

Court No. - 2

Case :- WRIT - A No. - 2001293 of 1998

Petitioner :- State Of U.P. Through Secy.

Respondent :- Smt.Madhubala

Counsel for Petitioner :- Standing Counsel

Counsel for Respondent :- C.S.C.,Birendra Narain

Shukla,Brijesh Kumar Shukla,Kartikey Bajpai,P.N.Bajpai

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Heard Sri Amitabh Ray, learned Additional C.S.C. for the State and Sri Birendra Narain Shukla, learned counsel for the respondent.

2. By means of this writ petition, which was filed in the year 1998 by the State of U.P. challenge has been raised to the order dated 30.07.1997 passed by the State Public Services Tribunal, Lucknow in review application filed by the respondent no.1 for reviewing the judgement dated 23.09.1995 passed in claim petition No. 153/III/1992 by which the review application as also the claim petition has been allowed after the claim petition had been dismissed earlier.

3. The contention of the petitioner's counsel is many fold. One of which is that the Tribunal, while considering the review application, has virtually reheard the matter in the garb of review and has decided the review application. The grounds which were taken for seeking review could have been the grounds for challenging the judgment dated 23.09.1995 but the same could not have been the ground for review as the Tribunal while dismissing the claim had considered all the issues. Various other grounds have also been raised, however, before considering the same respondent no.1 was initially appointed as stenographer on ad-hoc basis vide order dated 22.02.1979. Her ad-hoc services were extended from time to time, ultimately her services were confirmed vide order dated 02.05.1984 with effect from 01.10.1984. Ordinarily such ad-hoc services have to be regularized and thereafter the confirmation was to be considered

but for some reason straightaway she was confirmed. She went on sanctioned leave from 14.06.1985 to 11.09.1985. Thereafter, she submitted an application for extension of leave on 10.09.1985 to the prescribed authority Urban land Ceiling, Meerut, where she was posted. This application was rejected on 18.09.1985 and a notice was sent on her address mentioned in the service book. Father of respondent no.1 wrote a letter dated 16.09.1985 to the Director Urban Land Ceiling, UP for sanctioning leave referring to the rejection of the same as noticed earlier. Considering the continued absence of respondent no.1 the prescribed authority submitted a recommendation for her removal from services on 28.10.1985. The Director Urban Land Ceiling, UP, informed the father of the respondent no.1 that sanction of leave is the discretion and satisfaction of the concerned authority and that he should communicate with him. On 29.11.1985 last opportunity was given by the Director Urban Land Ceiling, UP, to the respondent no.1 to join her services by 01.12.1985, failing which her services would be terminated. On 18.03.1986 the Director asked the prescribed authority that notices should be given through newspapers to the effect that if respondent no.1 fails to join duties within 15 days, then it will be deemed that she is not interested to remaining in government service and her services will be deemed terminated. Accordingly, such publications were made on 08.04.1986 and 17.09.1986 at Meerut in daily newspaper Prabhat and at Nainital in daily newspaper Uttar Ujala respectively. As she did not join her services therefore on 09.06.1987 the same were terminated. In the removal order, which is on record, it is mentioned that respondent no.1 without permission/sanction, of her own free will, is absent unauthorizedly from the office of Urban Land Ceiling, Meerut, that she had been asked to join back vide various letters and publications dated 18.09.1985 and 01.11.1985, 29.11.1985 and publications dated 08.04.1986 and 18.09.1986 but she had not joined. Accordingly, as she had not joined, the competent authority at Meerut had recommended for termination of her services on 28.10.1985. Consequent to which the aforesaid notices were issued and publications made. But in spite of the aforesaid notices/information neither respondent no.1 had responded nor she had joined the services, therefore the inference was that she was absconding from Government services since 12.09.1985. Based on the aforesaid reasons and grounds she was

removed from service with effect from 12.09.1985. A copy of the said order was sent to the prescribed authority Meerut for service upon respondent no.1 personally as also for publication of the same in daily newspapers at Meerut and Nainital. This order, as claimed by the petitioner, was sent to the respondent no.1 by registered post, however, there is nothing on record to show that any publication was made of the same in any newspaper at Meerut or Nainital.

4. Be that as it may, the respondent no.1 for the first time after 12.07.1985 submitted her joining in the office of Director Urban Land Ceiling through the prescribed authority Urban Land Ceiling, Meerut on 04.07.1989. As she had already been terminated from service, the prescribed authority vide its letter dated 04.07.1989 recommended her case for reappointment. The State Government vide its letter dated 17.02.1990 informed the Director Urban Land Ceiling that the respondent no.1 cannot be taken in service. This decision was communicated by the Director to the prescribed authority on 22.03.1990. On 17.04.1990 the prescribed authority intimated the respondent no.1 about the letter dated 22.03.1990 of the Director that she cannot be reappointed. This letter dated 22.03.1990 is on record. It mentions about the decision of the State Government to the effect that:-

"उपरोक्त विषयक श्रीमती मधुबाला गुलाटी को सेवा से पृथक कर देने बाद पुनः सेवा में लेने विषयक अपने कार्यालय पत्र संख्या-98/न0भू0सी0/ दिनांक 4.7.89 का पत्रांक शून्य दिनांक 6.1.90 का सन्दर्भ लेने का कष्ट करें।

इस सम्बंध में सूचनीय है कि प्रश्नगत मामले में शासन द्वारा यह निर्णय लिया गया है कि "श्रीमती गुलाटी की सेवायें विधिवत नोटिस देकर समाप्त की गई है अतएव इनको सेवा में लेने का कोई औचित्य नहीं है।"

5. This order was sent to the respondent no.1 alongwith letter dated 17.04.1990. At this very stage we may refer to a letter dated 19.05.1990 submitted by respondent no.1 to the Secretary Awas Government of UP, Lucknow. Para 15 of this letter reads as under:-

"15) मुझे उस समय गहन आघात लगना स्वाभाविक था, जब सक्षम प्राधिकारी, मेरठ ने अपने पत्र सं० 605/न0भू0सी0/90 दिनांक 17.4.1990 संलग्नक -ड) के साथ निदेशक के पत्रांक 1215/सीमा0/एक-341 (स्था0)/79 दिनांक 22 मार्च, 90 की एक छाया प्रति मेरे पास प्रेषित की और मुझे सूचित किया गया कि- शासन ने मेरे मामले में यह निर्णय लिया है कि "मेरी सेवायें विधिवत नोटिस देकर समाप्त की गई है। अतएव मुझे सेवा में लेने का कोई औचित्य नहीं है।"

6. This letter shows that at least on 19.05.1990 respondent no.1 was aware about the letter dated 17.04.1990 and the letter dated 22.03.1990 wherein the decision of the Government, as quoted herein-above to the effect that her services had been terminated legally after due notice, therefore, she cannot be reappointed, was communicated. Another paragraph of the said letter/application of the respondent no.1 also clearly indicates that she was aware about the termination of her services but was taking the plea that the same had not been validly done or could not have been validly done. She had also mentioned in the said letter that the post on which she was working was still vacant. It is pertinent to take note of the fact that after submitting her joining for the first time on 04.07.1989 till the submission of this application dated 19.05.1990 she had been raising her claim for joining but her matter was forwarded by the prescribed authority with reference to her letters to the Director for reappointment and ultimately the matter reached the State Government, whose decision was communicated to her alongwith letter dated 17.04.1990. Therefore, it is reasonable to believe that all along she must have been visiting the office of the prescribed authority where she had been posted, obviously, only for this reason he had been communicating further with the higher authorities. Therefore, it is very difficult to accept that she was not aware of the fact that her services had already been terminated, possibly taking advantage of the fact that the said removal order dated 09.06.1987 had not been served upon her personally and there was no publication of it, she kept communicating with the authorities and subsequently raised a plea that the said order of removal was never served upon her.

7. However, in this very context we would again like to refer to her letter dated 04.07.1989 by which she submitted her joining for the first time, as claimed. The said letter is on record and it is not in dispute and in this letter which was addressed to the same prescribed authority at Meerut who all along till 1990 was communicating on her behalf to the higher authorities that she be reappointed and who ultimately informed her on 17.04.1990 about the facts as noticed herein-above and in this letter she had stated about her initial appointment and confirmation and thereafter she had stated that in December 1984 she got married at Nainital. She applied for three months' leave in June 1985 and

went to Nainital but because of family circumstances, she could not join back her services. Now that the family circumstances were such that she had been residing with her father for the past 10-11 months as a wife who had been deserted by her husband, therefore, now she wants to join her services. Now the father of the respondent no.1 used to reside at Meerut, therefore even prior to 04.07.1989 for about 10-11 months preceding the said date she had been residing at Meerut but she never went to join her services. In these circumstances one thing is very clear that she admits to the fact that she remained unauthorizedly absent with effect from September, 1985. As already stated in the circumstances noticed above it is very difficult to accept that she was not aware that her service had been terminated by a formal order.

8. Respondent no.1 moved applications dated 29.06.1991, 14.10.1991, 20.02.1992 and 13.03.1992 seeking information about any decision taken on her representation dated 19.05.1990. She also demanded duly attested copies of any decision taken terminating or removing her from services. Thereafter she filed claim petition No.153/III/1992, which was dismissed on merits vide judgment dated 23.09.1994, however with the modification that the order of removal from service shall not have retrospective effect i.e., from 12.09.1985 instead it shall have effect from 09.06.1987 i.e., from the date of its passing. Now this claim petition was filed more than two years after communication of the order dated 22.03.1990 and 17.04.1990 and this communication is admitted to the respondent no.1. The question of limitation certainly arose in this case but probably it was overlooked and the claim petition was dismissed in spite of specific objection in this regard that the claim was barred by limitation. As regards the contention of the learned counsel for the respondent no.1 that the order of removal not having been served, she could not approach the tribunal, which is not acceptable, firstly for the reason that the adverse orders dated 17.04.1990 and 22.03.1990 were communicated and this could have been made the basis for filing a claim petition before the Tribunal. Moreover the aforesaid claim petition which was filed in 1992 was for respondent no.1/claimant to join back in service. This prayer could have been made by respondent no.1 in 1990 itself once she came to know about the orders dated 17.04.1990 and 22.03.1990. If she could file a claim

petition without having a copy of the removal order, in 1992 then she could have done it in 1990 also.

9. Be that as it may, copy of the removal order dated 09.06.1987 is said to have been filed alongwith a written statement by the State authorities in the said claim petition, which was thereafter amended, however, after the amendment the claim petition was disposed of in terms aforesaid. A review application is said to have been filed two months after the judgment dated 23.09.1995 filed in the claim petition. The limitation for filing such claim petitions is such as is applicable to suits. By the same logic the review application should also have been filed within one month of the said judgment in the claim petition as that is the limitation prescribed for filing a review application in a judgment and decree passed in a suit, under the Limitation Act, 1963. But without considering this bar of limitation and without there being anything on record to show that there any condonation was sought by the respondent no.1 another bench of the Tribunal, which had not passed the judgement and order dated 23.09.1995, reviewed the judgment passed in the claim petition on merits and ultimately allowed the claim petition on the ground that no chargesheet was issued nor any joining was conducted on the post concerned. Although as per the learned counsel for the petitioner these were aspects which were raised in the claim petition and have been considered in the judgement dated 23.09.1995 and if they were not considered appropriately or to the satisfaction of the respondent no.1 then the remedy was to challenge the same. Moreover he has emphasized that another bench could not have reviewed the judgement passed by some other bench. In para 28-29 of the writ petition the State has specifically averred that the members of the bench which had passed the judgment dated 23.09.1995 were still available at the time of disposal of the review application but surprisingly another bench decided the same.

10. Replying to the said paragraph respondent no.1 has taken the plea that the requirement that the same bench would hear the review application did not exist at the relevant time, however, the learned counsel for the State has invited our attention to Rule 17(2) of UP Public Services Tribunal (Procedure) Rules, 1992, which according to him were in existence on the date of judgment in the claim petition and also on the date of passing of judgment

in review application. There is no denial of the specific facts averred in para 28-29 of the writ petition by the respondent no.1.

11. However, without entering into this issue any further, what comes out is that FR-18 was not applicable because the respondent no.1 had not completed five years of service, however, the conduct of the respondent no.1 is very relevant. In spite of several notices and publications she did not respond to the same and ultimately she was declared an absconder from service and consequently she was removed from service. In this context, learned counsel for the State has placed before us Rule 55 of the Civil Services (Classification, Control & Appeal) Rules, 1930, which was applicable at the time of removal of respondent no.1 from service, especially sub-rule 4 thereof, which delineates the procedure for imposition of major punishment and provides as under:-

"(4) This rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of the provisions of the rule may for sufficient reasons to be recorded in writing be waived where there is difficulty in observing exactly the requirements of the rule those requirements can in the opinion of the inquiring officer be waived without injustice to person charged".

12. Learned counsel appearing for State has invited our attention to the order of removal wherein it has been categorically mentioned that in spite of several notices and publications in the newspapers neither the respondent no.1 had joined back in service nor responded to the said notices and that she was unauthorizedly absent, therefore she was treated as an absconder and thereafter removed from service which according to him is referable to sub-rule 4 of rule 55.

13. We find merit in this submission. As already stated the conduct of respondent no.1 is very important. She in her letter dated 04.07.1989 has herself admitted that she got married in December 1984 to a person at Nainital and thereafter she took leave of three months in June 1985, meaning thereby even after marriage she was in service till June 1985 but thereafter took leave, which was only till September 1985. She has also admitted that because of family circumstances she could not join back in service. However, the situation took a turn for the worse and it appears that she was deserted by her husband and she came back to Meerut to live with her father. This happened about 10-11

months prior to submission of the joining on 04.07.1989. Meaning thereby even during this period of 10-11 months she did not make any effort to join back in service or to answer to the notices and publications made by the opposite party, which were made during this period as is evident from the details mentioned in the order of removal. Moreover as already noticed earlier based on the aforesaid letter dated 04.07.1989, the prescribed authority at Meerut started communicating with the higher authorities for the purposes of reappointment of respondent no.1. Therefore obviously when she had met the prescribed authority he would have informed her about the fact that she had been removed from service. This fact is also evident from her own letter dated 19.05.1990, wherein she admits to receiving the letter of the prescribed authority dated 17.04.1990 and of the Director dated 22.03.1990 which contained a reference to the decision of the State Government that she had been removed from service after notice and there was no question of reappointment. But she never approached the Tribunal challenging any such order of removal and seeking her joining filed the first claim petition in 1992, which was clearly barred by limitation. Nevertheless, even though ignoring this aspect the Tribunal dismissed the claim petition on merits as already observed.

14. We have perused the judgment of the Tribunal and in the facts and circumstances of the case, we find that this was a judgment which took care of all relevant aspects especially the conduct of the respondent no.1 and dismissed the claim petition, rightly so, with certain modifications. However, surprisingly enough on an application for review filed after two months, which itself was barred by limitation, another bench of the Tribunal reconsidered the entire matter and the upturned the judgment passed in the claim petition, by way of review and allowed it. In the facts and circumstances of the case, we are of the opinion that apart from the fact that the review application itself was barred by limitation, the conduct of the respondent no.1 as noticed herein-above disentitled her to any relief. She could not have taken advantage of her own lapses and illegalities. She could not offer any explanation much less an acceptable one for her unauthorized absence. In the facts of the case merely because no chargesheet was issued and appropriate inquiry was not held is immaterial especially in view of sub rule 4 of rule 55 of the Rules, 1930

referred here-in-above. The Tribunal while deciding the review application lost sight of these rules and merely referred to FR-18, which in fact was not applicable, as already stated.

15. For all these reasons the impugned judgment cannot be sustained, it is set aside. Review application is dismissed. Petition is **allowed**.

[Om Prakash Shukla,J.] [Rajan Roy,J.]

Order Date :- 24.5.2024

Vipul