

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10583 OF 2013

STATE OF UTTAR PRADESH & ORS.

Appellant(s)

VERSUS

SUDHAKAR DUBE

Respondent(s)

O R D E R

Heard Mr. Ardhendumauli Kumar Prasad, learned Additional Advocate General for the State of Uttar Pradesh representing the appellants. Also heard Mr. Sameer Srivastava, learned counsel appearing for the respondent.

2. The State challenges the judgment and order dated 09.04.2010 of the Division Bench of the Allahabad High Court, Lucknow Bench in Writ Petition No. 1825 of 1999 whereby the Court found no reason to disturb the finding in favour of the respondent rendered by the State Public Service Tribunal, Lucknow through its order dated 12.07.1999 and thereupon dismissed the State's writ petition.

3. Assailing the view taken by the Tribunal and also by the High Court, Mr. Prasad would firstly submit that the

respondent joined service on the basis of a forged appointment letter. Therefore, relief could not have been granted to him either by the Tribunal or by the High Court since forgery would undo all rights which might be claimed by the litigant. The counsel would next submit that an inquiry was conducted (Annexure P-18), the report of which mentioned that the Service Book of the respondent could not be secured despite multiple efforts made by the officials. However, the inquiry report also noted that the respondent was appointed as a Lower Division Clerk by the Chief Medical Officer, Meerut vide Director's Order No.4F(A) 12036 dated 19.12.1987 and thereafter he was transferred from Meerut to Allahabad. On the basis of Director's order No. 4F(A) 2777 dated 28.03.1988, the respondent was transferred from Allahabad to Bahraich. While he was posted at the Allahabad, his salary was withdrawn at the State level. However, it was opined in Paragraph 6 that it is not possible to give conclusive report on the status of the respondent's service and the position can be cleared from the Joint Director (Pediatrics). With such projections, the counsel would argue that since the *bona fide* of the appointment was under a cloud, the Tribunal should not have granted him relief in the Direction Petition No. 1394 of 1997.

4. Per contra, Mr. Sameer Srivastava, the learned counsel would point out that the respondent was forced to move the Tribunal as he was not given any joining at Deoria following his transfer on 26.08.1995 from District Bahraich. His salary was also abruptly stopped. Since he was neither allowed to join at Bahraich where he was re-transferred nor paid any salary, the respondent was compelled to move the Tribunal.

5. The counsel for the respondent would advert to the Tribunal's order dated 12.07.1999 to point out that the respondent's appointment order (26.11.1987) was made available before the Tribunal along with the *inter se* seniority list dated 20.08.1997 where the name of the respondent appeared at Serial No.464. Moreover, no inquiry was conducted to disprove the *bona fide* of the appointment of the respondent or to prove the allegation of forged appointment. This is why the Tribunal concluded that it was a case of wrongful denial of joining to the respondent and accordingly, consequential direction was given to the authorities to allow the respondent to join under the Chief Medical Officer, Bahraich. The authorities were also directed to ensure regular salary to the respondent together with the arrears unpaid since August 1995.

6. As can be seen from the proceedings before the Tribunal, the appellants had filed their written statement in the application. The respondent in his application specifically stated that he produced the relevant documents in original as demanded by the Chief Medical Officer, Deoria but the said officer refused to receive the same by saying that the documents sent by the Chief Medical Superintendent, District Hospital, Bahraich would be accepted only by registered post. The reply of the appellants in their written statement to the aforesaid averments were of general nature and not specific. Accordingly, the Tribunal favourably considered the grievance of the respondent of not being allowed to join the post following his transfer and the wrongful denial of salary.

7. Adverting then to the appointment order dated 26.11.1987 and the *inter se* seniority list made available to the Tribunal along with the regular disbursement of salary to the respondent until the 1995 transfer, the Tribunal held that the appointment was proper and was not forged.

8. It was also noted that respondent's service was not terminated at any point of time. If there was any doubt on the nature of the appointment, the authorities should have

conducted an enquiry with due opportunity and hearing to the respondent. But *de-hors* any hearing or enquiry, the respondent was denied salary and posting when he was transferred. With such findings, the Tribunal through its order dated 12.07.1999 granted relief to the respondent by directing the authorities to allow the respondent to join in the establishment of the Chief Medical Officer, Bahraich with directions to also disburse his salary and clear the arrears.

9. When the Tribunal's aforesaid order was challenged by the appellants, the High Court in the writ petition No.1825/1999 noted the following facts:-

*"The brief facts of the case are that the opposite-party no.1 was appointed as L.D.C. on 26th November, 1987 and joined his services in the office of Chief Medical Officer, Meerut. On 26th August, 1995, he was transferred to Bahraich and again he was transferred to Deoria on 8th September, 1995. Again on 17th January, 1997, he was re-transferred from Deoria to Bahraich but his salary was not paid for that period. Being aggrieved, the opposite-party no.1 has approached the State Public Services Tribunal who vide its impugned order has directed the Chief Medical Officer, Bahraich to allow him to join the duties. The Tribunal further directed to pay the arrears of salary along with 12% simple interest. Being aggrieved, the State has challenged the impugned judgment and order passed by the Tribunal."*

10. The Division Bench then noted that the respondent was transferred on multiple occasions from place to place from November 1987 to June 1995. His name appeared in the *inter*

se seniority list prepared in the year 1995 and in 1997. The salary vouchers of the respondent were also examined for the relevant period. On the allegation of forged appointment, it was noted that no opportunity was given to the respondent. His salary was abruptly stopped which forced him to move the Tribunal which granted relief to the aggrieved employee. The Division Bench therefore found no infirmity with the order passed by the Tribunal in favour of the respondent and accordingly the State's writ petition came to be dismissed.

11. Before us, Mr. Prasad would strenuously contend that when forged appointment is the stand of the State, the Tribunal should not have granted relief to the respondent. The learned AAG submits that an FIR was lodged firstly on 19.02.1999 in the concerned police station and thereafter another detailed FIR was lodged on 02.07.1999, regarding the forged appointment letter. However, the State counsel is unable to say whether any conclusion was reached against the respondent by the Police in the said case.

12. Insofar as the general inquiry conducted by the Additional Director Hilly Development (Annexure P-18) on the alleged forged appointment letter, the following qua the respondent was recorded in the said inquiry:

*"6. Service Book of Shri Sudhakar Dubey Junior Clerk and appointment letter has not been made available despite many efforts made for it. On the basis of the documents available, the appointment of Shri Sudhakar Dubey was made by the Chief Medical officer Meerut and transfer of Shri Dubey was made from Meerut to Allahabad vide Directorate's order No. 4F(A) /120 36 dated 19.12.1987 and the transfer of Shri Dubey again made from Allahabad to Bahraich under Senior Medical Superintendent, District Hospital Bahraich vide Order No. 4F(A) /2777 dated 28.03.1988. During the posting at Allahabad, his salary has been withdrawn at the state level. In addition to it, it is not possible to give the detailed report in the absence of other documents. In this regard also the position can be made clear from the Joint Director (Pediatrics)."*

13. The above would show that no adverse finding was recorded against the respondent in the inquiry and what was stated is that it is not possible to give a report in the absence of necessary documents and the position can be cleared by the Joint Director (Pediatrics). Therefore, the inquiry was inconclusive. In any case, the respondent was never informed about the inquiry nor he was given any opportunity to have his say before the Inquiry Officer.

14. Despite the alleged forgery in the appointment order, the State has not been able to prove that the same took place. In addition, the FIR claimed to have been lodged on 02.07.1999 has not yielded any conclusion with the State counsel not in a position to tell us the outcome of the police case either.

15. On the other hand, the respondent who joined service

in 1987 was transferred to various places and his name appeared in the *inter se* seniority lists as referred to above. Despite the same, authorities have abruptly stopped disbursing the employee's salary and have not allowed him to join the place of posting following his transfer from Bahraich to Deoria on 26.08.1995. Such action has to be preceded by a legal proceeding and unless the charges are proved through a lawful inquiry with due opportunity to the respondent, the State's action being arbitrary will fall foul of the law.

16. The main contention of Mr. Prasad the learned AAG is that the respondent's was a fraudulent appointment. The state has however failed to bring forth any material to establish that the respondent is a beneficiary of a fraudulent exercise. In fact, going by the way the respondent was made to serve with multiple transfer and posting orders issued against him and his placement in the seniority lists in the cadre would suggest that it was a genuine appointment. No charge of fraud was levelled against the respondent nor was he made to face any disciplinary proceeding on such charge. The State which contested the proceedings both in the Tribunal and in the High Court were unable to establish the allegation they

make against the respondent. Even in this Court, a feeble attempt is made to say that questions were raised in the enquiry conducted by the Additional Director Hilly Development (Ax. P-8) on the non-availability of the official records pertaining to the respondent's appointment. But this would suggest negligence on the part of the employer and certainly not the employee. In any case nothing conclusive is seen from the aforesaid enquiry and it was suggested that another officer should be able to throw light on the matter. The learned AAG points out that FIR was also filed. But unfortunately nothing by way of conclusion is brought forth on the issue. Therefore it would be safe to say that the charge of fraud is without any factual foundation. In that context, it seems appropriate to remember what the renowned playwright and Nobel laureate Harold Pinter had to say on another scenario. In his famous play 'Old Times' Harold Pinter so pithily wrote: *"There are some things one remembers even though they may never have happened."* We say no further.

17. Following the above, it must be said that neither the Tribunal nor the Division Bench of the High Court have committed any error in granting relief to the respondent in the Direction Petition No. 1394/1997 and in the Writ

Petition No. 1825 of 1999. Consequently, this appeal is found devoid of merit and is dismissed.

18. In consequence of this dismissal order, the appellants are directed to implement the Tribunal's 12.07.1999 order without any delay. It is, however, made clear that the respondent shall not be entitled to any arrears of salary for the period when he did not render service. However, his service is deemed to be continuous for only the limited purpose of pension. It is ordered accordingly.

19. The parties will bear their own cost.

.....J.  
[ HRISHIKESH ROY ]

.....J.  
[ PANKAJ MITHAL ]

NEW DELHI;  
AUGUST 17, 2023.

ITEM NO.102

COURT NO.6

SECTION III-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).10583/2013

STATE OF UTTAR PRADESH & ORS.

Appellant(s)

VERSUS

SUDHAKAR DUBE

Respondent(s)

Date : 17-08-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY  
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s) Mr. Ardhendumauli Kumar Prasad, AAG  
Mr. Vishnu Shankar Jain, AOR  
Mr. Ashish Madaan, Adv.  
Mr. Annaya Sahu, Adv.  
Mr. Marbiang Khongwir, Adv.  
Mr. Mani Munjal, Adv.  
Mr. Parth Yadav, Adv.

For Respondent(s) Mr. Sameer Shrivastava, AOR  
Ms. Yashika Varshney, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, stand closed.

(DEEPAK JOSHI)  
COURT MASTER (SH)

(KAMLESH RAWAT)  
ASSISTANT REGISTRAR

(Signed Order is placed on the File)