

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No.227/2006

This the 18th day of February, 2011

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Hon'ble Sri S.P. Singh, Member (A)

Umesh Rai aged about 38 years son of late Yogeshwar Rai r/o House No. Type I-68, Kendranchal Colony, Sector K, Aliganj, Lucknow

Applicant

By Advocate: Km. Vishwa Mohini

Versus

1. Union of India through the Secretary, Ministry of Agriculture, Krishi Bhawan, New Delhi.

2. Director, Sugar Cane Development, Directorate of Sugar Cane Development, Kendriya Bhawan, VIIIth Floor, Sector H, Aliganj, Lucknow.

Respondents

By Advocate: Sri S.P.Singh

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following reliefs:-

i) to quash the impugned orders dated 10.3.2006, 12.4.1999 and 18.4.1995.

ii) the respondents may be commanded to grant assured career progression scale of Rs. 2610-4000 to the applicant w.e.f. 1.5.2001 i.e. the date of completing 12 years continuous service with all consequential benefits.

2. According to the applicant, he was initially appointed as Peon-cum-Chowkidar on daily wage basis vide order dated 10.8.88 by the Director, Directorate of Sugar Cane Development. Thereafter, on the occurrence of substantial vacancy of Group 'D' w.e.f. 1.5.89, the applicant was appointed as Peon/Watchman on temporary trial basis for three months (Annexure A-1) in the scale of Rs. 750-12-870-14-940. The appointment was continuously extended after expiry of three months. As the applicant was apprehending illegally

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termination of his services, he filed O.A. No. 1084/90 at CAT, Delhi in which interim order dated 8.6.90 was passed restraining his termination. Thereafter, the O.A. was finally allowed on 25.8.94, directing the respondents to consider regularization of the applicant against existing vacancy of Group 'D'. In compliance of that order, the applicant was regularized by impugned order dated 18.4.95 w.e.f. 1.3.1995 against which the applicant had filed several representations. One of such representation was dated 24.7.97, by means of which request was made that his temporary service from 1.5.89 to 1.3.1995 may be regularized as has been done in the case of Raj Singh Rana. Consequently, his services were regularized w.e.f. 1.11.89 vide order dated Feb. 1998/22.7.1998 passed by Dr. S.C. Goutam, the then Director (Annexure A-8). But when the new director Sri N.C. Saxena took over, he passed on order dated 12.4.99 (enclosure No.2) saying that office order No. 10/98 dated 22.7.98 regarding regularization of the applicant Sri Umesh Rai w.e.f. 1.11.89 was issued under the signature of Sri S.C. Gautam in violation and mutilation of office rules and procedure and therefore, it is cancelled with retrospective effect. By means of this very order, the previous order dated 18.4.95 regularizing the services of the applicant w.e.f. 1.3.95 was revived saying that it still holds good. The applicant made representations dated 29.3.2000 and 3.1.2005 challenging the aforesaid order dated 12.4.99. These representations were rejected vide impugned order dated 10.3.2006. The applicant has impugned both the aforesaid orders dated 12.4.99 as well as 10.3.2006. He has also challenged order dated 18.4.95, which has in fact merged with regularization order dated 22.7.98, by

means of which the regularization was made in favour of the applicant w.e.f. 1.11.89.

3. From the other side, it is said that the order dated 12.4.99 recalling the order dated 22.7.98 was passed on account of the reasons that at the time of appointment of the applicant on 1.5.89, his name was not sponsored by the local employment exchange. Secondly, it is said that the impugned order dated 22.7.98 signed by Dr. S.C. Gautam in his capacity as Director was not factually correct.

4. In Rejoinder Affidavit, the applicant pleaded that the order dated 22.7.98 was in fact typed on 24.2.98 as would be evident from perusal of Annexure A-8. There was a delay of about 5 months in issuing the letter for which the clerical staff was responsible. But if this order is wrong, then certainly the order dated 28.4.95 regularizing the services of Mr. Raj Singh Rana from December 1998 was also illegal and the same should also be recalled. But it has not been recalled by the successor of Dr. Gautam.

5. We have heard the learned counsel for the parties and perused the material on record.

6. On the basis of pleadings, only two points emerge out for consideration. The first point is in respect of compulsory notification of vacancies to the employment exchange and the second point for consideration is whether the successor Director was justified in reviewing the order passed by his predecessor.

7. Firstly, we intend to deal with the point of notification of vacancy to the employment exchange. The learned counsel for the applicant submitted and rightly so that the employment

exchange (Compulsory notification of vacancies)Act, 1959 does not apply in relation to the vacancy in any employment to do unskilled office work, as mentioned in Section 3 (d) of this Act. The word 'un-skilled' has been defined in Section 2 as under:-

(i) "unskilled office work" means work done in an establishment by any of the following categories of employees, namely:-

- (1) Daftari
- (2) Jamadar, orderly and peon;
- (3) dusting man and farrash;
- (4) bundle or record lifter;
- (5) process server;
- (6) watchman;
- (7) sweeper;
- (8) any other employees doing any routine or

unskilled work which the Central Govt. may by notification in the official Gazette, declare to be unskilled officer work.

8. The learned counsel for the applicant pointed out that the post in question is of peon/watchman which comes under the category of unskilled officer work. The learned counsel further submitted that otherwise also, this Act does not oblige any employer to appoint those person who have been sponsored by the Employment Exchange. In this regard, he placed reliance on the case of **Union of India and others Vs. Ms. Pritilata Nanda reported in (2010, 3 UPLBEC 2291)**. The attention of the Tribunal was drawn specifically to para 16 which reads as under:-

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"16. A reading of the plain language of Section 4 makes it clear that even though the employer is required to notify the vacancies to the employment exchanges, it is not obliged to recruit only those who are sponsored by the employment exchanges. In Union of India Vs. N. Hargopal (1987) 3 SCC 308, this court examined the scheme of the 1959 Act and observed:

"It is evident that there is no provision in the Act which obliges an employer to make appointments through the agency of the Employment exchanges. Far from it, Section 4(4) of the Act, on the other hand makes it explicitly clear that the employer is under no obligation to recruit any person through the Employment Exchanges to fill in a vacancy merely because that vacancy has been notified under Section 4(1) or Section 4(2). In the face of Section 4(4), we consider it utterly futile for the learned Additional Solicitor General to argue that the act imposes any obligation on the employees apart from notifying the vacancies to the Employment Exchanges."

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"It is, therefore, clear that the object of the Act is not to restrict but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does

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not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges.'

9. The learned counsel for the respondents has nothing to say substantial as far as non-application of Act of 1959 in respect of unskilled work is concerned and also in respect of the aforesaid law propounded by the Hon'ble Apex Court.

10. In view of the provisions of Section 3 of the Employment Exchanges Act, 1959 as discussed hereinabove and also having regard to the proposition of law laid down by the Hon'ble Apex Court in the aforesaid case, we therefore, decide the first point in favour of the applicant.

11. As far as the second point is concerned, it is also a settled principle that successor should not normally review an order of his predecessor by entering into factual matrix. Moreover, some documents of the respondents, have been brought on record along with M.P. No. 1604/2007 dated 18th July, 2007. Annexure 3 is a memorandum dated 22.12.98 signed by Director Sri N.C. Saxena. From its perusal, it appears that sort of enquiry was conducted by Sri Saxena in respect of issuance of order No. 10/98 dated February 1998/22.7.98 conveying the regularization of service of the applicant Sri Umesh Rai, Chowkidar w.e.f. 1.11.89. It is mentioned in this memo that the concerned file was being dealt by Sri Ashwani Kumar, the then Superintendent and the said order was also issued by dispatcher under his instruction on 22.7.98. Sri Saxena therefore, sought explanation from Sri Ashwani Kumar, Superintendent for adopting such wrong practice. In response to this office memorandum, Sri Ashwani Kumar, Superintendent submitted his reply dated

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3.2.99 (Annexure R-3) saying that the order in question could not be issued during the tenure of the then Director Dr. S.C. Gautam due to close of financial year and also due to the fact that the file was mixed up with other files. But before issuance of the order, Sri Ashwani Kumar had brought it to the kind notice of new Director Sri Saxena. However, Sri Ashwani Kumar regretted that he could not bring it to the notice of Sri Saxena in writing. In the last, he submitted that the said order was dispatched by Sri Dinesh Kumar who is looking the duty of P.A. to Director. After receiving this explanation, Sri Saxena, sought explanation from Sri Dinesh Kumar also vide order dated 11.2.99 (Annexure R-5). Sri Dinesh Kumar submitted his explanation on 12.2.99 (Annexure 6) saying that Sri Ashwani Kumar, Superintendent has asked him for issuance of the order and he accordingly issued it. He expressed his regrets for not contacting the Director before issuance of the order.

12. From the above, it comes out that the order No. 10/98 though was signed by the then Director Dr. S.C. Gautam in Feb., 1998 but on account of the facts as mentioned above, it was issued on 22.7.98 by the subordinates. The perusal of this order also shows that in its caption February, 1998 is typed and this office order bears the signature of Dr. S.C. Gautam. But just below where February, 1998 is typed, date 22.7.98 has been mentioned by pen ink. Thus the own documents of the respondents as discussed hereinabove, show that this order was though signed by Dr.S.C. Gautam, the then Director in February, 1998 but it was issued on 22.7.98. It is not the case of the respondents that Sri Gautam was not working as Director in the month of February, 1998. In fact, it has also not been

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clearly pleaded anywhere that Dr. Gautam was not working as Director on 22.7.98, on the date of issuance of order. But probably that is the import of their pleadings and arguments. If the order was genuinely signed in Feb., 1998 by Dr. Gautam when he was working as Director and if the same could not be issued on account of budget ending or the papers getting mixed up as mentioned in the documents of the respondents themselves, then it cannot be faulted on this ground and the applicant should not be made to suffer for the fault of the subordinates of the respondents. Therefore, we find that the alleged grounds, on which the order No. 10/98 dated February, 1998/22.7.98 was recalled were not-existent and therefore, there was no justification for reviewing and recalling the order. This point is therefore, also decided in favour of the applicant.

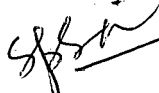
13. In the conspectus of the above, this O.A. deserves to be partly allowed. As the first impugned order dated 18.4.95 has merged with the order No. 10/98 dated February, 1998/22.7.98 (Annexure A-8) therefore, it is not required to be quashed. But second impugned order dated 12.4.99 (Annexure -2) by means of which the order No. 10/98 dated February, 1998/22.7.98 was cancelled, is hereby quashed. Similarly, the third order dated 10.3.2006 (Annexure -1) by means of which the representation of the applicant was rejected is also quashed.

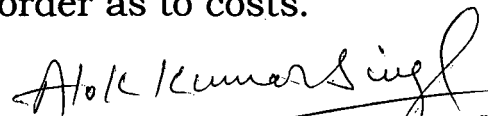
14. As far as relief (ii) pertaining to grant of Assured Career Progression Scale after completing 12 years of continuous service with all consequential benefits of arrears of salary is concerned, it is worthwhile to mention that we do not find any

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pleading in respect of this relief. In absence of any pleadings in respect of this relief, we also do not have sufficient material before us to adjudicate upon this point. However his case for grant of ACP will be considered as per provisions of the scheme in accordance with law.

15. In view of the above this O.A. is partly allowed with the aforesaid observations/directions. No order as to costs.


(S.P. Singh)
Member (A)


(Justice Alok Kumar Singh) 18.2.2011
Member (J)

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