

Chief Justice Court

Case :- SPECIAL APPEAL No. - 283 of 2019

Appellant :- State of U.P. through Prin.Secy.Sugar Lucknow and ors.

Respondent :- Vashishta Muni Mishra

Counsel for appellant :- Gaurav Mehrotra, Tushar Mittal,

Shreiya Agarawal

Counsel for Respondent :- Ajai Kumar Srivastava

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

(Per:-Jaspreet Singh, J.)

1. The instant intra-court appeal preferred by the State challenges the judgment and order dated 01.05.2019 passed in W.P. No. 4838 (SS) of 2000 (Vashishta Muni Mishra Vs. State of U.P. and others) whereby the writ petition preferred by the respondent Vashishta Muni Mishra was allowed and a direction was issued to the State that the respondent should be treated as a Government Servant having been appointed in the office of Cane Commissioner, Uttar Pradesh with all consequential service benefits.
2. Sri Gaurav Mehrotra, learned counsel for the appellants duly assisted by Sri Tushar Mittal and Ms. Shreiya Agarwal, Advocates has assailed the judgment dated 01.05.2019 submitting that the respondent was never appointed in the office of Cane Commissioner. The appointment of the respondent was under the Special Sugar Fund (Shakkar Vishesh Nidhi). The respondent treated himself to be an employee of the Special Sugar

Fund as shall be evident from the correspondence initiated by the respondent.

3. It is further submitted that various documents were brought on record to point out that right from the inception, the respondent was an employee of the Special Sugar Fund. Even in the counter affidavit filed before the Writ Court, it was specifically stated that the appointment of the respondent was on the post of a driver made under the Special Sugar Fund initially on daily wages and the Employees Provident Fund was deducted from the salary of the respondent.

4. It is also pointed out that from the perusal of the averments made in the writ petition itself, it was pleaded, that the respondent always understood that he was appointed under the Special Sugar Fund and the deduction made from the salary of the respondent under Contributory Provident Fund was correct but only when the respondent showed his appointment letter and certain other letters to his counsel then he was advised that he should raise his grievances and seek appropriate remedy for getting the wrong corrected, inasmuch as, the contributory provident fund should not be deducted rather the respondent being a State Government employee, his deduction should be made under General Provident Fund.

5. It is thus submitted that though the respondent was appointed on the post of driver vide order dated 19.02.1990 and he continued as an employee of the Special Sugar Fund. His salary was being paid from the fund and then after about 8 years the respondent sought to raise the aforesaid dispute which even otherwise is against the Rules as framed.

6. It is further submitted by learned counsel for the appellants that the Uttar Pradesh Sugar Cane (Purchase Tax) Act, 1961 (hereinafter referred to as "The Act of 1961) was promulgated, and Special Sugar Fund was created vide notification issued in the year 1974, with a view to promote cane research and development.

7. It is further urged that a meeting was held in the year 1984 by the Special Sugar Fund Committee wherein the Cane Commissioner, Uttar Pradesh was delegated with the power to act as the Appointing Authority of the employees engaged under the Special Sugar Fund. In the year 1987, the Special Sugar Fund purchased certain motor vehicles and in order to ply the said vehicles, certain drivers were appointed which included the respondent. These appointments were made on 19.02.1990 and inter-alia the respondent was paid his salary in consonance with the office order dated 20th May, 1987 and his contributory provident fund was deducted from his salary.

8. Every time the salary was paid from the Special Sugar Fund and even the bonus which was disbursed to the respondent was made after deducting the necessary contributory provident fund. The relation between the appellants and the respondent was clearly that of employer who employed the respondent for the Special Sugar Fund and no benefit was ever granted to the respondent nor he was ever treated as a government servant and thus the finding recorded by the learned Single Judge treating the respondent as a government employee is erroneous.

9. It has also been urged by learned counsel for the appellants that in so

far as the appointment of a driver is concerned, they are governed by separate rules namely the Uttar Pradesh Sugar Department Drivers Service Rules, 1984 (hereinafter referred to as “The Rules of 1984) which hold the field. If at all the appointment of the respondent had been made under the said Rules only then he could have been treated as a Government employee and naturally he would be governed by the said Rules.

10. It is urged that the Rules of 1984 specifically provide for an Appointing Authority which has been defined in Rule 3(a). Rule 5 provides for the source of recruitment and Rule 15 and 16 relate to the procedure for direct recruitment and appointment and it is not the case of the respondent that his Appointing Authority is the one which is defined in Rule 3(a) of the Rules of 1984, nor is it the case of the respondent that he was appointed under the said Rules. This aspect has not been considered by the learned Single Judge and in absence thereof the judgment impugned cannot be sustained.

11. Lastly, it has been urged by the learned counsel for the appellants that certain events occurred during the pendency of the writ petition which though should have been brought on record by the respondent himself as it was in their knowledge but unfortunately, the same was not placed before the writ court either by the appellants or the respondent (who was the writ petitioner) but had the same been placed then it would have had a major impact on the verdict of the learned Single Judge.

12. It is submitted that the said event emerged from the enactment of the Goods and Service Tax (GST) Act, 2016 and as its consequence, the levy of

purchase tax under the Act of 1961 and the Special Sugar Fund (Shakkar Vishesh Nidhi) came to be repealed w.e.f. 1st of July, 2017. In this context the State Government after holding consultation took a conscious decision for absorption of all such employees who were appointed and were being paid salary under the Special Sugar Fund, in different Cane Development Councils. This fact cannot be disputed by the respondent and being an undisputed fact, this Court may take the same into consideration.

13. In furtherance thereof on 07.03.2019, the services of the respondent was absorbed alongwith few other employees, in the Cane Development Council, Saharanpur. Later, vide order dated 29.03.2019, the Deputy Sugarcane Commissioner, Eastern and Central Region, Lucknow relieved the respondent from his services and he was required to join with the Cane Development Council at Saharanpur.

14. It is urged that this event took place during the pendency of the writ petition bearing no. 4838 (SS) of 2000 and instead of bringing the those facts to the notice of the court seized of W.P. No. 4838 (SS) of 2000, the respondent preferred another petition bearing No. 9833 (SS) of 2019 (Vashishta Muni Mishra vs. State of U.P. and others) whereby he sought the quashing of the order dated 07.03.2019. This fact of filing of the fresh petition was also not brought to the notice of the learned Single Judge who was seized of the writ petition bearing No. 4838 (SS) of 2000. However, once, the said writ petition No. 4838 (SS) of 2000 came to be decided, the respondent got his subsequent petition bearing No. 9833 (SS) of 2019 dismissed.

15. In the aforesaid backdrop and taking aid of the judgment dated 01.05.2019 (which is under challenge in this intra-court appeal), the respondent preferred a contempt petition bearing No. 1469 (C) of 2019 with the prayer to direct the Cane Commissioner to permit the respondent to join in the office on a post at a place near his residence. The Additional Cane Commissioner and the Sugarcane Commissioner passed an order posting the respondent at the Cane Development Council, Hargaon District Sitapur where the respondent joined his services on 14.10.2019 whereafter a subsequent order was passed on 13.01.2020 and the respondent was transferred to the Cane Development Council, Nawabganj, District Gonda and during his service there at Gonda, the respondent expired on 21.05.2021.

16. It is urged that taking a comprehensive view of the entire facts, it would clearly indicate that the respondent was always an employee of Special Sugar Fund and not of the State Government and this aspect was not appropriately considered by the learned Single Judge, accordingly, the writ petition deserves dismissal after allowing this intra-court appeal.

17. Sri Ajay Kumar Srivastava, learned counsel appearing for the legal heirs of the deceased respondent (who were substituted during the pendency of proceedings) has urged that the appointment of the respondent was made by the Cane Commissioner. The regularization order has also been passed by the Cane Commissioner. Neither in the appointment order nor in the order of regularization it was ever indicated that the petitioner was appointed under the Special Sugar Fund.

18. It was further submitted that in the minutes of the meeting of the Special Sugar Fund held on 22.04.2019, there is a reference of creation of certain Class-III posts but it did not include any post of drivers and in absence thereof it cannot be said that the respondent was appointed on the post of driver from the said fund and since the respondent was appointed on daily wages where he was regularized by the Cane Commissioner, he would be an employee of the State Government and not of the Special Sugar Fund.

19. The learned counsel for the respondents has further urged that while the respondent was regularized, the said regularization order did not indicate that the respondent was being regularized in context with his appointment in the Special Sugar Fund. Merely because for the purposes of reference, the said minutes of meeting were sent to the Special Sugar Fund Committee it will not amount to appointing the respondent in the Special Sugar Fund.

20. It has further been urged that even under the Rules of 1984, the Appointing Authority as defined in the said Rules does not exclude the Cane Commissioner and the officials mentioned in Rule 3(a) are all subordinate to the Cane Commissioner, hence, if the appointing order has been passed by the Cane Commissioner including the order of regularization, hence, it cannot be said that the respondent was not appointed according to the Rules of 1984, thus, for all the aforesaid reasons, the learned Single Judge has taken note of and dealt with the aforesaid aspect which does not require any interference and the appeal

deserves to be dismissed.

21. The Court has heard the learned counsel for the parties and also perused the material on record.

22. The sole issue before this Court is whether the appointment of the respondent was in the Special Sugar Fund or he was appointed as a Government servant.

23. Certain undisputed facts which are borne out from the records are:-

(i) The U.P. Sugarcane Purchase Tax Act of 1961 came to be amended in the year 1974, as a consequence, Section 3 (10), Section 3 (11), Section 3 (12) and Section 3 (13) were inserted. In terms of Section 3 (12), the maintenance and operation of the four funds created in terms of Section 3(10) was vested in a Committee to be called as Uttar Pradesh Special Sugar Fund Committee. The members of the said Committee consisted of (a) the Secretary to the State Government in the Sugar Industry Department who shall be the Chairman and convener of the Committee; (b) The Cane Commissioner, Uttar Pradesh; and (c) the Secretary to the State Government in Finance Department or his nominee not below the rank of Joint Secretary.

(ii) The Committee so created under Section 3 (12) was vested with powers and would be a Body Corporate having powers to invest money belonging to the funds in such manner as it deemed fit as well as to spend the funds on the objects of the respective fund as well as transfer money from one fund to the other with condition that such funds shall be refurnished by re-transferring the money from the funds to which it was transferred.

(iii) In a meeting of the Special Sugar Fund Committee held on 22.04.1984, it was resolved that 6 posts be created:- one post for an Accountant, one post for Assistant Accountant, two posts of Clerk-cum-typist and two posts for peon on daily wages. It was further

resolved that for the purposes of making the appointments aforesaid, the Committee nominated the Cane Commissioner as its Appointing Authority on behalf of the Committee.

(iv) The Committee in its meeting dated 02.01.1988 also resolved that since 6 vehicles had been procured by the Special Sugar Fund Committee, hence, drivers for the said vehicles were to be appointed and in this context, it was resolved that the drivers may be appointed on daily wages.

24. From the aforesaid facts as documented, it would be clear that the appointment made by the Cane Commissioner was on behalf of the Committee (Special Sugar Fund Committee) constituted under Section 3 (12) of the Act of 1961 and as indicated in the minutes of meeting dated 22.04.1984.

25. It is in the aforesaid vein that the respondent Vashishta Muni Mishra also came to be appointed and even though the appointment order was issued under the signatures of the Cane Commissioner but that was only as an authorized member of the Special Sugar Fund Committee.

26. Once again when the services of the respondent were regularized and while doing so it was clearly noticed that 9 drivers were being paid salaries from the Special Sugar Fund out of which 8 who were engaged on daily wages had been regularized and since only one driver remained, hence, his services too be regularized. It was also noticed that the post of the 9 drivers were temporary and since they were not sanctioned posts of the Special Sugar Fund, hence, a formal approval be obtained.

27. There is various correspondence made by the respondent and addressed to the Cane Commissioner which indicate that the respondent

therein always introduced himself as a driver working under the Special Sugar Fund.

28. It is also not disputed that while being appointed and having continued in service, the contributory provident fund was being deducted from the salary of the respondent and at no point of time, the GPF was deducted nor there is any communication indicating that the respondent was appointed under the Drivers Service rules of 1984.

29. The learned counsel for the respondent could not dispute that the Drivers Service Rules, 1984 were already in vogue when the appointment of the respondent was made in the year 1992. He also could not dispute that the appointment of the respondent was not made in terms of the Drivers Service Rules of 1984 specifically in terms of Rule 5, 15 and 16 of the Rules of 1984.

30. The learned counsel for the respondent did not dispute that with the promulgation of the GST Act, 2017 w.e.f. 1st July, 2017, the Special Sugar Fund was dissolved and the State Government took a conscious decision of absorbing the employees working under the Special Sugar Fund in different Development Council and in furtherance thereof an order dated 07.03.2019 was passed and thereafter the respondent was absorbed in the Cane Development Council at Saharanpur.

31. It is not disputed that when the aforesaid order dated 07.03.2019 was passed, the writ petition filed by the respondent bearing No. 4838 (SS) of 2000 was still pending and admittedly the aforesaid facts were not placed before the learned Single Judge either by the State or by the respondent.

The W.P. No. 4838 (SS) of 2000 came to be allowed on 01.05.2019 and thereafter the respondent who had filed the other W.P. bearing no. 9833 (SS) of 2019 seeking quashing of the order dated 07.03.2019 was got dismissed as withdrawn.

32. In the backdrop of the undisputed facts, it clearly emerges that Drivers Service Rules, 1984 were clearly in place when the appointment of the respondent was made and admittedly the appointment of the respondent was not in furtherance of the Drivers Service Rules, 1984.

33. From the material available on record, it clearly indicates that the service of the respondent was made under the Special Sugar Fund. The appointment order as well as the regularization order which was passed by the Cane Commissioner was not in his capacity as an Appointing Authority under the Drivers Service Rules, 1984 but was as the nominated member of the Special Sugar Fund Committee.

34. Admittedly, no post of a driver was sanctioned under the Special Sugar Fund Committee and the appointment of the respondent was on daily wages which came to be regularized and throughout the respondent was paid his salary from the Special Sugar Fund. The respondent always treated himself as an employee of the Special Sugar Fund but later raised the issue by filing the writ petition in question, without cogent reasons.

35. It could not be shown by the learned counsel for the respondent as to how the respondent could be treated as an employee of the State Government since his appointment was never made in terms of the Driver Service Rules, 1984.

36. The learned counsel for the respondent also could not dispute the fact that with the promulgation of the GST Act in 2017 and the Special Sugar Fund having been dissolved and then not only the respondent but even the other persons who were working in the Special Sugar Fund were absorbed in different Cane Development Council.

37. Another reason which propels this Court to not accept the contention of the respondent is the fact that when the respondent challenged the order dated 07.03.2019 by which he was absorbed in the Development Council and later he got his writ petition withdrawn, without any adjudication on merit in the issue relating to the status of the respondent as an employee.

38. Whereas, the only issue which was raised in the writ petition in question bearing No. 4838 (SS) of 2000 was to issue a mandamus commanding the Cane Commissioner to treat the respondent as a State Government employee and deduct GPF in accordance with law and in the entire writ petition, it was not pleaded that the respondent was appointed in accordance with the Drivers Service Rules, 1984. Moreover, other similarly situated persons as the respondent who were working in the Special Sugar Fund had also been absorbed in different Cane Development Council in pursuance of the policy of the State Government and the respondent having taken the benefit of the same cannot now turn around to say that he should be treated as a Government employee.

39. Be that as it may, in order to claim being a government servant, the appointment of the respondent should have been against a sanctioned post in terms of the Drivers Service Rules, 1984 which is admittedly not the

case of the respondent. In absence thereof, the only submission of learned counsel for the respondent is that since the appointment order was issued by the Cane Commissioner, coupled with the fact that no post of a driver was sanctioned in the Special Sugar Fund, hence, the appointment of the respondent was in the Sugar Cane Department of the State of U.P.

40. In terms of Rule 3(a) of the Drivers Service Rules, 1984 which clearly defines the Appointing Authority as the Cane Commissioner (Administration) or Joint Cane Commissioner (Administration) or the Deputy Cane Commissioner (Administration) would be a specific post and even though the same persons holding the aforesaid designation may be subordinate to the Cane Commissioner but the fact remains that the appointment of the respondent was made by the Cane Commissioner as a member and on behalf of the Special Sugar Fund Committee constituted for the purpose of supervising and managing the Special Sugar Fund and not in pursuance of the Drivers Service Rules, 1984.

41. The learned Single Judge has erred by holding that by issuing an appointment order by the Cane Commissioner could confer the status of a government servant on such an employee but had ignored the fact that in such circumstances the appointment of the respondent should have done only in accordance with the procedure prescribed under the Rules of 1984 which admittedly was not done.

42. Even though the Special Sugar Fund did not have any sanctioned post of a driver yet the respondent who was engaged on temporary and daily wages to work as a driver and the salary was being paid from the said fund

is clearly indicative of a fact that the respondent was not appointed as a driver by the Cane Commissioner under the Drivers Rules of 1984.

43. In light of the aforesaid, this Court is of the firm view that throughout the respondent treated himself to be a driver in the Special Sugar Fund and it is at a much later stage that a claim was sought to be raised by filing the writ petition. Later, the subsequent events which took place including the promulgation of the GST Act in the year 2017 and the absorption of the respondent and other similar persons working in the Sugar Special Fund in the different Cane Development Council are all indicative of the fact that right from the inception, the respondent was appointed in the Special Sugar Fund.

44. For all the aforesaid reasons, this Court is of the view that the respondent could not be treated as a Government employee nor a mandamus in this regard could have been issued in favour of the respondent to treat him as Government servant with all consequential benefits. Accordingly, the instant intra-court appeal is *allowed*. The order impugned passed by the learned Single Judge dated 01.05.2019 is set aside. Consequently, the W.P. No. 4838 (SS) of 2000 shall stand *dismissed*. In the aforesaid facts and circumstances, there shall be no order as to costs.

Order Date :- 20th November, 2024

Asheesh

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)