

CASE NO.:
Appeal (civil) 2048-2049 of 1999

PETITIONER:
Ram Ganga Command Area Development Authority & Anr.

RESPONDENT:
Sheetal Kumar Vaish & Ors.

DATE OF JUDGMENT: 12/03/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T

(With C.A.Nos. 2119-2120/1999)

ARIJIT PASAYAT J.

These appeals are classic examples of how simple controversies can be turned into confusions galore. The chameleonic somersaults in stands taken by the concerned authorities has added to the confusion in no less measure. The controversy related to simple question as to whether Seethal Kumar Vaish (hereinafter referred to as 'the employee') was on deputation, and if not, what was his status in employment. The High Court rightly noted that there has been great shift of stands by the parties and ultimately came to the conclusion that the employee was in substantive employment with Ram Ganga Command Area Development Project (hereinafter referred to as the 'Project') and thereafter in the Ram Ganga Command Area Development Authority (hereinafter referred to as 'the Authority'). He was not liable to be treated as employee of the Kanpur Sakkari Milk Board Limited (in short 'Milk Board').

As the stand has shifted and there is no consistency therein, it would be appropriate to cull out the basic features so that the controversy can be best resolved. The judgment of the High Court has been assailed by both the authority and the State of Uttar Pradesh.

The factual scenario, keeping out the contradictions, as essentially are as follows:

The employee was appointed by the Milk Board by order of appointment dated 5/9.4.1974 as Assistant Sales Officer on probation for six months, which period could be extended; the appointment was purely on temporary basis and could be terminated without notice and assigning any reason at any time even before the stipulated period. The authority requested the Area Development Department of the State Government for sending the employee on deputation, by its letter dated 6.2.1977, for being posted in the newly created

Animal Husbandry Department. At that point of time, the employee was working as Field Officer. The Milk Board by its letter dated 25.2.1977/1.3.1977 acted on the said request. The letter of the Milk Board is of great significance in the present controversy. The same is reproduced:

"Office of the Kanpur Cooperative Milk Board
Ltd. Nirala Nagar, Kanpur.

Letter No. 2128/Admn. Dated 25.2.77/1.3.77

The Administrator,
Ram Ganga Block Development Authority,
3/A/245 Azad Nagar,
Kanpur.

Subject: Deputation of the field officer
Shri S.K. Vasya.

Sir,

With reference to your letter No.15015/Est/77 dated February 8, 1977, it is respectfully submitted that Shri S.K. Vashya Filed Officer has given his consent in writing for going to Ram Ganga Authority on deputation. Therefore, Mr. Vashya is being relieved from this Institute in the after noon of 28.2.1977 so that he may submit his joining report as per the rules in the Authority Office. Rules regarding the deputation be sent separately.

Yours
Sd/-
(Ram Janam Singh)
Secretary."

Employee submitted his joining report on 1.3.1977. On 13.6.1977 the State Government intimated the authority about the sanction to appoint the employee as live stock expert. There was a notification about the temporary appointment of the employee on purely ad hoc basis as Subject Matter Specialist (Pashudhan). Employee requested the State Government for extending benefits of service rendered by him in the Milk Board and prayed for grant of increments. The same was turned down by the State Government by letter dated 7.5.1979. The employee continued to write to the Milk Board that he was on deputation and, therefore, the benefits should be available to him. He also questioned the propriety of the Milk Board taking stand that he was not on deputation. Subsequently, the Authority in expectation of Government approval sent the employee on foreign service on deputation for a period of one year. Thereafter the Milk Board at different points of time accepted that the employee was on deputation to the Authority. On 26.5.1982 the Milk Board intimated the Agricultural Production and Rural Development Department that the employee was on deputation. The said department by letter dated 4.6.1982 considered the question regarding appointment of the employee in the Authority. This letter is also of great significance in the present controversy and reads as follows:

"Government Order No.2944/4.1.1982/Regional
Department-1/

From

Shri Shamshad Ahmed,
Commissioner and Secretary,
Agriculture Produce and Rural
Development Department,
Govt. of Uttar Pradesh
Lucknow.

To

Smt. Sumita Khandpal,
Commissioner and Secretary,
Ramganga Command Project,
Azad Nagar,
Kanpur.

Regional Development Department Section-1

Dated Lucknow: June the 4th, 1982

Subject: Regarding appointment in Kanpur
Ramganga Command Authority of Shri
S.K. Vaish, Subject Matter Expert,
Dairy and Animal Husbandry,
Ramganga Command Project.

Madam,

Kindly refer to your demi official
letter No.P.E.R.-2/V-11/405 dated 4.5.1982
regarding the above said subject matter under
consideration of the Government. In this
regard I am directed to say that after
examining the related documents placed before
the before the Government it has come to the
fore that Shri Vaish was appointed as
Assistant Sales Officer in Kanpur Milk Board
on basic post at the salary of Rs.300-900 by
the order of Milk Board No.
4211/Admn./Personal Letter/dated5/7.4.1974.
The above pay scale was revised and Rs.300-
900 was converted to Rs.550-1200 from
1.4.1974. Shri Vaish before joining Ramganga
Command Project on the above said post was
working on this pay scale from 1.4.1974 to
1.3.1987 in Milk Board.

2. The appointment of Shri Vaish in
Ramganga Command Project at the post of
Subject Matter Expert, Animal Husbandry was
done at the request of the then Administrator
Shri Ramakrishna by Government Order
No.3678/(2)/12(Regional Department 1)/77
dated 13.6.77.

3. Before joining Ramganga Command Project,
Shri Vaish was working at the salary of
Rs.550-1200 in Milk Board and was getting
Rs.640/- per month and on 1.4.77 his further

increment in salary was due. However, when Shri Vaish demanded the enhancement in salary over Rs.640/- from 1.4.767 it was contended by the office that determination of salary of Shri Vaish was not to be done by the Head of the Department and was to be done by the Government. Therefore, after explaining the circumstances to Shri Vaish the proposal for determination of salary of Shri Vaish was sent. However, the Government does not agree with the basis of the above proposal that Shri Vaish has been appointed in Ramganga Command Project on deputation. On the other hand Shri Vaish was given fresh appointment in Ramganga Command Project by the Government. It has become a subject matter of correspondence between the Government and the officers of the Project and today the situation is that even after five years Shri Vaish is being paid the same salary of Rs.640/- which he was getting before joining Ramganga Command Project and the increment in salary from 1.4.77 has not been approved. There can be some force in the above said opinion of the Government on purely technical basis. However, the reality is that from 1.3.77 Shri Vaish is continuously under great financial loss. Certainly, therefore, Shri Vaish has to face unexpected mental and economic harassment.

4. After considering this subject liberally, the Government has come to the conclusion that to give justice to Shri Vaish only one alternative is left that Shri Vaish shall be appointed in Ramganga Command Authority at the pay scale of Rs.550-1200 as Subject Matter Expert (Dairy and Animal Husbandry) or on any suitable equivalent post and from 1.3.1977 after also approving the five increments over basic salary of Rs.640/- being paid to him by Milk Board the salary of Shri Vaish be determined by Ramganga Command Authority.

5. The Kanpur Milk Board shall also be informed about the above said appointment of Shri Vaish in the Authority. Shri Vaish also holds lien over the basic post of Assistant Sales Officer at the pay scale of Rs.550-1200.

6. In the opinion of the Government, this is the only correct and just alternative. Therefore, you please carry out the formalities as aforesaid.

By Order,
Sd/- Illegible
(Shamshad Ahmed)

A carbon copy of the above said Government Order is being sent to the Secretary, Kanpur Cooperative Milk Board, Nirala Nagar (Juhi), Kanpur for his information with reference to his demi official letter dated 26.5.1982

By Order,

(Shamshad Ahmed)
Commissioner & Secretary"

In compliance with the said order, employee was appointed on a temporary basis as Assistant General Manager with clear stipulation that his services are totally temporary and can be terminated at any time by the other side by giving notice for one month or payment of salary in lieu thereof. In terms of the Government order, the basic pay was also fixed. In the meantime the State Government took the decision in March 1982 for abolishing all posts of the Authority except that of Chief Engineer Irrigation. In the resolution it was stipulated that those employees who were directly appointed by the Authority should be absorbed in the vacant posts with the Project and till their absorption with the Project they were to be retained with the Authority. At this juncture came the letter of Milk Board requesting for relieving the employee immediately so that he could join the Milk Board by 1.3.1983. This letter dated 17/24.2.1983 is also of importance and reads as below:

"Kanpur Sakkari Milk Board Limited

Ref. No. 238/Admn./17/03 Dated: 17/24.2.1983

The Chairman &
Project Administrator,
Ram Ganga Command & Development Authority,
3A/101, Azad Nagar,
Kanpur 2.

Dear Sir,

Sri S.K.Vaish, Asstt. Sales Officer, Kanpur Sahkari Milk Board Ltd., Kanpur, who has been to the Ram Ganga Command Authority on deputation since 1977 is required to join this institution as Asstt. Sales Officer immediately. You are, therefore, requested to please relieve him immediately so that he may be able to join his duties as above by 1.3.1983. In case Sri Vaish is not interested to join back in this institution, his resignation may please be obtained and forwarded so that further action may be taken at this end.

Yours faithfully,
Sd/-

General Manager"

In line with the request, the Authority relieved the employee so that he can join the Milk Board. This order was the subject matter of challenge before the High Court in which the impugned judgment came to be passed.

To make the narration of facts complete, one more document needs to be referred i.e. the letter dated 20.5.1985 written by the Milk Board to the authority. The position regarding employee's employment was indicated as follows:

"So far as the termination of line of Mr. Vashya is concerned, from the post of the Assistant Sales Officer in the Kanpur Milk Board, in the above subject, copy of the letter No. ANW dated 25.3.1980 of Mr. Vashya is being enclosed. Vide above mentioned letter, Shri Vashya had admitted himself his services as terminated claiming it as false and improper and on the same ground, he obtained a Certificate from the general Manager Shri B. Dingar of this Institute on 31.3.82 that his lien was existing in the Kanpur Cooperative Milk Board in the month of March, 1982 and it had not been ended. On the basis of the abovementioned grounds and reasons, he was called back vide this Institute letter No. 238/Admin/PF/83 dated 17/21.2.83. But instead of this, Mr. Vashya, as far as it is in the knowledge, had filed a writ petition in the Hon'ble High Court against the order of the Ram Ganga command Authority, regarding submitting the joining report in this Institute and that his position of lien is being maintained as it is about which Shri Vashya is fully aware."

Before approaching the High Court, questioning the legality of the relieving order, the employee had moved the U.P. Public Service Tribunal (in short 'the Tribunal') questioning refusal of the increments in 1980. It is relevant to note that before the Tribunal, the State Government and the authorities concerned as well as Milk Board took varying stands, which were highlighted by the employee before the High Court and in these appeals also.

Mr. Gopal Subramanian, learned senior counsel for the appellant-Authority submitted that the High Court erred on the basic premises by attaching great importance to two aspects, which were really inconsequential. The employee all through took the stand that he was on deputation. Similar was the stand taken by the Milk Board. In fact, the action for sending the employee back was taken by the Authority on the basis of Milk Board's letter. It is not now open to it to take a different stand. Additionally, the High Court has failed to notice that the order dated 4.6.1982 passed by the State Government was essentially in the matter of fixation of pay and was not determining the question of deputation or otherwise of the employee. Even if it is accepted for the sake of argument that the employee was given employment by

the Authority, same was on purely temporary basis as order of appointment clearly indicates. There being no substantive appointment, the question of employee being retained in the Authority after decision of the Government for abolition of posts cannot be countenanced. Similar stand was adopted by learned counsel for the State. Per contra, learned counsel for the Milk Board and the employee submitted that the Authority and the State Government are estopped from taking stand that the employee was on deputation, after having taken a positive stand before the Tribunal about the employee's status of employment. He supported the views expressed by the High Court.

As noted above, in view of the conflicting stands of the parties, most of which were self-serving stands and in some cases without reference to the relevant documents, it would be appropriate to find out the essence of the dispute by taking note of various documents, more particularly the order of appointment, the order by which employee's services were placed at the disposal of the Authority and subsequently orders passed. One thing is clear that from the beginning the employee and the Milk Board as well as the Authority proceeded on the footing that employee was on deputation. This becomes clear from the stand taken by the employee asserting that he was on deputation. That was also his positive stand before the Tribunal. Interestingly, the Milk Board initiated the action for repatriation of the employee by writing to the Authority, clearly indicating that the employee was on deputation. In response to the said letter the Authority acted. Therefore, it is not open to the Milk Board to take a contrary stand. The High Court seems to have lost way amidst the maze of factual red herrings. Great stress was laid on the order dated 4.6.1982 of the Government. As rightly submitted by learned counsel for the Authority, the same was not directly on the question of deputation, but primarily related to fixation of pay. Therefore, that letter was not of any conclusive or determinative value so far as the controversy at hand is concerned.

In view of materials available from the documents referred to above, the inevitable conclusion is that the employee was on deputation from the Milk Board and appointment on temporary basis with the Authority can, by no stretch of imagination, be considered to be substantive appointment. Abolition of posts is an aspect which cannot be lost sight of. Therefore, the order of repatriation which formed subject matter of challenge does not suffer from any infirmity. The High Court erred in interfering with the same. The appeals are allowed with costs fixed at Rs.5,000/-.