

(1998) 07 AHC CK 0047

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 30036 of 1994

Shailendra Kumar

APPELLANT

Vs

Chief Administraticn
(Sri R.Raghunathan)

Nuclear flower
Corporation,NAPS,Bulandshahar
and Ors.

RESPONDENT

Date of Decision: July 28, 1998

Citation: (1998) 07 AHC CK 0047

Hon'ble Judges: D.K.Seth, J

Final Decision: Dismissed

Judgement

D. K. Seth, J.

It is alleged that the land of the petitioner"s father was acquired by the respondents and pursuant to the Government order on compassionate ground he was offered traineeship. The traineeship was terminated by an order dated 9 81984 without assigning any reason. This order has since been challenged in the present writ petition.

2. Sri Ashok Khare, learned Counsel for the petitioner contends that since the offer of traineeship contained in Clause11 that he may be offered an employment in a suitable scale of pay depending upon successful completion of the training. He also contends that the termination is invalid on account of mala fide. He further contends that the appointment was on compassionate ground, it should have been made permanent appointment and could not have been dispensed with on the alleged ground and in that event the purpose of appointing on compassionate ground will be completely frustrated. He further contends that by reason of Clause11 of the conditions of offer of appointment/traineeship, the petitioner has a right to be absorbed in service. The other contention is that the termination not being simplicities and having been done in violation of principles of natural justice, the same cannot be sustained and the same should be quashed.

3. Sri Chandrashekhar Singh, learned Counsel appearing on behalf of respondents, on the other hand contends that the petitioner's services has not been terminated on the basis of confidential report or otherwise. It was termination simpliciter and in terms of the offer of Traineeship the petitioner cannot claim any right. Clause11 provides that he may be offered an employment in a suitable scale of pay depending upon his passing typing test and final assessment by the Selection Committee, subject to the availability of the post, which is a matter of chance and does not confer any legal right upon the petitioner. At the same time Clause10 provides that training can be terminated at any time during the currency of training or at the conclusion of the training without any notice and without assigning any reason there for. The training shall continue for the period as the respondent may decide. Therefore termination of Traineeship after nine months cannot be said to be illegal and cannot be beyond the scope of said letter of offer. He further contends that compassionate appointment as a trainee does not mean that the respondents are precluded from terminating his traineeship. His appointment was subject to the conditions of offer of appointment as contained in Annexure2 to the writ petition dated 22101993 addressed to the petitioner. Having accepted the said appointment the petitioner cannot contend otherwise. On these grounds, according to him, the writ petition should be dismissed.

4. I have heard learned Counsel for the parties at length.

5. So far as the point that termination was not termination simpliciter is concerned. In paras 11 and 12 of the petition the petitioner has made out a case that his Traineeship has been terminated on the basis of confidential report. In para11 of the counteraffidavit it has been pointed out by the respondents that termination was not on the basis of any confidential report or otherwise which was termination simpliciter. The alleged report, if any, is connected with project and its plants which are always subject to surveillance of different agencies which are purely confidential and the same has no nexus with the present controversy. This proposition is being disputed in the rejoinder affidavit filed by the petitioner. Thus on the face of it it appears that a disputed questions of fact has been raised. This Court sitting in writ jurisdiction cannot enter into disputed questions of fact. However, there is no material to substantiate the allegations made in paras 11 and 12 of the writ petition. There is no iota of material to substantiate the said allegations. In absence of any such material it is not possible to decide the question by this Court sitting in writ jurisdiction. Therefore the said point cannot be sustained. The second point that Traineeship cannot be terminated in view of Clause11 of the condition of offer, is concerned, it appears that the condition of offer as provided in the said Clause11 prescribes that, "You may be offered an employment in a suitable scale of pay of the Corporation depending upon the passing typing test and which should be conducted during the period of training from time to time and fixed in the grade of L.D.C. after final assessment by the Selection Committee, subject to availability of post." Thus, this contention is purely a chance which may come in the way of the trainee. Subject to the availability of post such offer may be made and depending upon passing of test and final

assessment by the Selection Committee which are the conditions to be fulfilled. Simply because a person has been offered Traineeship does not mean that he has a right of consideration under Clause 11 before completion of his training. In the present case the Traineeship was terminated, therefore, there was no completion of Traineeship and that right might be accrued to the petitioner only after completion of the training and not before that. The right can accrue only after the petitioner would have completed Traineeship.

6. Clause 1 contains a condition that initially the period of training shall be of six months and would be further extended according to the discretion of the respondents and the trainee will have no choice in the matter. In the present case admittedly the petitioner had been continuing till the date of termination of Traineeship. The petitioner cannot say that on completion of six months he has completed Traineeship since it was not within his choice.

7. At the same time Clause 10 provides that such Traineeship can be terminated during the currency of training without notice and without assigning any reason there for.

8. Sri Khare, contends that this condition is excessive and has given unanalyzed and unrestricted power to the authorities. Such conditions cannot be entertained in such a case where it was offer of Traineeship. Once Traineeship is offered it cannot be said that the employer has lost all his rights to terminate the Traineeship.

9. In that view of the matter it is not possible to hold as contended by Sri Khare that Clause 10 should be struck down on account of its being a condition which gives uncanalised and unrestricted power to the respondents.

10. So far as the contention that since the petitioner was granted employment pursuant to the Government order by which persons whose land were acquired were so accommodated. The offer being made on the basis of such conditions the same cannot be terminated. This point also does not cut the ice since the appointment cannot be subject to irrespective of efficiency or suitability. All appointments are subject to suitability or efficiency.

Even if such an appointment is offered it cannot be said that the employer is precluded from dispensing with the service even if he is found unsuitable or for any other reason, he may not be considered to be a fit person. Then again in the present case it was not employment but it was offer of Traineeship which the petitioner had accepted as laid down in the letter dated 22/10/1993. Therefore, he is subject to the conditions which cannot override any other conditions.

11. Sri Khare further relied on the decision in the case of Rajendra Singh v. Managing Director, Nuclear Power Corporation, in Writ Petition No. 3900 of 1993 disposed of on 14/7/1995. According to him the said writ petition was allowed on identical facts. But it appears that the facts of the said case are wholly distinguishable inasmuch as in the said case the petitioner had completed his Traineeship and was assured that he will be called

for interview. Whereas in the present case the petitioner did not complete Traineeship. On the other hand his Traineeship was terminated before he completed Traineeship. In the said case the question was decided on the basis of fact that upon conclusion of the Traineeship, the petitioner in the said case was assured that he would be called for interview, but thereafter he was not called for interview, though all other trainees were called. This fact distinguishes the fact of the said case with those of this case. Therefore, the ratio decided in the said case cannot be attracted, in the facts and circumstances of the case. Therefore, I do not find any merit in the present writ petition. The writ petition, therefore, fails and is accordingly dismissed.

12. There will, however, be no order as to costs. Petition dismissed.