Dwijendra Datt Saklani vs State Of U.P. on 28 July, 1955

Equivalent citations: AIR1956ALL10, AIR 1956 ALLAHABAD 10

ORDER

Mehrotra, J.

1. This is an application under Article 226 of the Constitution praying that a writ of mandamus be issued to the Opposite Party directing them to treat the applicant in service of the State on terms which are not less favourable to those on which the applicant was employed by the erstwhile Tehri State.

2. The applicant was appointed as Sub-Divisional Officer, in charge Keertinagar and Deopra-yag Sub-Division and worked, as such from 15-1-1948, up to 31-3-1948, under the erstwhile Tehri State, On 27-6-1950, the applicant was drawing a salary of Rs. 180/-. On account of certain political changes the Tehri-Garhwal State merged in the State of U. P. The applicant continued to work in the District of Garhwal in the same grade and scale as Town Rationing Officer and was drawing a salary of Rs. 180/- per month in spite of the merger of the State in the State of Uttar Pradesh. On 24-4-1950, a communication was received by the applicant from the District Magistrate, Garhwal, intimating the inability of the State Government to absorb the applicant in the gazetted service. The petitioner accepted the grade of Rs. 160-10-240 offered in the aforesaid communication as he thought that his services may not be terminated. On 22-6-1950, the applicant received another communication from the Commissioner, Food and Civil Supplies (C) Department, Uttar Pradesh, through the District Magistrate, Tehri-Garhwal, to the effect that the applicant was appointed to the temporary post of Chief Food Grains Inspector in the scale of Rs. 160-5-200 per month at Fatehgarh, District Far-rukhabad.

His appointment was subject to the conditions laid down in the office Memorandum No. 1237/III-614-1950, dated 14-2-1950. He was not entitled to any travelling allowance to join his post at Fatehgarh. He was further informed that he must report for duty to the District Magistrate, Farrukha-bad, immediately. Thereupon the . applicant made a representation to the District Magistrate, Tehri-Carhwal, in which he protested and asserted that he was entitled to travelling allowances and that his services should be counted from March, 1943, He, however, joined the service at Fatehgarh and continued to work there as Food Grains Inspector.

Thereafter he was transferred to Allahabad as Chief Food Grains Inspector and by a letter dated 19-5-1953, from the Regional Food Controller, Kanpur Region, he was demoted to the rank of Food Grains Inspector in the scale of Rs. 85-5-160. No opportunity was given to the petitioner to show cause against the order of demotion. The applicant was on medical leave and during that period on 18-9-1953, his services were terminated by an order from the Regional Food Controller, Kanpur.

After that the petitioner made several representations and ultimately the present petition was filed.

3. The contention of the petitioner is that he was a permanent employee of the erstwhile Tehri-Garhwal State and under the merger agreement arrived at between His Highness the Maharaja of Tehri-Garhwal and the Dominion Government the Government of India guaranteed the continuance in service of the permanent members of the public services of Tehri-Garhwal on condition which was not less advantageous than those on which they are serving on 1-5-1949, or payment of reasonable compensation. After this agreement the administration of State was taken over by the Central Government under the provisions of Section 290A, Government of India Act, 1935.

Thereafter the United Provinces State Merger (Governor's Province) Order, 1949, was passed and the territory of the Tehri State merged in the State of U. P. Under Section 7, Clause (1) of the Order all liabilities in respect of the guarantees given by the Central Government to the State were taken over by the State of U. P. The contention of the petitioner is that as the State Government decided to continue the employment of the petitioner, as a matter of law all the incidents and the conditions of the service in the Tehri State must attach to the new employment and it was not open to the State Government to convert his permanent employment into a temporary one.

It is admitted by the opposite party that no opportunity was given to the petitioner and no charge-sheet was given to him, but the contention of the opposite party is that his employment was a temporary employment and his services could, therefore, be terminated after giving him one month's notice. Article 311 of the Constitution did not apply to the case.

4. A preliminary point was raised by the learned counsel for the State that in view of Article 363 of the Constitution this Court cannot go into the terms of the agreement arrived at between, the State and the Central Government Article 363 provides that no Court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of the Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India was a party.

The petitioner's answer to this preliminary objection is that his claim is not based on the agreement, nor does any question arises with regard to the interpretation of any terms of that agreement The claim is based on Article 311 and in order to interpret what the nature of his present employment is he is relying upon the agreement. The claim that his services could not be terminated unless he was given an opportunity to show cause is not based on any of the conditions in the agreement but on Article 311 of the Constitution. There is force in this contention of the petitioner and the present writ petition is not barred by the provisions of Article 363 of the Constitution.

5. The main question, however, to be considered in the case is whether the employment of the petitioner was a temporary employment or a permanent one. After the merger of the State the petitioner continued to work in the District of Garhwal and he drew a salary of Rs. 180/- per month. Thereafter the State Government intimated to him that he could not be absorbed in a gazet-ed post.

In June, 1950, it was distinctly given out to him that his services were treated as temporary and he had to report for duty immediately. The petitioner joined his duty.

He no doubt made a protest but in that letter he never said that he was joining his service under a protest. He claimed that he was entitled to travelling allowance bat he never said in his representation that he was not prepared to accept the contention of the State Government that his employment was a temporary one. The agreement gave two options to the State Government, either to terminate his services and pay him compensation or to continue his services on conditions not less favourable than those on which he was employed earlier. By making a fresh offer of employment on fresh terms the State Government in effect terminated his services and re-employed him on fresh conditions.

By joining his service the petitioner accepted the new conditions and under the new conditions of service his services could be terminated on giving him one month's notice. As regards the termination of his old service by his re-employment on fresh conditions, he may be entitled to compensation but it is not open to the petitioncr to argue that the order terminating his new employment was illegal as his services were permanent. The contention of the petitioner is that the State Goevernment had two options, either to terminate his services on payment of compensation or to continue him in service.

The State Government not having paid him compensation, it must be inferred that they exercised the second option of continuing him in service and the conditions of the new service were not to be less favourable than those of the old service. There may be some force in this submission on behalf of the petitioner but the question whether the State Government exercised one option or the other is dependent on the facts and circumstances o the case. It the petitioner had continued the service and had been paid compensation a legitimate inference could have been drawn that the State Government did not exercise its option of terminating his service, but in the present case the State Government distinctly offered him employment on new conditions and the petitioner joined his service in spite of those conditions.

In these circumstances a legitimate inference can be drawn that the State Government exercised its option of terminating his old service and giving him a fresh employment on new conditions^ Failure to give compensation may give rise to a claim by the petitioner for compensation for termination of his old services but the order of the Re-gional Food Controller terminating his service cannot be quashed on the ground that it infringes the provisions of Article 311 of the Constitution.

6. There is, therefore, no force in this peti tion and it is rejected but without making any order as to costs.