

SUPREME COURT OF INDIA

Shripal Bhati

Vs.

State of U.P.

C.A.No.802 of 2020

(Mohan M. Shantanagoudar and Krishna Murari,JJ.,)

29.01.2020

JUDGMENT

Krishna Murari,J.,

SLP(C)No.9276 of 2017

1. Leave granted.

2. This appeal has been preferred against the judgment of the High Court dated 08.02.2017 dismissing the Writ Petition filed by the appellants laying a challenge to the appointment of respondent no. 4 on the post of Project Engineer (Electrical) on deputation in New Okhla Industrial Development Authority (hereinafter referred to as 'NOIDA') and his subsequent absorption.

3. The appellants are presently posted as Assistant Project Engineer (Electrical) in NOIDA.

4. On a request made by respondent no. 4, who was employed as a Sub-Divisional Officer with U.P. Power Corporation Ltd., seeking appointment on a vacant post of Project Engineer (Electrical) in NOIDA, State Government, vide letter dated 13.02.2014 required the NOIDA to appoint him on the said post on deputation for a period of three years. In pursuance to the aforesaid letter, an appointment order dated 19.02.2014 was issued by NOIDA and respondent no 4 was permitted to join the said post. Subsequently vide letter dated 16.02.2015, respondent no. 2 made a recommendation to respondent no. 1 for absorption of respondent no. 4. Aggrieved by the same, the appellants approached the High Court by way of a Writ Petition praying, inter-alia, for:-

(i) Quashing the recommendation letter dated 16.02.2015 for absorption.

(ii) Quashing letter dated 19.02.2014 appointing respondent no 4 on deputation on the post of Project Engineer (Electrical).

(iii) Commanding the respondents to fill up the post of Project Engineer in accordance with Service Rules and to restrain respondent no. 4 from functioning as Project Engineer (Electrical) in NOIDA.

5. During the pendency of Writ Petition before the High Court, respondent no. 4 was absorbed on the post of Project Engineer (Electrical) vide order dated 07.05.2015, issued by the respondent no.1. This order was challenged in the Writ Petition by way of an amendment application which was allowed by the High Court.

6. Vide impugned judgment dated 08.02.2017, the High Court dismissed the Writ Petition.

7. The core issue which arises for our consideration is whether the recruitment of respondent no. 4 on the post of Project Engineer (Electrical) on deputation and his subsequent absorption on the said post is permissible under NOIDA Service Regulations, 1981.

8. Incidentally another issue which arises is whether the appellants are eligible for being promoted to the post on which respondent no. 4 has been appointed and whether the appellant's right of promotion gets eclipsed by absorption of respondent no. 4 and in case the appellants were not found eligible for promotion whether any challenge to appointment or absorption of respondent no. 4 would be maintainable at their behest.

9. NOIDA was constituted by the State Government by means of notification issued under Section 3 of the U.P. Industrial Development Act, 1976 (hereinafter referred to as 'Act of 1976') enacted by the State legislature to provide for constitution of an authority for development of certain areas in the State, into Industrial and Urban Township.

10. Section 5 of the Act of 1976 vests with the Authority the power to appoint officers/employees for performance of its functions including determining their grades and designations subject to control/restrictions of the State Government through general/special orders. Section 19 of the Act of 1976 vests with the Authority the power to make regulations with the previous approval of the State Government.

11. In exercise of powers vested under Section 19 of the Act of 1976, NOIDA has framed the New Okhla Industrial Development Authority Service Regulations, 1981 (hereinafter referred to as '1981 Regulations') to govern the conditions of service of conditions of its employees. Regulation 16 of 1981 Regulations provides for sources of recruitment to all posts. The same reads as under :-

“ Section 16 - Sources of Recruitment 16. (1) 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 post carrying a lower

scale through a departmental test or an interview of 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 percent of Group 'A' posts shall be filled in by direct recruitment and the remaining thirty four percent posts shall be filled in by promotion from amongst the employees upon the basis of seniority subject to the rejection of the unfit and fulfillment 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 recruitments;

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

(iii) Posts under Group C carrying lowest scale of pay shall be filled in to the extent of twenty five percent by promotion from amongst the employees belonging to the Group 'D' on the basis of seniority subject to the rejection of the unfit and fulfillment of the requisite qualifications and also subject to the condition of the particular employee having worked on a post carrying a scale of pay next below for at least a period of two years. The remaining seventy five percent of such posts shall be filled in by direct recruitment;

(iv) Notwithstanding anything hereinbefore contained the Authority shall have full power to modify the source of recruitment or the percentage of promotion or direct recruitment in relation to any posts or class of posts.”

12. It has been contended by learned counsel for the appellant that since Clause 16 (2) provides that 60% of Group 'A' posts are to be filled in by direct recruitment and remaining 34% by way of promotion from amongst the existing employees on the basis of seniority, the post of Project Engineer (Electrical) which is a Group 'A' post could not have been filled in by way of deputation and thus the appointment of respondent no. 4 on the said post on deputation is illegal and directly in the teeth of Service Regulations.

13. The argument is based on an isolated reading of Regulation 16(2)(i) which is impermissible. It is well settled that a provision is required to be read in whole and not in part and in isolation to the other parts of the provision. The entire provision is required to be read out harmoniously. Regulation 16 (i) (c) clearly provides that recruitment to any

post under the Authority can be made by deputation. If the provisions of Regulation 16 are to be read in a manner suggested by learned counsel for the appellant it would render Clause 16 (i) (c) totally redundant. It is well settled principle of law that any particular portion of provision cannot be read in isolation in a manner so as to render the other part of the same provision totally redundant. Similar situations exist under Clause 16 (2)(ii) and (iii) providing for appointment on post falling under Group 'B' and 'C'. If the provisions of Regulation 16 are read in the mode and manner suggested by the learned counsel for the appellant, the provisions of Section 16 (i) (c) would be rendered totally redundant in respect of posts falling under Group 'B' and 'C' as well. Regulation 16 is intended to provide the modes of recruitment and combined reading of the entire regulations makes it amply clear that an appointment to a post falling either under Group 'A', 'B' and 'C' can very well be made on deputation.

14. Learned counsel for the appellants further submitted that NOIDA had formulated a Recruitment and Promotion Policy in the year 1993, wherein the mode of recruitment provided was by way of promotion, direct recruitment and deputation. Subsequently another Recruitment and Promotion Policy was framed in 2005, which provided that the post of Project Engineer in the Engineering cadre was required to be filled in 100% by promotion. Thus, the three sources of recruitment contemplated in the 1993 Policy were reduced to one source in the 2005 and thus thereafter no recruitment could have been made on the post Project Engineer by way of deputation.

15. In the counter affidavit filed on behalf of the NOIDA, it has been stated that the Recruitment and Promotion Policy, 2005 was sent for approval of the State Government. Vide letter dated 18.10.2007, the State Government while clarifying that the Board is competent to frame its Recruitment and Promotion Policy directed the NOIDA to ensure that Policy is not inconsistent with the provisions of Regulations, 1981. It is the specific case setup by NOIDA in its counter affidavit that the Policy could not be implemented in view of the directions issued by the State Government, since the proposal to do away with direct recruitment to Group 'A' posts and to fill them only on the basis of promotion was inconsistent with the NOIDA Service Regulations 16 (i) (c) of the 1981 Regulations. In view of the specific case setup by NOIDA that the Policy of 2005 was never implemented being inconsistent with the 1981 Regulations and that no part of Regulation 16 of 1981 Regulations has been amended till date, the reliance placed by the appellants upon the 2005 Policy is completely misplaced and erroneous. Regulation 16 as it stands (quoted hereinabove) that holds field with regard to source of recruitment in the Authority. The State Government has taken the same stand in its counter affidavit.

16. Now coming to the issue of absorption of respondent no. 4 Regulation no. 16 of 1981 expressly provides that recruitment can be made either by deputation or direct recruitment or from any other source. Regulation 2 deals with applicability of these Regulations and expressly provides for posting/recruitment on deputation basis and absorption of such persons in the service of NOIDA. It may be useful to extract Regulation no. 2 which reads as under:-

“2. These regulations shall apply to every whole time employee of the Authority except a person working with the Authority on deputation from the Union Government or any State Government or a Local Authority or a Corporation or any other organization, by whatever name called, and such a person shall continue to be governed by the rules applicable to him in relation to his service under his parent department or organization, by whatever name called unless such person is absorbed in the service of the Authority as a regular employee.”

17. The decision to absorb respondent no. 4 was taken by the State Government exercising the powers under the U.P. Absorption Rules, 1984 framed in exercise of the powers conferred by Article 309 of the Constitution of India. Rule 5 of the U.P. Absorption Rules, 1984 provides that any Government servant may be permitted to be absorbed in the services of undertaking in which the employee is on deputation, if he applied to the Government for his absorption in the undertaking before expiry of three years from the date of commencement of his deputation or before the date on which he attains the age of 53 years whichever is earlier and the undertaking concerned also moved the Government for his absorption within such period and the Government agrees to such absorption in public interest.

18. A specific stand has been taken by the State Government as well as NOIDA in the counter affidavit that the State Government has exercised the power under the U.P. Absorption Rules, 1984 by issuing orders of absorption of respondent no. 4 in the NOIDA.

19. Learned counsel for the appellants submits that respondent no. 4 was employee of erstwhile U.P. Power Corporation which is not a government department hence he was not a government employee and thus could not be absorbed in the service of NOIDA under the Absorption Rules, 1984 as the said Rules are applicable only in the case of a government employee. No doubt respondent no.4 was not a government servant and Absorption Rules are applicable only to a government servant, but the issue need not detain us for the reason that there are another set of Rules known as “Uttar Pradesh Rajya Vidyut Parishad Ke Sewako Ka Sashan Evam Anya Upkarmo Me Samvilayan Viniyam 1987” (hereinafter referred to as ‘1987 Regulations’), which is a Statutory Regulation framed under the provisions of Section 79(c) of Electricity Supply Act, 1948, whereunder the employees of corporation can be absorbed in the service of State Government or in other undertakings of Government or corporations in the same manner as employees of the Government can be absorbed under Absorption Rules, 1984.

20. Reference at this stage may be made to provisions of Section 5 of the Act of 1976 which reads as under:-

“ 5 Staff of the Authority –

(1) Subject to such control and restrictions as may be determined by general or special orders of the State Government,
Authority may appoint such member of officers and employees as may be necessary

for performance of its functions and may determine its grades and designations.

(2) Subject as aforesaid the officers and other employees of Authority shall be entitled to receive from the funds of the Authority, such salaries and allowances and shall be governed by such other conditions of service as may be agreed upon with the Authority. ”

21. From a perusal of aforesaid provisions, it is clear that the power of appointment of officers and employees lies with the Authority subject to such control and restrictions as may be determined by general or special orders of State Government. Learned counsel for the appellants failed to place before us any such general or special orders of the State Government whereunder the power of appointment which includes power of appointment by deputation is restricted. Contrary thereto, Regulation 16(1)(c) of 1981 Regulations gives express power to the NOIDA to make appointment on deputation which is one of source recognized under the sources of recruitment. Once the deputation as a source of recruitment is available under the Rules of Recruitment, we do not see any impediment in assuming the power of absorption of a deputationist with the Authority by necessary intendment or implication, under Act of 1976 and 1981 Regulations framed thereunder.

22. Besides this Regulation 80 of 1981 Regulations provides that these Regulations are subject to the provisions of any Rule made by the State Government under the Act of 1976 as directions issued by State Government under Section 41 of U.P. Urban Planning and Development Act, 1973 or to the provisions of any other law made on the subject by an Act of Legislature of Uttar Pradesh or the Parliament. Regulation 80 of 1981 Regulations reads as under:-

“80. For the removal of doubt it is hereby declared that these Regulations shall be subject to any Rules made by the State Government under the Act or any directions issued by the State Government under Section 41 of the U.P Urban Planning and Development Act, 1973 or to the provisions of any other law made on the subject by an Act of Legislature of Uttar Pradesh or the Parliament. Section 41 of the U.P. Urban Planning and Development Act reads as under:-

“41. Control by State Government :-

(1) The [Authority],the Chairman or the (Vice-Chairman] shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the [Authority, the Chairman or the Vice-Chairman) under this Act any dispute arises between the authority, the Chairman or the Vice-Chairman) and the State Government the decision of the State Government on such dispute shall be final.

(3) The State Government may, at any time, either on its own motion or on

application made to it in this behalf, call for the records of any case disposed of or order passed by the [Authority or the Chairman) for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit: Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

(4) Every order of the State Government made in exercise of the powers conferred by this Act shall be final and shall not be called in question in any court. ” Section 41 of the U.P. Urban Planning and Development Act, 1976 is applicable to Act of 1976 by virtue of Section 12 of the said Act. 1987 Regulations having been framed under the provisions of Section 79(c) of Electricity Supply Act, 1948, a parliamentary enactment authorizing absorption of employees of erstwhile U.P. Power Corporation in Government undertakings or other Statutory Corporations, in view of provisions of Section 80 of 1981 Regulations read with Section 41 of U.P. Urban Planning and Development Act, 1976, not only respondent no. 2 is bound by every direction issued by the State Government from time to time, the appointment of respondent no. 4 in NOIDA on deputation and his subsequent absorption under the orders of the State Government cannot be faulted with or can be held to be in violation of 1981 Regulations. The first issue stands answered accordingly.

23. Question of maintainability of challenge to appointment and subsequent absorption at the behest of appellants has also been raised by learned counsel for respondent nos. 2 & 3. It is vehemently contended that appellant lacks requisite necessary qualifications for being considered for promotion to the post of Project Engineer (Electrical) and being ineligible for promotion any challenge to appointment on the said post at their behest is not maintainable. It is pointed out that eligibility for promotion to the post of Project Engineer is Degree in Engineering with minimum 8 years of experience as Assistant Project Engineer.

24. Specific case set up by NOIDA in its counter affidavit is that appellant no. 1 was appointed as Junior Engineer in 1987 and was promoted to the post of Assistant Project Engineer on 27.08.2013. Thus he lacks necessary qualification of 8 years experience and shall be eligible for being considered for promotion in 2021. Insofar as appellant no. 2 is concerned, he was appointed on the post of Assistant Project Engineer in February, 2009. As prescribed by Service Regulations, he became eligible for being considered for promotion on completing 8 years of service in February, 2017. Thus, at the time of appointment of respondent no. 4 in 2014, and his subsequent absorption in 2015, both the appellants were not eligible for promotion to the post of Project Engineer for want of requisite 8 years experience as Assistant Project Engineer.

25. For the aforesaid facts and reasons the challenge made by the appellants to the appointment and absorption of respondent no. 4 is not tenable and they have no locus standi in the matter. It may be relevant to refer to the observations made by this Court in the case *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed & Ors.*, relied

upon by the High Court, holding that unless injury is suffered personally a person can not be said to be aggrieved and has no locus standi.

“In the light of above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore, he is not a ‘person aggrieved’ and has no locus standi to challenge the grant of ‘No Objection Certificate’.”

26. There is yet another aspect of the matter liable to be taken into consideration, undisputedly after absorption of respondent no. 4 in the NOIDA he was relieved from his parent department and his lien with the parent department ceased. Considering a somewhat similar controversy in the case of Jamil Ahmed Vs. Industrial Development Commissioner and Principal Secretary & Ors. , where a Senior Inspector in Railway Protection Force was initially deputed to NOIDA and subsequently absorbed, this Court after analysing the provisions of 1981 Regulations while holding the appointment on deputation and subsequent absorption in NOIDA was permissible, observed that such an employee can not be put in a position which results in his being an employee neither of the Authority nor of the parent department. It may be relevant to reproduce observations made in Paragraph 9 of the reports.

“On the facts and circumstances of this case, we need not go in depth into the question sought to be urged on behalf of the Authority, for, we are of the view that the appellants having resigned from the Railways and having been absorbed in the Authority eight years back, can not be put in a position, for no fault of his, which results in his being an employee neither of the Authority nor of his parent department. The appellant cannot be made to suffer for the discrepancy, if any, assuming there is any such deficiency which is now pleaded as a reason by the Authority. ”

27. As a result of our aforesaid discussion, we do not find any merit in this appeal and the same accordingly stands dismissed with no order as to costs.