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11.2.1986

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration No. 1126 (T) of 1986

Union of India Defendant-Appellant-
Applicant.

Versus

Ashok Kumar Srivastava & others .. Plaintiff-Respondents.

Hon'ble D.S. Misra, A.M.

Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. D.S. Misra, A.M.)

This is a Civil Appeal No.807 of 1982 pending in the court of Additional Civil Judge, Kanpur, which has come on transfer under Section 29 of the Administrative Tribunals Act, XIII of 1985.

2. The appeal is against the judgment and decree dated 27.9.1982 passed by Munsif Hawali, Kanpur in Suit No.428 of 1981, Ashok Kumar & others v. Union of India.

3. In the Original Suit before the Trial Court the plaintiffs had contended that Santosh Kumar elder brother of plaintiff no.1, Ashok Kumar Srivastava, was appointed as E.D. Stamp Vendor at Kanpur Head Post Office, Kanpur vide appointment letter dated 18.2.1974 issued by the Deputy Post Master (Gazetted), Kanpur; that on the promotion of Santosh Kumar Srivastava as class IV employee at Head Post Office, Kanpur with effect from 31.3.1979 the plaintiff no.1 was appointed provisionally as E.D. Stamp Vendor at Kanpur Head Post Office vide appointment letter dated 8.1.1980 issued by the Deputy Post Master (Gazetted), Head Post Office, Kanpur; that the plaintiff

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no.2, Ram Babu, was provisionally appointed as E.D. Packer with effect from 31.3.1979 vide order dated 3.1.1980 issued by the Deputy Post Master (Gazetted), Head Post Office, Kanpur; that plaintiff no.3, Kailash Narain Misra, was appointed provisionally as E.D. Packer with effect from 31.3.1979 vide letter dated 3.1.1980 issued by the Deputy Post Master (Gazetted), Head Post Office, Kanpur; that the Post Master Class 'A' Senior had circulated a public notice dated 7.3.1981 inviting applications by 15.4.1981 for appointments of three Extra Departmental (E.D.) Stamp Vendors ignoring the claim of the plaintiffs for their regular appointments to the posts held by them. The plaintiffs contended that the Post Master 'A' Class Senior, not being the appointing authority of E.D. Stamp Vendor and Packer, has no authority and jurisdiction to issue such a public notice which amounts to denying the due rights of the plaintiffs. The plaintiffs prayed for a permanent injunction restraining the defendant and its officers from holding selection and making appointments against the posts held by the plaintiffs in pursuance of public notice dated 7.3.1981 issued by the Post Master 'A' Class Senior, Head Post Office, Kanpur.

4. In the reply filed on behalf of the defendant; it is stated; that the plaintiffs were appointed on ^{be} provisional basis as there was a ban on making fresh regular appointments to vacancies occurring at various levels. This ban was removed by an order dated 4.11.1980 of D.G.P & T., New Delhi. It was decided to discontinue the provisional arrangements made earlier and applications were invited for making regular recruitments vide public notice dated 7.3.1981. All the three plaintiffs have been appointed provisionally at the risk and responsibility of

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persons who are holding this post on regular basis and their services were liable to be terminated at any time without notice; that the provisions of Articles 311, 14 and 16 of the Constitution of India are not attracted in these cases. The plaintiffs have no right to continue on the post after regular selection and appointment has been made; that the plaintiffs are also eligible for the post and they can also apply for it.

5. On the basis of the pleadings of the parties the Trial Court framed three issues and held that the public notice dated 7.3.1981 issued by the Post Master, Kanpur inviting applications for filling in the posts held by the plaintiffs-respondents was illegal and void due to the fact that he was not the appointing authority for these posts and the Deputy Post Master (Gazetted) was the competent authority, who could terminate the services of the plaintiffs and also make appointments in their place.

6. We have heard the arguments of the learned counsel for the parties. The learned counsel for the defendant-appellant contended that the interpretation of the Trial Court that the Deputy Post Master (Gazetted) was the appointing authority in respect of the plaintiffs-respondents was erroneous and the court below had also failed to consider the provisions contained in the Extra-Departmental Agents (Conduct and Service) Rules, 1964 which were applicable to the plaintiffs-respondents. The learned counsel for the defendant-appellant also enumerated the circumstances in which the three plaintiffs-respondents were appointed on a purely temporary basis

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because of the ban imposed on the filling of vacancies by the Director General (Post & Telegraph), New Delhi. This ban was relaxed in May, 1980. The purpose of the notification dated 7.3.1981 was to make regular selection against the various vacant posts in accordance with the Service Rules. The grievance of the plaintiffs-respondents appears to be that once the selection is made, their services will be terminated. The Trial Court appears to have ignored the fact that there is a distinction between appointing authority and authority competent to select candidates for appointments against certain posts. It is well known that the Government have established the Union Public Service Commission and the State Public Service Commissions for preparing panels and recommending the same to the competent authority for making appointments against various posts. Similarly the Railway administration have established Railway Service Commissions for selecting candidates for appointments against non-gazetted posts in the Railways. In the present case the Post Master had initiated the process of making selection for filling in the posts which were being held on ad hoc basis by the plaintiffs-respondents. There is no dispute that the Post Master is a higher authority than the Deputy Post Master. The Department appears to have authorised the Post Master to select suitable candidates for appointments against such posts and the objection raised by the plaintiffs-respondents appears to be to pre-empt and to delay the process of the selection. In the present case on the date fixed for final hearing an application was made on behalf of the plaintiffs-respondents that they may be permitted to appear in the departmental examination being held in the first week of May, 1987. In doing so the

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plaintiffs-respondents are conscious of the fact that according to the Extra-Departmental Agents (Conduct and Service) Rules, 1964 their ad hoc appointments are liable to be terminated without any notice. Rule 6 of the E.D.A. (Conduct and Service) Rules reads as follows :

"6. Termination of Services:

The Services of an employee who has not already rendered more than three year's continuous service from the date of his appointment shall be liable to termination by the appointing authority at any time without notice."

None of the plaintiffs-respondents had completed three years of service when the notice dated 7.3.1981 inviting applications for filling in the posts occupied by the plaintiffs-respondents were issued by the Post Master, Kanpur and under the rules, quoted above, the competent authority could have terminated their services even on any administrative ground unconnected with their conduct.

7. We are of the opinion that the Trial Court failed to appreciate that the Post Master was fully competent to make selection for posts which were held by the plaintiffs-respondents on ad hoc basis. As and when ~~be selected~~ candidates would become available, whoever would have been the appointing authority would make the appointment and whoever was competent to terminate the services of the plaintiffs-respondents would pass an order of termination of their services under the rules applicable to them. It is only at that stage that a cause of action would arise and the plaintiffs-respondents could have moved the court for a redressal of their grievances, if any. In our opinion the original suit was based on presumption and there was no real cause of action

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necessitating the filing of the suit. The Trial Court appears to have missed this aspect of the matter and gone to the irrelevant question of determining the appointing authority of the posts held by the plaintiffs-respondents.

8. For the reasons mentioned above the appeal is allowed and the judgment and decree passed by the Trial Court are set aside and the suit of the plaintiffs is hereby dismissed. Parties will bear their own costs.

~~Khanna~~ 20.5.87
A.M.

~~J.S. Khanna~~ 20/5/87
J.M.

Dated: May 20, 1987.

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