

YOGESH CHANDRA JOSHI

v.

STATE OF U.P. AND ORS.

SEPTEMBER 2, 1998

[SUJATA V. MANOHAR AND G.B. PATTANAIK, JJ.]

Service Law :

U.P. Water Supply and Sewerage Act, 1975 : Section 27.

Post—Creation of—Prior to amendment of S. 27 in 1983—Jal Sansthan created post of Finance Officer in 1978 without prior approval of State Government—Employee was promoted as Finance Officer in 1986—But subsequently he was reverted on the ground that creation of the post and his promotion were irregular since prior approval of State Government was not obtained—Validity of—Held, unamended S. 27 does not require prior approval of State Government for creation of post—Prior approval required only after amendment of S.27—Hence, creation of post in 1978 was not irregular—Further prior approval of State Government is required only in respect of posts covered by proviso to S. 27 and not in other cases—Therefore, the said reversion is invalid.

The Allahabad Jal Sansthan Samiti created the post of Finance Officer by Resolution dated 16.1.1978. The appellant was promoted to this post of Finance Officer on 7.6.1986 and was confirmed against this post. However, in September 1992 the appellant was reverted to the post of Accounts Officer on the ground that creation of the post and consequent promotion were irregular as the Jal Sansthan did not take prior approval of the State Government under Section 27 of the U.P. Water Supply and Sewerage Act, 1975. The High Court dismissed the writ petition filed by the appellant. Hence this appeal.

On behalf of the appellant it was contended that the post of Finance Officer was created on 16.1.1978 under the unamended provisions of the Act which did not require the previous approval of the State Government as a condition precedent for creation of the post under the Jal Sansthan and, therefore, the High Court erred in considering the provision of Section 27 of the Act which was amended in the year 1983.

A Allowing the appeal, this Court

B HELD : 1.1. The Jal Sansthan had full authority for creation of post and for appointment of persons to such post on such terms and conditions, as it thinks fit. The State Government has not produced any order purported to have been issued under proviso to unamended Section 27 of the U.P. Water Supply and Sewerage Act, 1975 which required that the post of Finance Officer could be created only with prior approval of the State Government. The post of Finance Officer was created on 16.1.1978 on which date the unamended provision was in force. Therefore, the Jal Sansthan was competent to create this post without obtaining prior approval of the State Government. The State Government as well as the High Court committed gross error in relying upon the amended provisions of Section 27, which had no application during the year 1978.

[375-G-H; 376-A-B; F; 377-A]

D 1.2. It is true that when the appellant was promoted as Finance Officer on 7.6.1986 the amended provision of Section 27 of the Act was in force and, therefore, the appellant's promotion was to be governed by the amended provision. However, there is nothing in the amended provision, which requires prior approval of the State Government for appointment to the post created in Jal Sansthan. Under amended Section 27, the power of Jal Sansthan for appointment is unfettered and does not require any prior approval of the State Government except when the State Government frames Rules or order in this behalf, but no such Rules or order have been produced in this case. Therefore, the post in question having been duly created by the Jal Sansthan under the unamended provisions of Section E F 27 of the Act and the Jal Sansthan having duly promoted the appellant to the said post in the year 1986 under unamended Section 27(2) of the Act, there is no infirmity with the promotion of the appellant. The impugned order of reversion being unsustainable is set aside. [377-C-H]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3817 of 1993.

From the Judgment and Order dated 21.1.93 of the Allahabad High Court in C.M.W.P. No. 36624 of 1992.

H V.A. Mohta and Manoj Prasad for the Appellant.

Prashant Kumar, Joseph Pookkatt and S. Dave for the Respondents. A

The Judgment of the Court was delivered by

PATTANAİK, J. Appellant filed a writ petition in the High Court of Allahabad challenging the order of reversion to the post of Accounts Officer from the post of Finance Officer in Jal Sansthan by order dated 18.9.92. The Division Bench of the Allahabad High Court by the impugned order dated 21.1.1993 dismissed the said writ petition *inter alia* on the ground that the post of Finance Officer not having been created in consonance with the provisions of Section 27 of the U.P. Water Supply and Sewerage Act, 1975 (hereinafter referred to as the Act) inasmuch as prior approval of the Government had not been taken before the creation of the such post, the promotion of the appellant to such post does not confer any right and consequentially the order of reversion does not suffer from any infirmity. The appellant challenges the aforesaid judgment of the Allahabad High Court in this appeal. B
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From the averments made by the appellant in the writ petition filed before the High Court as well as the documents appended thereto, it appears that Allahabad Jal Sansthan Samiti created the post of Finance Officer by Resolution No. 7 dated 16.1.1978. Shri Mool Chandra Kamla was appointed against the said post by order dated 17.1.1978 issued by the Chairman of Jal Sansthan. Said Shri Kamla went on leave and in his place the appellant was allowed to remain in-charge of the post of Finance Officer. By Office Order dated 21.1.1989 passed by the Chairman, Jal Sansthan, the appellant was confirmed against the post of Finance Officer and it was stated therein that for the purposes of seniority the date of his promotion to the post of Finance Officer on 7.6.1986 will be the relevant date. In accordance with the aforesaid order the pay of the appellant as Finance Officer was fixed in the pay scale of Rs. 1100-2050 w.e.f. 7.6.1986 by the General Manager of Jal Sansthan by his order dated 17th of August, 1989. Thereafter there has been several correspondence between the Government and the Jal Sansthan, the Government entertaining a doubt with regard to the legality of the appointment of appellant to the post of Finance Officer and Jal Sansthan reiterating its stand that the appellant has been duly promoted to the post of Finance Officer. Finally, the State Government issued the Office Order dated 18.9.1992 reverting the appel- E
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A lant to the post of Accounts Officer with immediate effect and communicated the same to the Chairman, Jal Sansthan, Allahabad. The Chairman in his turn passed an order on 28.9.1992 cancelling the promotion and confirmation of the appellant on the post of Finance Officer in compliance of Resolution No. 353 dated 14.9.1992 passed by Jal Sansthan. Appellant, therefore, approached the High Court challenging the legality of the aforesaid order. It may not be out of place to notice that while the appellant was continuing as Finance Officer the State Government itself nominated the appellant to undergo training at Bombay under the U.P. Urban Development Project. The respondents took the stand before the High Court that the post of Finance Officer had been created by Jal Sansthan in contravention of Section 27 of the Act inasmuch as previous approval of the State Government had not been obtained before the creation of the post and as such post itself has not been created in accordance with law, promotion of the appellant to the said post will not confer any right on the appellant. On examining the provisions of Section 27 of the Act the High Court was persuaded to accept this stand of the State Government and accordingly it held that the post of Finance Officer not having been created with the previous approval of the State Government, promotion of the appellant to the said post was bad in law, and therefore, reversion is fully justified.

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Mr. V.A. Mohta, learned senior counsel appearing for the appellant urged that the High Court committed error in considering the provisions of Section 27 of the Act as amended in the year 1983, though the post of Finance Officer had been created as early as on 16.1.1978 under the unamended provisions which did not require the previous approval of the State Government as a condition precedent for creation of post under the Jal Sansthan. According to learned senior counsel, Mr. Mohta, only stand of the State Government being the legality of the creation of the post itself and the said stand being based on amended provision of 1983 though the post was created in January 1978 under the unamended provisions, the entire premise on which the Government laboured and the High Court was persuaded to accept the same is unsustainable, and therefore, the impugned order of reversion is liable to be set aside. Mr. Mohta also contended that the order of reversion is actuated by malafides of the General Manager but we are not persuaded to examine the said question on the existing materials on record.

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The learned counsel appearing for the State of U.P. on the other hand reiterated the stand that for creation for the post Finance Officer prior approval of the State Government was necessary and the said approval had not been obtained. The learned counsel also urged that assuming that the post could be created in the year 1978 without the approval of the Government but by the time the appellatant was promoted to the post of Finance Officer the amended provisions have come into force, and therefore, his appointment has to be governed by the amended provisions and since prior approval of the Government had not been taken the promotion has rightly been set aside and the appellatant has been reverted to the substantive post of Accounts Officer.

In view of rival submissions at the Bar, the first question that arises for consideration is whether under the unamended provisions of Section 27 of the Act which was in force on the date the Jal Sansthan created the post of Finance Officer, prior approval of the State Government was necessary before creating the same? Section 27 of the Act prior to its amendment by U.P. Act No. 5 of 1984 reads as under:

"27. Appointment of Employees:-

The Jal Sansthan may appoint such employees as it considers necessary, and on such terms and conditions as it thinks fit, for the efficient performance of its functions.

Provided that the appointment of such employees as the State Government may, by general or special order, specify shall be made, and their terms and conditions shall be determined, with the approval of the State Government.

(2) Subject to general control and direction of the Chairman, the supervision and control over all employees of the Jal Sansthan shall be vested in the General Manager."

A reading of the aforesaid provisions would indicate that the Jal Sansthan had full authority for creation of post and for appointment of persons to such post on such terms and conditions as it thinks fit. Proviso to the aforesaid Section confers power on the State Government to issue general or special order specifying the terms and conditions of any such appointment which could be made with the approval of the State Govern-

A ment. No such order has been produced by the State Government which the State government could have passed either general or special in the purported exercise of power under the proviso. Under the amended provisions, however, the creation of post under Jal Sansthan required previous approval of the State Government. The amended provisions of Section 27 may be extracted hereinbelow in extenso.

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"Creation of posts and appointment of employees - (1) The Jal Sansthan may, with the previous approval of the State Government, create such posts of officers and other employees and with such designations as it considers necessary for the efficient performance of its functions.

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(2) The appointments to the posts, referred to in sub-section (1), shall be made by the Jal Sansthan on such terms and conditions, as it thinks fit:

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Provided that the appointment on such posts as the State Government may, by rules framed under Section 27-A or by general or special order, specify shall be made and the terms and conditions of appointment on such posts shall be determined with the approval of the Government.

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(3) Subject to general control and directions of the Chairman, the supervision and control over all employees of the Jal Sansthan shall be vested in the General Manager."

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The High Court in the impugned order has noticed the amended provisions of Section 27 and came to the conclusion that the creation of post made by Jal Sansthan was bad in law. The High Court committed serious error in relying upon the amended provisions which came into force w.e.f. 26.12.1983 whereas the post of Finance Officer had been created by Jal Sansthan on 16.1.1978. The State Government also acted on an erroneous impression relying upon the said amended provisions as it appears from the stand taken by it in support of the order of reversion that was issued. Since the post of Finance Officer had been created by the Jal Sansthan on 16.1.1978 and under the relevant provisions of Section 27 as it stood then, prior approval of the State Government was not necessary for creation of the post, we have no hesitation to come to the conclusion that there was no infirmity with the creation of the post of Finance Officer

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by Jal Sansthan and the Government as well as the High Court committed

gross error by relying upon the amended provisions of Section 27 which obviously had no application during the year 1978. In this view of the matter, the order of the State Government dated 18.9.1992 and the consequential order of the Jal Sansthan dated 28.9.1992 passed by the Chairman of the Jal Sansthan pursuant to the Resolution of the Committee of Jal Sansthan dated 14.9.1992 cannot be sustained and we accordingly set aside the said orders.

The next question which arises for consideration is whether by the time when the appellant was promoted to the post of Finance Officer, the amended provisions of Section 27 having come into force, is there any embargo on his promotion or is there any provision which requires prior approval of the Government for promoting an employee to the post of Finance Officer? It is no doubt true that Rule which is in force at the time when the promotion was made would govern the case of promotion and since the amended provisions have come into force w.e.f. 26.12.1983 and the appellant was promoted to the post of Finance Officer on 7.6.1986 the amended provisions will govern his appointment. But on examining the amended provisions we do not find anything contained therein which require prior approval of the Government for appointment to the post created in Jal Sansthan. Under the amended provisions post under Jal Sansthan could be created only with previous approval of the State Government as contemplated under sub-section (1) of Section 27. But the appointment to those posts has to be made under sub-section (2) of Section 27 and in such appointments the power of Jal Sansthan is unfettered and does not require any prior approval of the State Government. The proviso to sub-section (2) of Section 27 confers power on the State Government either to frame rules or to specify by general or special order indicating the terms and conditions of appointment and the terms and conditions of appointment has to be with the approval of the Government but no such rule or order either general or special has been passed by the Government under the proviso to sub-section (2) of Section 27. In that view of the matter, the post in question having been duly created by the Jal Sansthan under the unamended provisions of Section 27 of the Act and the Jal Sansthan having duly promoted the appellant to the said post in the year 1986 under sub-section (2) of Section 27 of the amended provisions, there is no infirmity with such promotion of the appellant. Consequentially, we do not find any force in the second submission of the learned counsel appearing for the State of U.P. In the aforesaid premises the impugned order of

A reversion is wholly unsustainable and we accordingly set aside the order of the State Government dated 18.9.1992 and that of the Jal Sansthan dated 28.9.1992, we also set aside the impugned order of the High Court and the writ petition filed by the appellant is allowed. The civil appeal is allowed but in the circumstances there will be no order as to costs.

B V.S.S.

Appeal allowed.