

Rameshwar Prasad vs Managing Director U.P. Rajkiya Nirman ... on 16 September, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3443, 1999 AIR SCW 3427, 1999 LAB. I. C. 3285, 1999 ALL. L. J. 2220, 2000 (1) SERV LJ 137 SC, 2000 (1) LRI 918, (1999) 7 JT 44 (SC), 1999 (7) JT 44, 1999 (9) SRJ 422, 1999 (8) SCC 381, 1999 (8) ADSC 73, (1999) 4 ALL WC 2743, (1999) 3 UPLBEC 2412, (1999) 5 SERV LR 203, (1999) 4 SCT 785, (1999) 83 FACLR 442, (1999) 2 CURLR 1121, (1999) 4 LAB LN 700, (1999) 5 SCALE 603, (1999) 8 SUPREME 176, 2000 SCC (L&S) 60

Bench: K. Venkataswami, M.B. Shah

CASE NO.:

Appeal (civil) 5319-20 of 1999

PETITIONER:

RAMESHWAR PRASAD

RESPONDENT:

MANAGING DIRECTOR U.P. RAJKIYA NIRMAN NIGAM LTD. AND ORS.

DATE OF JUDGMENT: 16/09/1999

BENCH:

K. VENKATASWAMI & M.B. SHAH

JUDGMENT:

JUDGMENT 1999 Supp(2) SCR 593 The Judgment of the Court was delivered by SHAH, J, Leave granted.

These appeals by special leave are filed against the judgment and order dated 9th April, 1997 passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 19892 of 1995 and Writ Petition No. 7640 of 1995 rejecting the prayer for absorption of appellant in employment of Respondent No. 1 Nigam and holding that the order dated 21st July, 1995 passed by Respondent No. 2 terminating his lien could not be sustained and that the appellant continues his lien with his parent department.

In these appeals, it has been pointed out that the appellant was appointed in the U.P. Small Industries Corporation Limited, Kanpur, Respondent No. 2 (for short "U.P. S.I.C.") as Civil Engineer (Re-designated as Executive Engineer) on 1.5.1973. In response to an advertisement dated 19th March, 1981 issued by Respondent No. 1, U.P. Rajkiya Nirman Nigam Ltd., Lucknow ("Nigam" for short) for the post of Chief Project Manager, appellant applied through U.P. S.I.C. Respondent No. 1

Nigam wrote letter to U.P. S.I.C. for No Objection Certificate along with confidential record of the appellant for ten years. After obtaining the requisite information, Nigam by letter dated 31 May. 1985 request U.P. S.I.C. to relieve the appellant for joining Nigam on deputation on usual terms and conditions as applicable to U.P. Government employees. On 18.11.1985, the appellant was relieved by U.P. S.I.C. and on 19.11.1985 he joined respondent No.1, Nigam. On 29th November, 1985, Nigam issued Office Order stating that the appellant had joined with effect from 19.11.1985 and is designated as Project Manager and will be given the same pay-scale as in the parent department with 20% deputation allowance. On 22nd December, 1987, the General Manager (H.Q.) wrote to the appellant that if he was willing for permanent absorption in the Nigam, then he should send his option letter in the prescribed format to Deputy Manager (Personnel) through proper channel on or before 31st December. 1987. It was also stated in the said letter that merely by giving applications for permanent absorption by any employee, the Nigam was not bound in any way to absorb him. On 30th December, 1987, the General Manager (North East Zone) wrote letter to the appellant asking for necessary information by written post. On that basis on 31st December. 1987, the appellant submitted his willingness along with the option letter to be absorbed in the employment of Nigam. Thereafter by letter dated 17th September, 1988, the General Manager (N.E.Z.), North District wrote to General Manager (H.Q.). Nigam that the appellant had already sent his option for being absorbed and that he has completed three years as a Project Manager; his work during this period was excellent and his merger in the Nigam will be in the interest of the Nigam and therefore, merger of the appellant in the Nigam be expedited so as to send the intimation to his parent department U.P. Small Industries Corporation Ltd. for obtaining no objection certificate. On 19.11.1990, the appellant completed statutory period of five years on deputation with Nigam. Nigam did not repatriate him to his parent organization and retained him in service without demur, it has been pointed out that on completion of five years' service, the appellant's deputation allowance was also stopped with effect from 19.11.1990.

It has been contended by the learned counsel for the appellant that several engineers working with Nigam approached the High Court by filing Writ Petition No. 3947/91 contending that respondent No. 1 be restrained from absorbing deputationists as their promotional chances were jeopardised on account of such absorption. It is stated that by order dated 17.7.1991. court granted interim relief. Further fact has come on the record that on 10.1.1994, parent organization of the petitioner (U.P. S.F.C.) granted notional promotion to the appellant as Superintending Engineer (Select Grade) with effect from 1.1.1990 and as Chief Engineer (Grade II) with effect from 1. 1.1994. The said notional promotions were granted with no actual benefits flowing to the appellant as he was on deputation with respondent No. 1. On 31.3.1994, U.P. S.I.C., parent organization declared that lien of the appellant would stand terminated on expiry of one month, i.e. 30th April, 1994 on account of his having been on deputation for more than five years.

Thereafter on 6th May. 1994, appellant sent representation to respondent No. 1 for the benefits of absorption as well as for corresponding promotional benefits equivalent in the parent organization. In response to that letter, on 28th October, 1994, respondent no. 1 issued a letter intimating that absorption of the appellant was not possible. The appellant sent representation dated 14.11.1994 and 23.11.1994 without any avail. Hence on 9th December, 1994, he filed Writ Petition No. 39594 of 1994 challenging the order dated 28th October, 1994. The High Court disposed of the said writ

petition by order dated 9th December, 1994 directing the Nigam to decide the representations filed by the appellant within two months from the date of the production of the certified copy of the order.

On 4th March, 1995, Nigam passed an order, in pursuance of the directions given by the High Court, rejecting the representations by stating inter alia that the employee working on deputation has no legal right to be absorbed in the concerned institution as it depends on policy decision and circumstances regarding the concerned institution. Secondly, the option to be absorbed as Project Manager given by some engineers could not be accepted in view of the interim order dated 7th July, 1991 passed in Writ Petition No. 3947 of 1991. Regarding the prayer of further promotion, Nigam rejected by order dated 4.3.1995 stating that there is no provision for promotion of the officers working on deputation in the Corporation. The Managing Director of respondent No. 1 further stated that the Corporation is not responsible for the order passed by the parent department terminating appellant's lien with effect from 30th April, 1994. It was for the appellant to take steps to go back from deputation. That order was challenged before the High Court by filing C.M. Writ Petition No. 7640 of 1995.

Thereafter by order dated 5th July, 1995, Corporation decided to repatriate all deputationists who had completed five years on deputation. That order was challenged by the appellant by filing Civil Miscellaneous Writ Petition No. 19892 of 1995. As the appellant was sought to be removed, he approached the High Court for interim relief and the, Court granted the same. Thereafter, the High Court has passed the impugned order rejecting both the petitions.

In these appeals, learned counsel for the appellant submitted that the impugned order passed by respondent No. 1 repatriating the appellant's service is, on the face of it, illegal and erroneous. The appellant is deemed to have been absorbed with effect from 19.11.1990, that is, the date when respondent No. 1 stopped paying deputation allowance. This was done on the basis of option exercised by the appellant by letter dated 31st December, 1987 and on the basis of recommendation made by the General Manager (N.E.Z.) on 17.9.1988. He, therefore, submitted that the impugned order passed by the Lucknow Bench of the Allahabad High Court in Writ Petition No. 3947/ 91 filed by some of the Engineers working with respondent No.1 would not be applicable in the case of the appellant. He further pointed out that even the High Court in Writ Petition No. 4314 of 1992 filed by similarly situated deputationist, Shri R.K. Goel has directed respondent No. 1 to absorb him by an interim order. It is further pointed out that the Government of U.P had made the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 and Rule 4 of the said Rules provides that deputation in Public Undertakings shall not be allowed to exceed five years. Rule 5 further provides for absorption of deputationists in Public Undertaking if an application is made by him within three years and the Government agrees to such absorption in public interest. The aforesaid rules are binding on respondent No.1. On the basis of the said rules. Appellant was asked to exercise option of being absorbed in December 1987. Learned counsel has further pointed out that even the Board of respondent No. 1 has re-affirmed the said policy by resolution dated 25th October, 1994 which is as under:-

"After considering the proposal the Board of Directors approved the following principles regarding absorption of employees working on deputation:-

1. The employees working on deputation should be considered for absorption against the vacant post in the direct recruitment source.
2. The absorption should be done as per the provisions of Rules of 1984 as issued by the government and the absorption of those officers and staff who have come on deputation from sources other than the Government should also be done on the basis of fundamental policies laid down under these Rules."

As against this, the learned counsel for Nigam submitted that the employee who is on deputation has no right to be absorbed and. therefore the High Court has rightly dismissed the petitions. He further submitted that even in 1994, the parent department of the appellant has given him promotions Therefore, it cannot be stated that the appellant is deemed to have been absorbed in November 1990 when Corporation stopped paying him deputation allowance and the rights of appellant are in any way, not prejudiced.

For deciding the controversy, we would first refer to the Uttar Pradesh Rajkiya Nirman Nigam Limited (Engineers and Architects) Service Rules, 1980. Rule 16(1) of the Rules empowers respondent No. 1 to recruit to the various categories of posts in the service inter alia by appointment on deputation or transfer. Sub-Rule (3) of Rule 16 reads as under:

"Notwithstanding anything contained in sub-rules (1) & (2) or any other rules or orders, the persons on deputation or transfer may be absorbed in the service of the Nigam on such terms and conditions as may be agreed upon between the Board, the person working on deputation or transfer and his present employer and no employee of the Nigam shall be entitled to claim any right under these rules against the absorption of such persons or terms and conditions of absorption."

Further, for absorption of employee on deputation, other relevant statutory rules are the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984. Relevant part of Rules 4 and 5 is as under:

"4. Time limit for deputation: No Government servant shall ordinarily be permitted to remain on deputation for a period exceeding five years.

5. Absorption in Undertaking: (1) A Government servant may be permitted to be absorbed in the service of the undertaking in which he is on deputation, if-

(i) he applies to the Government for his absorption in the Undertaking before the 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 be earlier, and the Undertaking concerned also moved the Government for his absorption within such

period, and

(ii) the Government agrees to such absorption in public interest."

Before the High Court, it was not disputed that it was accepted as a matter of policy that the aforesaid Rules were applicable to the employee who was on deputation from other Public Undertaking. It has been, therefore, pointed out by the learned counsel for the appellant that as deputation period of five years was over, appellant was deemed to be absorbed in the service of respondent No. 1. He has exercised his option for that purpose in December 1987, as suggested by the General Manager of respondent No. 1. He, therefore, contended that on the basis of option being exercised and as he stood absorbed, respondent No. 1 stopped paying deputation allowance from 19.11.1990, that is, exactly after five years period of deputation.

We agree with the learned Counsel for the Respondent No. 1 and made it clear that an employee who is on deputation has no right to be absorbed in the service where he is working on deputation. However, in some cases it may depend upon statutory rules to the contrary, If rules provide for absorption of employees on deputation then such employee has a right to be considered for absorption in accordance with the said rules. As quoted above. Rule 16(3) of the Recruitment Rules of the Nigam and Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 provide for absorption of employees who are on deputation.

In the present case, considering the facts, it is apparent that inaction of respondent No. 1 of not passing the order either for repatriation or absorption qua the appellant was unjustified and arbitrary. On the basis of Rule 16 of the Recruitment Rules, appellant was appointed on deputation in May 1985. He was relieved from his parent department on 18th November, 1985 and joined Nigam on 19th November, 1985. Under Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984, he was required to file an application for his absorption in employment of Nigam. Thereafter on the basis of letter dated 22.12.1987 written by the G.M. (HQ) and the letter dated 30.12.1987 written by the G.M. (NEZ), he opted for continuation and absorption in service of Nigam by letter dated 31st December 1987. The General Manager (N.E.Z.) by letter dated 17th September, 1988 wrote to the G.M. (HQ) that appellant's service record was excellent; he was useful in service and as he was about to complete 3 years on deputation, appropriate order of absorption be passed. Nothing was heard from the General Manager. Further on 19-11-1990, as soon as the appellant completed 5 years of deputation, his deputation allowance was stopped with effect from that date. The appellant continued in service without any break. Rule 4 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 which was admittedly applicable, provides that no government servant shall ordinarily be permitted to remain on deputation, for a period exceeding 5 years. Nothing has been stated by the Nigam as to why he was not repatriated. If the appellant was not to be absorbed, he ought to have been repatriated in the year 1990 when he had completed 5 years of service on deputation. By not doing so, the appellant is seriously prejudiced. The delay or inadvertent inaction on the part of the Officers of the Nigam in not passing appropriate order would not affect the appellant's right to be considered for absorption in service of Nigam as provided in Rule 16(3) of Recruitment Rules.

Further, from the record it appears that the appellant was to be absorbed in service but in-service employees filed Writ Petition and obtained an interim order restraining Nigam from absorbing deputationist, Nigam failed to pass any order absorbing him. Subsequently, when appellant approached the High Court and High Court directed Nigam to consider his representations, me impugned order rejecting the appellant's representations was passed. In the said order, it is stated that:-

- (a) it was a policy decision;
- (b) some engineers who were in service objected to absorption; and
- (c) the High Court has passed Interim Order on 17-7-91.

In our view, it is true that whether the deputationists should be absorbed in service or not is a policy matter, but at the same time, once the policy is accepted and rules are framed for such absorption, before rejecting the application, there must be justifiable reasons. Respondent No. 1 cannot act arbitrarily by picking and choosing the deputationists for absorption. The power of absorption, no doubt, is discretionary but is coupled with me duty not to act arbitrarily, or at whim or caprice of any individual. In the present case, as stated earlier, the General Manager (N.E.Z.) specifically pointed out as early as in the year 1988 that appellant's service record was excellent; he has useful in service and appropriate order of his absorption may be passed. His application for absorption was within three years as provided in Rule 5. There is nothing on record to indicate that for any reason whatsoever, he was not required or fit to be absorbed or the power under Rule 5(1) of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 was not required to be exercised in his favour. Interim order dated 17.7.1991 passed by the High Court would not be applicable in case of appellant because his case was considered for absorption in the year 1988. Further on completion of five years on 19.11.1990 he could not have ordinarily been continued on deputation in the service of Nigam. It is apparent that he was absorbed from 19.11.90 because from that date his deputation allowance was also discontinued. If he was to be continued on deputation, there was no reason for non-payment of deputation allowance. So on the basis of statutory rules as well as the policy, appellant stand absorbed in the service of Nigam.

In this view of the matter, these appeals are allowed, the impugned order dated 9.4.1997 passed by the High Court in Civil Miscellaneous Writ Petition No. 19892 of 1995 and Writ Petition No. 7640 of 1995 is quashed and set aside. The impugned order dated 11th July, 1995 relieving the appellant from the post which he was holding in the U.P. Rajkiya Nirman Nigam Ltd., Lucknow is quashed and set aside. Respondent No. 1-Nigam is directed to pass order on or before 31st December, 1999 absorbing the appellant at appropriate place and from appropriate date in accordance with the Rules. There will be no order as to costs,