

NARSING PRASAD

A

v.

ANIL KUMAR JAIN & ORS.

(Civil Appeal No. 3153 of 2012)

MARCH 27, 2012

B

[DALVEER BHANDARI AND DIPAK MISRA, JJ.]

Service Law:

Uttar Pradesh Avas Evam Vikas Parishad (Appointment and Conditions of Service of Chief Engineer) Regulations, 1990 - Regulations 7, 8 and 11 - Post of Chief Engineer - Appointment of appellant by the Uttar Pradesh Avas Evam Vikas Parishad, to officiate as the Chief Engineer - Challenged by respondent, senior most in the feeding cadre - High Court observing that in the absence of merit selection, a senior most person is entitled to hold the charge unless there is any legal impediment, held that the respondent was entitled to hold the post of Chief Engineer till regular selection - On appeal, held: On a perusal of the order passed by the High Court, it is not clear that the finding of the selection committee was brought to the notice of the High Court - Order of the Chairman of the Uttar Pradesh Avas Evam Vikas Parishad, was brought before this Court for the first time - As per Regulation 7, the Selection committee is required to be constituted by the Board - However, in the instant case, the decision to appoint the appellant was taken by the Chairman - Supreme Court has passed an order of status quo relating to promotional posts in certain civil appeals which is still in force - Thus, a regular promotion cannot take place and, the direction of the High Court to hold regular selection within two months is untenable - Considering the sensitive nature of the post and the duties to be performed by the incumbent, selection committee directed to be constituted by the Board to consider the suitability of all the eligible candidates for the

C

D

E

F

G

H

A *purpose of holding the post of the Chief Engineer - Till then appellant to continue holding charge - Order passed by the High Court set aside.*

B *The Uttar Pradesh Avas Evam Vikas Parishad passed an order that the appellant, a Superintending Engineer, would hold the post of Chief Engineer on officiating basis till the regular selection was made. Respondent challenged the appointment before the High Court on the ground that he was senior in the cadre of the Superintending Engineer and thus, the charge should be given to him. The High Court quashed the order passed by the Parishad. Therefore, the appellant filed the instant appeal.*

Partly allowing the appeal, the Court

D **HELD:** 1.1 On a perusal of the order passed by the High Court, it is not clear that the finding of the selection committee was brought to the notice of the High Court. For the first time, a document contained in Annexure P-6 showing the order of the respondent No. 2-Chairman of the Uttar Pradesh Avas Evam Vikas Parishad, was brought before this Court. Regulation 8 of the Uttar Pradesh Avas Evam Vikas Parishad (Appointment and Conditions of Service of Chief Engineer) Regulations, 1990 lays down the procedure for selection for promotion. Regulation 11 stipulates for preparation of list by the selection committee. The selection committee is required to be constituted by the Board as per Regulation 7. On a perusal of Annexure A-6, it appears that the decision was taken by the Chairman but not by the Board. The High Court directed that if any officiating appointment is to be made, the case of the first respondent should be first considered and he should be given the charge unless there is any legal impediment. There is further direction to hold a regular selection within a maximum period of 2 months. [Para 7] [182-E-H]

H

1.2 This Court had passed an order of status quo relating to promotional posts in certain civil appeals and the said order is still in force. Thus, a regular promotion cannot take place and, therefore, the direction of the High Court in that regard is untenable. However, as in the interest of the administration, someone has to remain in charge, the employer, i.e., the Parishad can choose someone to hold the officiating charge. Regard being had to the sensitive nature of the post and the duties to be performed by the incumbent, it is appropriate to direct that the selection committee be constituted by the Board within a period of four weeks which shall consider the suitability of all the eligible candidates for the purpose of holding the additional charge of the post of the Chief Engineer. It is made clear that the decision in favour of any candidate to hold the additional charge would not enure to his benefit and no claim can be put forth on the said basis at the time of consideration for regular promotion. When the High Court passed the order, the present appellant was holding the charge. This Court, on 24.11.2011, while issuing notice, directed status quo as of that day to be maintained by the parties. Keeping in view the totality of circumstances, it is directed that till the Board takes a decision after getting the report of the selection committee, the interim order passed in this case should remain in force. The order of the High Court is set aside. [Paras 8, 9 and 10] [183-A-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3153 of 2012.

From the Judgment & Order dated 21.10.2011 of the High Court of Allahabad, Lucknow Bench in Writ Petition No. 1793 (S.B.) of 2011.

Mukul Rohtagi, Arun Bhardwaj, Rameshwar Prasad Goyal, Praveen Chauhan, Amol Sinha, Vijay Kumar, Anshum Jain for the Appellant.

A Dinesh Kumar Garg, Vishwajit Singh, Abhindra Maheshwari, Pankaj Kumar Singh, Ritesh Agrawal for the Respondent.

The Judgment of the Court was delivered by

B **DIPAK MISRA, J.** 1. Leave granted.

2. The present appeal by way of special leave under Article 136 of the Constitution of India is directed against the Judgment and Order dated 21.10.2011 passed by the High Court of Judicature at Allahabad Bench at Lucknow in Writ Petition No. 1793 (SB) of 2011 whereby the Division Bench of the High Court quashed the Order dated 30.09.2011 of the Uttar Pradesh Avas Evam Vikas Parishad (for short, 'the Parishad') whereby it had decided that the present appellant, a

D Superintending Engineer, shall hold the post of Chief Engineer on officiating basis till the regular selection was made.

3. The factual expose', as has been unfurled, is that the post of Chief Engineer fell vacant and the Parishad, after deliberation, appointed the appellant to officiate as the Chief Engineer. The respondent, Anil Kumar Jain, invoked the extraordinary jurisdiction of the High Court challenging the said appointment on many a ground. It was contended before the High Court that he was senior in the cadre of the Superintending Engineer and, therefore, the charge should have been given to him and not to a junior person; that he had an excellent service record and there was no reason to supersede him and compel a senior officer to work under a junior; that in the absence of merit selection or regular selection being made, a senior most person was to be given charge unless he had any other disqualification, and that when there was no disqualification as far as he was concerned, it was obligatory on the part of the Parishad to appoint him to function on officiating basis on higher post. In oppugnation to the stand put forth by the first respondent, the appellant as well as the Parishad urged that while appointing the appellant herein by

the Uttar Pradesh Avas Vikas Parishad (Appointment and Conditions of Service of Chief Engineer) Regulations, 1990 (for short, "the Regulations"), especially Regulations 8 and 11 were kept in view; that the respondent in the Writ Petition was found more suitable to function on the higher post on officiating basis; that in the Parishad, most of the work is of civil nature and as the Writ Petitioner belongs to electrical cadre and not to the civil cadre the present appellant who has excellent track record in the civil cadre was selected to hold the post on officiating basis; and that even for a stop-gap arrangement, the merit for such a higher post is to be considered and that having been done, the action of the Parishad could not be flawed.

4. The High Court took note of the rival submissions and opined that at no point of time, the criteria of merit had been considered before passing the Order; that in the absence of merit selection, a senior most person is entitled to hold the charge unless there is any legal impediment; that if the relevant regulations are properly understood, the Writ Petitioner would be eligible to be considered for the post of the Chief Engineer as no distinction can be made between the electrical and civil cadre; and that the Writ Petitioner was not ousted from the zone of consideration as has been admitted by the Parishad. Being of this view, the High Court axed the Order passed by the Parishad and directed that in case any officiating arrangement is to be made, the Writ Petitioner's case shall be first considered and he shall be given the charge unless there is any legal impediment till the regular selection is made. The High Court further directed that the selection shall be made within a maximum period of two months.

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

6. The central issue that arises for consideration is whether the High Court is justified in expressing the view that the first respondent was entitled to hold the post of Chief Engineer till regular selection was made on the ground that he was the

A

B

C

D

E

F

G

H

- A senior most in the feeding cadre. Mr. Rohtagi, learned senior counsel, contended that regard being had to the sensitive nature of the post, the selection procedure was undertaken and, thereafter, the petitioner was found suitable to hold the post. He has commended us to Regulation 11 of the Regulations to
- B highlight that even for officiating purpose the selection procedure is to be adopted. He has invited our attention to the findings of the competent authority dated 30.09.2009 to substantiate the stand that there has been a selection. Per contra, Mr. Garg, learned counsel for the respondent, would
- C contend that Regulation 11 would not be attracted as additional charge given for higher post was given to the respondent. That apart, the learned counsel would urge that the factum of any kind of procedure being taken recourse to by the selection committee was not brought to the notice of the High Court and in any event, the findings of the competent authority on which reliance has been placed do not really reflect that the appropriate committee has taken the decision.

7. On a perusal of the Order passed by the High Court, it is not clear that the finding of the selection committee was

- E brought to the notice of the High Court. For the first time, a document contained in Annexure P-6 showing the order of the respondent No. 2 has been brought before this Court. The respondent No. 2 is the Chairman of the Uttar Pradesh Avas Evam Vikas Parishad. Regulation 8 of the Regulations lays
- F down the procedure for selection for promotion. Regulation 11 stipulates for preparation of list by the selection committee. The selection committee is required to be constituted by the Board as per Regulation 7. On a perusal of Annexure A-6, it appears that the decision is taken by the Chairman but not by the Board.
- G The High Court had directed that if any officiating appointment is to be made, the case of the first respondent shall be first considered and he shall be given the charge unless there is any legal impediment. There is further direction to hold a regular selection within a maximum period of 2 months.

H

8. This Court had passed an order of *status quo* relating to promotional posts in certain civil appeals and the said order is still in force. Thus, a regular promotion cannot take place and, therefore, the direction of the High Court in that regard is untenable. However, as in the interest of the administration, someone has to remain in charge, the employer, i.e., the Parishad can choose someone to hold the officiating charge. Regard being had to the sensitive nature of the post and the duties to be performed by the incumbent, we think it appropriate to direct that the selection committee be constituted by the Board within a period of four weeks which shall consider the suitability of all the eligible candidates for the purpose of holding the additional charge of the post of the Chief Engineer. It is hereby made clear that the decision in favour of any candidate to hold the additional charge would not enure to his benefit and no claim can be put forth on the said base at the time of consideration for regular promotion. Be it noted, before the High Court passed the order, the present appellant was holding the charge. This Court, on 24.11.2011, while issuing notice, had directed status quo as of that day to be maintained by the parties.

9. Keeping in view the totality of circumstances, it is directed that till the Board takes a decision after getting the report of the selection committee, the interim order passed in this case shall remain in force.

10. In the result, the appeal is allowed to the extent indicated hereinabove and the order of the High Court is set aside leaving the parties to bear their respective costs.

N.J.

Appeal partly allowed.