

Court No. - 8

1. Case :- WRIT - A No. - 5437 of 2022

Petitioner :- Sanjeev Kumar And Another

Respondent :- State Of U.P. Thru. Prin. Secy. P.W.D. And 6 Other

Counsel for Petitioner :- Brijesh Kumar Mishra

Counsel for Respondent :- C.S.C., Shishir Jain

2. Case :- WRIT - A No. - 5078 of 2022

Petitioner :- Alok Kumar Singh Chauhan And 4 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Public Works Deptt. And 4 Others

Counsel for Petitioner :- Brijesh Kumar Mishra, Kapil Misra

Counsel for Respondent :- C.S.C., Shishir Jain

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri S.C. Mishra, learned Senior Advocate assisted by Sri Brijesh Kumar Mishra, learned counsel appearing for the petitioners, Sri V.K. Bajpayee, learned Additional Chief Standing Counsel appearing for the State and Sri Shishir Jain, learned counsel appearing for the U.P. Rajkiya Nirman Nigam.

2. Present petitions under Article 226 of the Constitution of India have been filed seeking quashing of the order dated 01.08.2022 whereby the petitioners, who are promotee Assistant Engineers have been sent on deputation in U.P. Rajkiya Nirman Nigam, a fully owned Government Corporation.

3. The petitioners along with others, total 60, Junior Engineers were promoted to the post of Assistant Engineers (Civil) from Junior Engineers (Civil) on 31.05.2022. The Chief Engineer wrote a letter dated 20.07.2022 asking the Superintending Engineer to submit proforma duly filled Assistant Engineer (Civil), Assistant Engineer (Mechanical) in his division with their consent to go on deputation on U.P. State Bridge Corporation and U.P. Rajkiya Nirman Nigam, Lucknow.

4. Vide impugned order dated 01.08.2022, 10 promotee Assistant Engineers (Civil), 5 promotee Assistant Engineers (Electrical/Mechanical) as well as two newly appointment Assistant Engineers (Civil) have been sent on deputation in U.P. Rajkiya Nirman Nigam.

5. Sri S.C. Mishra, learned Senior Advocate submits that consent was not obtained from the petitioners and without obtaining their consent, impugned order has been passed sending the petitioners and others on deputation in

U.P. Rajkiya Nirman Nigam. Second submission of the learned counsel appearing for the petitioners is that no criteria was evolved for choosing the petitioners for deputation amongst 60 promotee Assistant Engineers and the Government has adopted pick and chose policy in violation of Article 14 of the Constitution of India.

6. This Court on 02.05.2023 passed following order:-

"1. Sri S.C. Mishra, learned Senior Advocate, assisted by Sri Brijesh Kumar Sigh, learned counsel for the petitioners has raised two contentions in support of the petition i.e.

(i) without asking for the consent of the petitioners, they have been sent on deputation from the Public Works Department to U.P. Rajkiya Nirman Nigam Limited and;

(ii) that no criteria was evolved for choosing the petitioners for deputation and it is in violation of Article 14 of the Constitution of India as the Government has adopted pick and choose policy.

2. Sri Savitra Vardhan Singh, learned Additional Chief Standing Counsel is also not able to assist the Court as to what was the criteria evolved by the Government for sending these 17 persons on deputation to the U.P. Rajkiya Nirman Nigam Limited. He submits that he will file short counter affidavit of a responsible officer regarding the criteria evolved for picking these 17 persons for sending on deputation to the U.P. Rajkiya Nirman Nigam Limited.

3. List this petition on 10.5.2023 peremptorily.

4. Interim order, if any, shall remain in operation till the next date of listing."

7. In response to the said order, an affidavit has been filed on behalf of the respondents. It has been submitted that consent is not mandatory for sending a government employee to a fully owned Government Corporation/undertaking and without consent also a Government employee can be sent on deputation, if there is requirement as provided in the Financial Hand Book. However, in response to the second submission about the criteria, the affidavit is silent.

8. Sri V.K. Dixit, learned Standing counsel is also not in a position to assist the Court that what was the criteria for choosing the petitioners for sending on deputation amongst 60 Assistant Engineers, who were promoted. This Court does not find substance in the submission of the learned Senior Advocate appearing for the petitioners that without their consent, the

petitioners could not have been sent on deputation in U.P. Rajkiya Nirman Nigam inasmuch as consent is not mandatory for sending a person from one department to the other department of the State Government or a 100% owned corporation/undertaking of the Government. Consent is only desirable.

In respect of the second submission, as the State government has not adopted criteria for picking up the persons, who have been sent on deputation, I find impugned order to that extent unsustainable as it appears to be arbitrary. The Government ought to have evolved some criteria for picking up a person to be sent on deputation, therefore, impugned order dated 01.08.2022 so far as it relates to the petitioners in these two writ petitions, is set aside. The petitions are ***allowed***. However, the State Government may adopt a criteria within a period of 10 days from today and then take a decision for sending the petitioners or others on deputation to U.P. Rajkiya Nirman Nigam as per the criteria evolved, as there is a shortage of Engineers in U.P. Rajkiya Nirman Nigam and its work is being affected.

(Dinesh Kumar Singh, J.)

Order Date :- 5.7.2023
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