

Captain B.D. Gupta vs State Of U.P. And Another on 7 September, 1990

Equivalent citations: AIR1991SC526, [1991(61)FLR517], JT1990(3)SC712, 1991SUPP(1)SCC1, 1990(2)UJ645(SC), AIR 1991 SUPREME COURT 526, 1991 LAB. I. C. 412, (1990) 3 JT 712 (SC), 1990 (2) UJ (SC) 645, 1990 (3) JT 712, 1991 (1) SCC(SUPP) 1, 1991 SCC (L&S) 712, (1990) 61 FACLR 517, (1990) 2 LAB LN 1051, (1990) 5 SERVLR 304, (1991) 16 ATC 550, (1990) 2 CURLR 895

Author: P.B. Sawant

Bench: P.B. Sawant, K. Ramaswamy

ORDER

P.B. Sawant, J.

1. These are three proceedings instituted by an aggrieved employee, Captain B.D. Gupta (hereinafter referred to as the "petitioner"). Civil Appeal No. 4026 of 1982 is directed against the decision dated 26th May, 1982 of the Allahabad High Court in two writ petitions. Writ Petition No. 1976 of 1982 was filed by the petitioner and the other writ petition was filed by one Captain R.S. Sanger with whom we are not concerned here. In his writ petition in the High Court, the petitioner had challenged the appointment of Captain Shashank Shckhar Singh, who is one of the respondents herein, to the post of Director, State Civil Aviation Department, Uttar Pradesh, and had prayed for a direction to hold fresh selection for the said post by treating him senior to Captain Singh. The petition was dismissed by the High Court by the impugned decision dated 26th May, 1982.

2. Writ Petition No. 7292 of 1982 is filed by the petitioner to challenge the order of 11 th June, 1962 passed by State Civil Aviation Department, Uttar Pradesh, relieving him from his services, and Writ Petition No. 8186 of 1982 is filed by him for a writ of mandamus to strike down the Uttar Pradesh State Civil Aviation (Director and Pilots) Service Rules, 1982 (hereinafter referred to as the 'Rules') as unconstitutional and illegal and to direct the respondent-State to frame fresh set of rules in consultation with the Public Service Commission and the Director General of Civil Aviation, Government of India and to appoint properly qualified and competent candidate for the post of the Director, U.P. Civil Aviation.

3. In order to appreciate the grievance of the petitioner in these proceedings, it is necessary to state the relevant facts. In the State, of Uttar Pradesh, in 1947 a Society called "Cooperative Hind Flying Club, Lucknow" was registered under the U.P Cooperative Societies Act for training pilots etc. The

affairs of the said Club were in an unsatisfactory state on account particularly of the financial stringency, and hence in 1969 an administrator was appointed by the State Government to manage its affairs. The State Transport Commissioner was the administrator. There was no other institute, private or Government, engaged in the task of training pilots. On January 15, 1971, the petitioner was appointed as an Assistant Pilot Instructor in the said Club. On 18th November, 1974, he was promoted as Pilot Instructor (Senior Grade) in the scale of Rs. 800-1400/- and on 21st May, 1975 he was confirmed in the said post. On 28th August, 1976, he was promoted as Pilot Instructor - Incharge as per the decision of the Director General, Civil Aviation, Government of India and he was also asked to fly Government (VIP) aircrafts. On 11th November, 1976, the State Government created the post of Government Pilot in the scale of Rs. 1950-2250/-.

4. Captain Singh was appointed on 1st May, 1979 not in the Club but in the Department of State Civil Aviation on the post of Helicopter Pilot and his pay was fixed at Rs. 1550 + Rs. 250 = Rs. 1800 per month which he was drawing in the Army as a Regular Commissioned Officer.

5. The Club went into liquidation on 19th April, 1980, and on and from 1st August, 1980, the State Government took over its assets by an order dated 7th May, 1981. At the same time, the Government also took some employees of the Club on contract basis. The petitioner was one of them. Since the petitioner was holding the post of the Pilot Instructor - Incharge in the Club at the time of its take over, he was appointed on the said post in the Department of State Civil Aviation but for a fixed term and on contract basis from 1st August, 1980. On 15th October, 1980, he appeared before the Selection Committee for the post of the Government Pilot which, as stated earlier, the Government had created on November 11, 1976. He was, however, not selected on account of the pendency of an inquiry against him in connection with an accident.

6. On 1st May, 1981, the Government abolished the old post of Helicopter Pilot which was in the scale of Rs. 1150-1550/- and created a new post of Helicopter Pilot in the scale of Rs. 1950- 2250/-. Respondent-Captain Singh was appointed to the said post. In its counter-affidavit, the respondent-Government has pointed out that Helicopter Pilots were not available and hence they used to be brought to the State Aviation Department on deputation from the Indian Airforce. Hence, depending upon the rank of the person deputed, the salary was fixed varyingly from case to case. It is for this reason that the pay-scale was for the first time nationalised on May, 1, 1981 and Captain Singh was appointed to the said post.

7. On 31st May, 1981, the then Director of Civil Aviation retired and charge of the said post was given to the Deputy Secretary to Government, Department of Civil Aviation. Anticipating the vacancy, the said post was advertised earlier on 28th May, 1981 and the petitioner and Captain R.S. Sanger applied for the said post. On 9th June, 1981, the Selection Committee deferred selection for the said post in view of the impending re- organisation of the Directorate of Civil Aviation, and instead decided to interview the petitioner and Captain Sanger for the post of the Chief Pilot with their consent. The Committee, however, did not find any of them suitable. On the same day, the Committee considered the petitioner for the post of Government Pilot and recommended him for ad hoc appointment to the said post for a period of one year. It may be pointed out here that the petitioner's contractual appointment as Pilot Instructor Incharge made on 1st August, 1980 for a

fixed term of one year was upto June 11, 1981 and was to expire two days hence. He was, therefore, appointed as Government Pilot w.e.f. June 12, 1981 again on ad hoc basis for a period of one year expiring on June 11, 1982. On June 16, 1981, Captain Singh was authorised to look after the administrative and financial work of the Civil Aviation Department in the absence of the Director.

8. Against the order of June 16, 1981 authorising Captain Singh to look after the work of the Director, the petitioner made a representation to the State Government on June 17, 1981. In his representation, he alleged that respondent-Captain Singh was not at all qualified to be appointed as Director and that he was junior to the petitioner in pay-scale, educational qualification, flying experience etc. The petitioner also stated that if there was any difficulty in making the appointment, the Government might designate an IAS/PCS officer to the said post. Notwithstanding this representation, the Government appointed Captain Singh on August 4, 1981 as Director on ad hoc basis. As stated by the Government, it made this appointment since he was the senior-most Pilot in the Directorate of Civil Aviation.

9. Captain Sanger challenged this appointment, as stated earlier, by filing a writ petition, viz., Writ Petition No. 5203 of 1981 on October 1, 1981 in the High Court of Allahabad and the petitioner followed suit by filing a separate petition on April 28, 1982. On that day, the High Court directed that both the writ petitions of Captain Sanger and of the petitioner would be disposed of together. On that day, the Court recorded the statement made on behalf of the State Government that it will finalise the rules for regular appointment of the Director, State Civil Aviation. The Court also expressed the hope that such rules will be finalised by the time the writ petitions would come up for hearing. In its counter-affidavit in the writ petition filed by Captain Sanger, the State Government stated that in pursuance of the order of April 28, 1982 necessary steps were being taken for getting the rules finalised in order to make regular appointment to the post of Director and that the rules were already accorded due sanction by the concerned Minister and were at that time being processed and efforts were being made to get the same finalised at the earliest possible time.

10. On May 26, 1982, the High Court dismissed both the writ petitions and held that Captain Singh being the senior-most pilot in the Directorate of Civil Aviation, was rightly appointed as ad hoc Director, The Court also rejected the contention based on mala fides raised in the said petitions.

11. On June 11, 1982, the petitioner's term as Government Pilot came to an end and consequently a relieving order was issued by the State Government. On the same day, Captain Singh communicated the said order of the Government to the petitioner.

12. On July 7, 1982, the Rules came into operation. They provided for the appointment of Director by promotion. On July 15, 1982, Captain Singh was appointed as the Director of State Civil Aviation Department.

13. The petitioner filed in this Court on August 1, 1982 Special Leave Petition No. 7816 of 1982 against the impugned judgment of the High Court in Writ Petition No. 1976 of 1982 relating to the ad hoc appointment of Captain Singh w.e.f. August 4, 1982. Leave was granted in that petition and it now stands converted into Civil Appeal No. 4026 of 1982. On September 13, 1982, the petitioner

filed writ petition No. 7292 of 1982 challenging his relieving order dated June 11, 1982 and on October 30, 1982 he filed Writ Petition No. 8186 of 1982 to impugn the Rules and to restrain Captain Singh from functioning as Director. In the meanwhile, Captain Singh was confirmed on the post of Director on November 10, 1982 w.e.f. August 4, 1982, i.e., his initial appointment.

14. Since Captain Singh was appointed as the Director under the Rules on July 15, 1982 and was also confirmed w.e.f. August 4, 1982 by an order of November 10, 1982, the challenge to his ad hoc appointment on August 4, 1982 no longer survives. Hence, Civil Appeal No. 4026 of 1982 has become infructuous as indeed it had become infructuous even on the date it was filed. The appeal has, therefore, to be dismissed on that short ground.

What, therefore, survives for our consideration are the writ petitions, viz., Writ Petition No. 7292 of 1982 challenging the order dated June 11, 1982 relieving the petitioner from his post as Government Pilot and Writ Petition No. 8186 of 1982 which seeks to challenge the Rules, and therefore, the appointment of Captain Singh made under the Rules. Although the facts are not very relevant for deciding the issues raised in the petitions, since the Government has brought them on record and they are not disputed on behalf of the petitioner, we may further state, to make the record complete, that on September 7, 1982 the petitioner was offered appointment to the post of Pilot Instructor which he did not avail. Instead, he joined and is working at present, as Deputy General Manager with the Steel Authority of India Limited at Ranchi.

15. The first contention raised by Mr. Ramamurthy on behalf of the petitioner is that the Rules made by the Government are both mala fide and arbitrary and have been made only to accommodate Captain Singh. The second contention is that, in the meanwhile, on February 19, 1982 while the petitioner was still in service, the Government by an order had regularised 43 temporary posts for Civil Aviation Training but had excluded the petitioner deliberately so that his services could be terminated w.e.f. June 11, 1982 paving way for the appointment of Captain Singh as Director by promotion on July 15, 1982. Mr. Ramamurthy also challenged the order relieving the petitioner on the ground that it was issued by Captain Singh while acting as Director when he had no authority to issue the same. The last contention was that Captain Singh was not qualified to be a Director on the date he was appointed as such and the qualifications were acquired by him subsequent to his appointment.

16. In support of his first contention that the Rules were framed mala fide and arbitrarily, Shri Ramamurthy relied firstly upon the fact that under the Rules only three posts were created leaving the rest of the posts to be filled in by executive instructions. If the Rules were framed for making regular appointments in the Civil Aviation Department, there was no reason why they should have been confined only to three posts which included the post of Director. Secondly, he pointed out that whereas the post of Director was not a promotional one earlier and was, therefore, open to external candidates as well, it was made promotional to suit Captain Singh. These circumstances according to us do not prove the mala fides. Admittedly, the Rules are made under Article 309 of the Constitution of India and are, therefore, a piece of legislation. It is well-settled that no legislation can be challenged on the ground of mala fides. On facts also, we find that there is no substance in the allegation of mala fides. The Rules were framed on July 7, 1982 and the Selection Committee

made the order on July 15, 1982. The Committee found Captain Singh fit and, therefore, appointed him with effect from the same date, i.e., 15th July, 1982. He came to be confirmed subsequently by an order of November 10, 1982 w.e.f. August 4, 1982. Further, whether the Rules should have provided for appointment to the post by promotion or by direct recruitment, it was for the legislature to decide. There is no dispute that the post of Director is only one in the Directorate. As stated by the petitioner himself in his writ petition filed in the High Court, there was no special qualification required for the post of Director and hence an IAS/PCS officer could also be appointed to the said post. If that be so, then no wrong could be attributed to the framers of the Rules if the post was made promotional one opening an avenue of promotion to the departmental staff. What is further, as pointed out by the Government, Captain Singh who was in the Directorate from the inception, i.e., May 1979 as a regular employee all along had the requisite qualifications. As against it the petitioner was employed in the Directorate for the first time on 1st August, 1980 and on fixed contractual tenure. The chart of the comparative qualifications produced by the Government shows that there is no substance in the contention advanced on behalf of the petitioner that the relevant qualifications were acquired by Captain Singh after his appointment as Director. It is not necessary to reproduce the said qualifications here and burden the judgment.

It is also not correct to say that the Rules were framed on July 7, 1982 only to suit Captain Singh, because by that time the petitioner was out of service w.e.f. June 12, 1982 and the field for selection of Captain Singh was thereafter free of other candidates and limited to Captain Singh. As stated earlier while narrating the facts, in the writ petition filed by Captain Sanger in the High Court, a statement was made by the State Government that it would finalise the Rules for regular appointment of the Director, and the Court had expressed the view that it would be better if the Rules were ready by the time the writ petitions came up for final hearing. In the counter-affidavit filed thereafter by the State Government in his writ petition (which they had to do within 2 weeks from the said date), the State Government pointed out that pursuant to the order of April 28, 1982 steps were taken to frame the Rules and they were approved of by the Minister in-charge and all efforts were being made to finalise them at the earliest possible time. This statement in the counter-affidavit was made sometime in May, 1982. On May 26, 1982, the High Court dismissed both the writ petitions (one filed by the petitioner and the other by Captain Sanger) holding that Captain Singh was properly appointed as ad hoc Director since he was the senior-most in the Directorate. The High Court had also rejected the contention of mala fides in the appointment. The petitioner's contractual term as Government Pilot had also by this time expired and he was relieved from service from June 11, 1982. It is thereafter that the Rules came to be finalised and were brought into force w.e.f. July 7, 1982. In the circumstances, it can hardly be contended that the Rules were framed and timed to accommodate Captain Singh.

17. The further contention that the Government Order dated February 18, 1982 while regularising 43 temporary posts for Civil Aviation Training did not regularise the petitioner's post deliberately so as to end his contractual service before Captain Singh could be appointed as Director is, according to us, far-fetched. The Government Order regularised the posts which were created for Civil Aviation Training. The petitioner was holding the post of Government Pilot which was admittedly not a post for Civil Aviation Training. We, therefore, find no substance in this contention either.

18. The next contention that the order relieving the petitioner was illegal because it was issued by Captain Singh in his capacity as the Director has also no merit in it. For this contention Shri Ramamurthy relied on the order signed by Captain Singh and served on the petitioner. From it, he pointed out that although the said order is dated June 11, 1982 it was actually typed on June 10, 1982. The Government Order of the same date, viz., June 11, 1982 is, therefore, later fabricated only to support the order issued by Captain Singh. We had, therefore, called for the original papers to verify the facts. From the original record we find that the Office Assistant in the Directorate put up a note on June 7, 1982 to the Administrative Officer seeking orders whether necessary action to relieve the petitioner should be taken. On June 8, 1982, the Administrative Officer gave the following orders to the office:

put up draft.

The draft for relieving the petitioner was then put up by the Office Assistant to the Administrative Officer on June 10, 1982 and on that date the Administrative Officer sent the file to the Director with the following note:

May kindly see notes from page overleaf. May kindly approve the draft as the period of service of Capt. Gupta comes to an end on 11.6.82, in view of the terms of his appointment order dated 12.6.81 issued by the Government.

The Director then recorded his note on the file as follows:

Have any orders been received from the Government? If not, it would be better to wait for the orders.

On receipt of the order dated June 11, 1982 from the Government, the Office Assistant put up the note for the issue of the draft and the draft was approved on the same date with the following note:

Please refer to the preceding notes and the orders of the Director on page-6. The Government orders dated 11.6.82(Sl. 22) regarding Capt. Gupta have been received today. In view of the Government orders, Capt. Gupta, who has completed one year of his fixed term of service, is to be relieved today. It may be noted that Capt. Gupta had taken over charge on 12.6.81, as is evident from his charge certificate dated 12.6.81 placed at Sl. 3 in the file. Accordingly the Administrative Officer may like to obtain the approval of the Director in the draft put up earlier.

The Director thus only communicated the order of the Government to the petitioner and the order served on the petitioner is of the Government. There is, therefore, no substance in the allegation that because the draft of the order was prepared in the office on June 10, 1982 it should be held that the order was that of the Director or that the Government Order was prepared at a later date.

19. We thus find no substance in any of the contentions. The material sought to be relied upon on behalf of the petitioner was enough to kick dust but not enough to carry conviction with regard to mala fides. As stated above, for reasons more than one, the petitioner had no case even otherwise for challenging his relieving order. Admittedly, his post was a contractual one and its tenure would have ended even without a relieving order. Captain Singh was the senior-most pilot in the Directorate and had the requisite qualifications for the post of the Director. Hence, we find no substance in any of the writ petitions. In the result, the appeal as well as the writ petitions are dismissed.

In the circumstances, however, there will be no order as to costs.