

PETITIONER:
FERTILIZER CORPORATION OF INDIA LTD.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 19/02/1996

BENCH:
SINGH N.P. (J)
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SINGH N.P. (J)
VERMA, JAGDISH SARAN (J)
BHARUCHA S.P. (J)

CITATION:
1996 SCC (3) 325 JT 1996 (2) 410
1996 SCALE (2)315

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

N.P. SINGH.J.

This appeal has been filed on behalf of the Fertilizer Corporation of India Ltd. (hereinafter referred to as the 'Corporation') for setting aside the judgment dated 24.9.1990 of the High Court by which the writ petition filed on behalf of respondent No. 4, Shri D.K. Jain, (hereinafter referred to as the 'respondent') has been allowed and a direction has been given to the appellant Corporation to take back the said respondent in service as Director (Finance) w.e.f. 20.4.1986. A further direction has been given that in case the post of Director (Finance) had already been filled up by some other incumbent and it was not possible) to appoint the the respondent against the said post, then he should be appointed in another equivalent post with all consequential benefits.

The respondent joined the Indian Audit and Accounts Service in the year 1958 and was holding a substantive post in junior administrative grade of Rs. 1500-100-3000 w.e.f. 15.7.1982. While the respondent was working as Joint Adviser (Finance), Bureau of Public Enterprises Selection Board for the post of Director (Finance) for the Corporation. By an order dated 8.6.1982 issued by the Government of India. Ministry of Petroleum, Chemicals and Fertilizers the respondent was appointed as Director (Finance) of the said Corporation.

Article 66 of the Articles of Association of the Corporation which provides for the appointment of Director says:

"66.(1) The Directors representing the Govt. shall be appointed by the President of Directors shall be appointed by the President of India in consultation with the Chairman

of the Board of Directors and shall be paid such salary and or allowance as the President of India in consultation with the Chairman of the Board of Directors and shall be paid such salary and or allowance as the President may from time to time determine.

(2) All the Directors except the Managing Director, Executive Director/s and Functional Director/s shall retire at the end of their term, not exceeding three years from the date of their appointment. The Managing Director, Executive Director/s and Functional Director/s shall retire on his/their ceasing to hold the office of the Managing Director, Executive Director/s and Functional Director/s. A retiring Director shall be eligible for re-appointment.

(3) The President shall have the power to remove any Director including the Chairman, the Managing Director, Executive Director/s and Functional Director/s from office at any time and in his absolute discretion.

(4) The President shall have the right to fill any vacancy in the office of a Director caused by retirement, removal, resignation, death or otherwise."

The respondent after having been appointed as Director on the Board of the Corporation was also appointed in terms of Article 69 of the Articles of Association of the Corporation as Director (Finance) of the said Corporation for a period of five years or till the age of his superannuation, whichever was earlier.

Pursuant to the aforesaid order, the respondent joined the Corporation on 17.7.1982. On 12.11.1984 another order was issued by the Government of India, Ministry of Industry (Department of Industrial Development) in respect of the said respondent saying that the President had been pleased to appoint the said respondent who was then Director (Finance) of the Corporation as Director (Finance) of the Cement Corporation of India Ltd. for a period of two years. The relevant part of the order is as follows:

"ORDER.

In pursuance of Article 95(a) and (b) of the Articles of Association of the Cement Corporation of India Limited, the President is pleased to appoint Shri D.K. Jain, at present Director (Finance), Fertilizer Corporation of India Limited as Director (Finance), Cement Corporation of India Limited for a period of two years with effect from the date he assumes charge of the post of Director (Finance) in the Cement Corporation of India Limited."

The Chairman and Managing Director of the appellant-Corporation issued an order on 22.11.1984 saying:

"On his appointment as Director (Finance) in the Cement Corporation of India Ltd., notified vide Ministry of Industry's Order No.10-16/84-Com. dated 12th November, 1984 and subsequent request from the same Ministry for his early release as per their letter dated 17th November, 1984 and the clearance given by the Ministry of Chemicals and Fertilizers, it has been decided to release Shri D.K. Jain, Director (Finance) with effect from 24th November, 1984 (Forenoon).

He is advised to hand over the charge of his office to Shri S. Padmanabhan, Dy. General Manager (Finance), who would look after the work of Finance Division, in the Corporate Office, until further orders."

It may be mentioned that before the aforesaid order dated 22.11.1984 was issued by the appellant Corporation releasing the respondent w.e.f. 24.11.1984 the respondent had addressed a letter on 15.11.1984 to Shri Iyer, Director, Government of India, Ministry of Industry (Department of Industrial Development) saying that he had been appointed in June 1982 as Director (Finance) in the appellant-Corporation and his tenure had been fixed at five years, as such his appointment for two years in the Cement Corporation of India shall be a distinct disadvantage to him, and a request was made:

"In View of above, I would request that my term of appointment in the Cement Corporation of India Limited be kept at five - years so that I may not be denied the benefit which was conferred earlier by the Government at the time of appointment in the Fertilizer Corporation of India Limited more so when I am not gaining any monetary advantage in joining the Cement Corporation of India Limited....."

On 3.12.1984 yet another order was issued in respect of respondent by the appellant-Corporation saying:

"Further to Memo of even number dated 23rd November, 1984 and as requested by Shri D.K. Jain, Director (Finance) he will stand relieved from the services of the Corporation as Director (Finance) with effect from the afternoon of 5th December, 1984.

Shri Jain is advised to hand over the charge to Shri S. Padmanabhan, Dy. General Manager (Finance) Padmanabhan, Dy General Manager (Finance). Provident Fund/E.L. will be settled as per

rule of the Corporation.

(P.L. KUKREJA)

Chairman & Managing Director"

On 5.12.1984 the respondent relinquished the charge of the post of Director (Finance) of the appellant-Corporation saying:

"I hereby relinquish the charge of the post of Director (Finance) FCI with effect from the afternoon of 5th December, 1984 to take up my assignment as Director (Finance), Cement Corporation of India. There are no papers which need to be handed over as all the related files are in the respective sections and departments.

Sd/

(D.K. Jain)

Director (Finance)"

He assumed the charge of the post of Director (Finance) in Cement Corporation of India on 6.12.1984.

Unfortunately by an order dated 20.1.1986 issued by the Government of India, Ministry of Industry (Department of Public Enterprises) the respondent was removed from the post of Director (Finance) in the Cement corporation of India. The aforesaid order said:

"ORDER

WHEREAS the President is of the opinion that it is in the public interest to do so;

NOW, THEREFORE, in exercise of the powers conferred by Article 95(d) of the Articles of Association of Cement Corporation of India Limited, New Delhi, the President is pleased to terminate forthwith the services of Shri D.K. Jain as Director (Finance) in the Cement Corporation of India Limited and also remove him forthwith from the Board of Directors of the said Corporation.

The President is further pleased to decide that Shri D.K. Jain will be paid three months' pay and allowances, as admissible under the rules of the corporations in lieu of the period of notice prescribed in para 1(1) of this Ministry's letter No.10(18)/84-Com., dated the 4th February, 1985.

By order and in the name of the President.

Sd/- E.V.L. Prasada Rao

Under Secretary to the Govt.
of India"

The respondent addressed a communication dated 17.4.1986 to the Secretary, Department of Fertilizers, Ministry of Agriculture saying that he had received a reply from the appellant-Corporation vide their letter dated 14.4.1986 that his employment with that Corporation had ceased immediately on respondent being relieved on the afternoon of 5.12.1984 consequent to his appointment as Director (Finance) in the Cement Corporation of India. The respondent made a grievance in the said letter that the

appellant-Corporation had not created a Permanent post for his permanent absorption. In that connection, respondent said: '

"It may please be recalled that my permanent absorption in Fertilizer Corporation of India was a material condition precedent to my appointment with the corporation and retirement from Indian Audit & Accounts Service. This was stipulated both by me and my cadre authority, i.e. the Comptroller & Auditor General of India through various letters on the subject both before and after my joining the Corporation in July, 1982."

Our attention was drawn to a communication dated 10.6.1983 addressed by Under Secretary to the Government of India to the Comptroller and Auditor General of India referring to the Sanction of the President to the permanent absorption of the respondent in the appellant-corporation in public interest w.e.f. 17.7.1982. In this connection, a reference was also made on behalf of the respondent to a notification dated 21.6.1983 issued by the Asstt. Comptroller and Auditor General saying:

"Consequent upon his permanent absorption in the Fertilizer Corporation of India Ltd. (A Central Public Sector Undertaking), New Delhi, in public interest, with effect from 17th July, 1982 A.N., Shri D.K. Jain, I.A. & A.S., is deemed to have retired from Government Service with effect from the same date in terms of Rule 37 of the Central Civil Services (Pension) Rules, 1972."

When the appellant-Corporation refused to take back the respondent to the post of Director (Finance) on the ground that after the said respondent had been relieved from the said post as desired by him, there was no question of his continuing on the said post, the respondent filed a writ petition before the High Court. That writ petition as already mentioned above was allowed by the High Court and a direction was given to the appellant to take back the said respondent in service as Director (Finance) w.e.f. 20.4.1986.

According to the appellant-Corporation, the claim of the respondent that he had been appointed on permanent basis in the Corporation is not borne out from records of the Corporation and the said claim has been made by the respondent only after the said respondent was removed from the post of Director (Finance) of the Cement Corporation of India. It was pointed out that the respondent had been appointed by the appellant-Corporation for a fixed tenure of five years and there was no question of his being absorbed on permanent basis in the Corporation. Even before the expiry of the said period of five years, the respondent of his own volition left the service of the Corporation to join the Cement Corporation of India. In this background, after his removal from the Cement Corporation of India, there was no question of the respondent coming back to appellant Corporation to join the post of Director (Finance) or any equivalent post.

There is no dispute that at no stage any order was

issued by the appellant-Corporation absorbing the respondent in the service of the Corporation on permanent basis. The only order which issued in respect of respondent's appointment under Article 66(1) of the Articles of Association of the Corporation on 8.6.1982 said in clear and unambiguous words that the appointment of the respondent as Director (Finance) was for a period of five years or till the age of superannuation, whichever was earlier. This order was never modified or substituted at any stage. The Stand of the appellant-Corporation appears to be that merely on the basis of notification issued on 21.6.1983 retiring the respondent from the Government service w.e.f. 17.7.1982, saying "consequent upon his permanent absorption in the Fertilizers Corporation of India Limited", it cannot be held that the respondent had been absorbed in the Corporation on permanent basis. Any such statement in the notification issued by the Assistant Comptroller and Auditor General shall be of no consequence so far the appellant-Corporation was concerned.

It is unfortunate that the respondent for his better prospects in life stepped out from service of the Central Government to the service of the appellant-Corporation and then to the Cement Corporation of India. But the fact remains that in this process, he has landed in a situation where he cannot claim that either he continued in the service of the Central Government or the appellant Corporation till the date of his superannuation. Not only the order of appointment of the respondent by the President in the appellant-Corporation is clear, specific and unambiguous regarding his five years term, the respondent has also understood it in the same manner. After he was removed from the Cement Corporation of India, in his aforesaid communication dated 17.4.1986 to the Secretary, Department of Fertilizers, Ministry of Agriculture he said:

"....This indicates that the Fertilizer Corporation had not created a permanent post to accommodate my lien consequent to my permanent absorption with them in terms of Ministry of Finance, Government of India letter No.A-39020/14/83-EC dated 10th June, 1983, conveying President's sanction to that effect. If that be so my deemed retirement from Indian Audit & Accounts Service as notified by the Comptroller and Auditor General of India through Notification No.3740/GE.I/J-13/P.F.Pt.III dated 21st June, 1983 was not covered by the rules and regulations and therefore, ultra-vires."

In other words, in the aforesaid communication he claimed that his resignation from the Indian Audit and Accounts Service itself was ultra-vires and he shall be deemed to be continuing in the said service after his removal from the Cement Corporation of India. In this background, according to us, it is difficult to hold merely on basis of aforesaid notification dated 21.6.1983 issued by the Assistant Comptroller and Auditor General saying that "consequent upon the permanent absorption of the respondent in the Fertilizers Corporation of India" that the respondent had been permanently absorbed in the appellant-Corporation. For the Permanent absorption of the respondent, the appellant-

Corporation had to issue an order or notification to that effect. That finding cannot be recorded by a court merely on basis of some correspondence or order or notification issued by others.

The counsel appearing on behalf of respondent referred to different communications addressed by the respondent for his permanent absorption. A reference was also made to a communication dated 4.5.1983 addressed by the respondent to the Comptroller and Auditor General of India in which he said that he was giving his consent for Permanent absorption in the Corporation effective from 17.7.1982 and similarly he was agreeing for termination of his lien in the Indian Audit & Accounts Service from that date. Reliance was also placed on the aforesaid notification dated 21.6.1983 issued by the Assistant Comptroller and Auditor General which has already been referred to above in which it has been said that "consequent upon permanent absorption in the Fertilizers Corporation of India" the respondent shall be deemed to have retired from the Government service. According to us what the respondent desired and how the Assistant Comptroller and Auditor General understood in respect of appointment of the respondent in the appellant-Corporation shall not be binding on the appellant-corporation. The question whether the respondent was appointed on permanent basis or was absorbed at any stage by the appellant-Corporation on permanent basis has to be traced and found out on basis of orders issued by the appellant-Corporation. It is an admitted position that no such order has been issued by the appellant-Corporation at any stage.

Apart from that, before the expiry of period of five years for which the respondent had been appointed by the appellant-Corporation, respondent of his own left the appellant-Corporation and at his request and as desired by him he was relieved from the service of the Corporation. Thereafter there was no occasion for the respondent to claim the post of Director (Finance) in the appellant-Corporation. The High Court has missed the real issue involved and was in error in issuing writ of mandamus on the appellant-Corporation to take back the said respondent in service as Director (Finance) w.e.f. 20.4.1986.

Accordingly the appeal is allowed. The order of the High Court is set aside. In the facts and circumstances of the case, there shall be no order as to costs.