession being handed over to the respondent. As observed by the learned Single Judge the issue whether the plaintiff is entitled to possession is yet to be decided in the trial court and granting of any interim order directing handing over of possession would only mean decreeing the suit even before trial. Once the possession of the appellant either directly or through his agent (caretaker) is admitted then the fact that the appellant is not using the said property for commercial purpose or not using the same for any beneficial purpose or the appellant has to pay huge amount by way of damages in the event of he losing the case or the fact that the litigation between the parties is a luxury litigation are all facts which are irrelevant for changing the status quo in regard to possession during the pendency of the suit."

[See also Srikrishna and Ors. v. Aniruddha Singh and Ors., [2005] 12 SCC 389].

19. In any event, the writ petition having been dismissed, the interim order also came to an end. It could have been directed to be continued. Respondent did not, thus, have any legal right to continue in service after dismissal of the writ petition by the High Court.

20. It is furthermore doubtful as to whether an original application could have been filed questioning the report of the District Employment Officer.

21. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. Respondent may file his show cause within two weeks from date whereupon the appellants may take an appropriate decision in accordance with law. The Appeal is allowed. However, in facts and circumstances of the case, there shall be no order as to costs.