

(2009) 01 AHC CK 0054

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 1581 of 2001

Pramod Kumar Singh

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision: Jan. 12, 2009

Acts Referred:

- Constitution of India, 1950 - Article 16

Hon'ble Judges: U.K.Dhaon, J and Barkat Ali Zaidi, J

Final Decision: Dismissed

Judgement

1. Heard Sri Manish Kumar, learned counsel for the petitioner, learned standing counsel for the Opp. Party No. 1 and Sri N.C. Mehrotra, learned counsel for Opp. Party Nos. 2 to 4.
2. The petitioner being aggrieved by the order dated 2792001 and the order dated 392001, by which the petitioner has been asked to join the parent department, has come to this Court under Article 226 of the Constitution of India.
3. The brief facts of the case are that the petitioner was duly selected by U. P. Public Service Commission on the post of Assistant Engineer in the Housing Department of Urban Land Ceiling and was posted at Varanasi. Thereafter, by the order dated 1361995, he was sent on deputation by the State Government to the Mandi Parishad for a period of one year. Petitioner continued working with the Mandi Parishad on deputation till the impugned order was passed on 2792001 by the Opp. Parties.
4. The learned counsel for the petitioner submits that on 7111996, a no objection certificate was issued by the Urban Land Ceiling Department for absorption of the petitioner in Mandi Parishad, which the State Government also approved on 1171997. He further submits that the Urban Land Ceiling Department, has been abolished as The Urban Land (Ceiling and Regulation) Act, 1976 has been repealed by the Ordinance No. 5 of 1999 dated 1111999. He further submits that one Sri Awadhesh Kumar Mishra from other department has been absorbed in Mandi

Parishad on 952003 and, therefore, the petitioner is also entitled for his absorption in Mandi Parishad.

5. Sri N. C. Mehrotra, the learned counsel for the Opp. Party Nos. 2 to 4 submits that there is no illegality in the impugned order dated 2792001, by which the absorption of the petitioner in the Mandi Parishad has been refused. He further submits that the board of the Mandi Parishad has already taken a decision on 2561999 not to absorb any person from outside in engineering section. He further submits that the State Government on 1852002 had sent a communication that as soon as the petitioner is sent to the parent department, he will be provided a posting. Sri Malhotra further submits that the case of Awadh Kumar Mishra is on different footings, as his parent department has been abolished.

6. We have considered the submissions made by the learned counsel for the parties and gone through the record.

7. It is an admitted case of the parties that the petitioner was appointed as Assistant Engineer in the Housing Department of the State Government and at the relevant time was posted as Assistant Engineer in the department of Urban Land Ceiling at Varanasi. By the order dated 1361995, petitioner was sent on deputation to the Mandi Parishad by the State Government. On 7111996, a no objection certificate was issued by the department of Urban Land Ceiling for absorption of the petitioner in the Mandi Parishad and on 1171997, an approval was also granted by the State Government regarding the absorption of the petitioner in Mandi Parishad but by the impugned order dated 2792001, Mandi Parishad refused the absorption of the petitioner and sent the petitioner to its parent department. Alongwith the counter affidavit, the Opp. Party Nos. 2 to 4 have annexed the communication dated 1852002 sent by the State Government to the Secretary Agriculture U. P. Lucknow, in which it has been inter alia stated that incase the petitioner is sent to his parent department, the necessary order of posting shall be issued by the department wherever the post is available. The Mandi Parishad has already taken a decision on 2561999 to the effect that no employee of other department will be absorbed in the engineering department of the Mandi Parishad. It is an admitted case of the parties that one Sri Awadhesh Kumar Mishra was absorbed in Mandi Parishad on 952003. The case of Sri Awadhesh Kumar Mishra is distinguishable as in the instant case, State Government has already given an assurance on 1852002 that the petitioner shall be given a posting wherever the post is available in the department. No employee on deputation has a right of an absorption. Hon"ble the Supreme Court in the case of Kunalnanda v. Union of India and another, (2000) 5 Supreme Court Cases, 362 : (AIR 2000 SC 2076) has held as under:

"The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get

absorbed in the department to which he had gone on deputation."

The petitioner has already completed more than 5 years of service on deputation in the Mandi Parishad. There is no illegality in the impugned order dated 27/9/2001. No case at all for interference by this Court is made out and the petition is wholly without substance.

8. The Writ Petition is dismissed.

9. Under the circumstance, there shall be no order as to costs.