

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 7243 OF 2012

THE STATE OF U.P. AND ANOTHER APPELLANT(S)

VERSUS

IQBAL SINGH RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. The appeal challenges the judgment and order dated 25th November, 2010 by which the Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow has dismissed the Writ Petition being S.B No.1740 of 2010 filed by the appellant-State challenging the order dated 23rd June, 2009 passed by the State Public Services Tribunal, Indira Bhawan, Lucknow (hereinafter referred to as “Tribunal”).

2. The undisputed fact is that the respondent-employee came to

be appointed as a Junior Engineer with the Public Works Department (hereinafter referred to as the "PWD") on 27.03.1973. In the year 1982, there was an advertisement for the post of Assistant Engineer issued by Harijan Evam Nirbal Varg Avas Nigam Ltd. (hereinafter referred to as "Nigam").

3. The respondent-employee was duly selected in the selection process and appointed as Assistant Engineer on 30th December, 1982. The respondent-employee was relieved from PWD of the State on 5th February, 1983. After having rendered services with the Nigam for a few years, the respondent-employee made an application to the State for permitting him to join back to the services of the PWD. Since the respondent-employee was denied the same, he filed the Claim Petition No. 991 of 2004 before the Tribunal. The Tribunal, vide order dated 12th October 2004, directed the appellant(s) herein to allow the respondent-employee to join the PWD on the post of Junior Engineer before 31st October 2004. During the pendency of the claim petition before the Tribunal, the respondent-employee retired and superannuated from the services of the PWD on 31st October 2006. The claim petition came to be decided by the learned Tribunal on 23rd June

2009. Vide the said order, the learned Tribunal held that the respondent-employee had retired from the PWD and was entitled to retiral benefits and notional promotions from there as he was deemed to be an employee of PWD. Being aggrieved thereby, the appellant(s) approached the Division Bench of the High Court and the same was dismissed. Hence, the present appeal.

4. Shri Singh, learned Senior Counsel appearing on behalf of the State submits that the respondent-employee was permanently relieved on 5th February 1983 upon his selection to the permanent post of Assistant Engineer in the said Nigam. He submits that the finding of the Tribunal as well as the High court that the respondent-employee was on deputation in the said Nigam, are totally incorrect.

5. The learned Senior Counsel relying on the G.O. dated 16th February 1983 submits that once an employee from the State Government was appointed to a post under the University, Degree College or any other Autonomous Body upon due selection, he/she cannot be treated as a State Government employee as there is a severance of relationship between the employer-State and the employee.

6. Shri Singh further submits that the respondent-employee has also received terminal benefits including gratuity etc. from the said Nigam and he cannot be permitted to claim terminal benefits twice, once from the Nigam and thereafter from the State.

7. Shri Vineet Bhagat, learned counsel appearing on behalf of the respondent-employee submits that the respondent's appointment in the Nigam was on a temporary basis and he had sought a lien over his services with the State. He submits that since the respondent-employee had a lien over his services with the State, he was entitled to be re-inducted in the State services i.e, in PWD. He submits that as a matter of fact, in pursuance to the order passed by the Tribunal, the respondent-employee was re-inducted in the State services and therefore, no interference is warranted in the concurrent orders.

8. A perusal of the record would reveal that the respondent-employee's appointment with the said Nigam as an Assistant Engineer was on a temporary basis. In that view of the matter, the respondent-employee had specifically, by his letter dated 21st February 1983 addressed to the Engineer-in-Chief, requested for keeping a lien over his services with the PWD. Undisputedly, the

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said request has not been rejected. On the contrary, it would be seen that in the Seniority List maintained by the appellants in the year 1994, that is almost after a period of eleven years from the date on which the respondent-employee joined the Nigam, he has been shown in the said Seniority List at Sl. No. 1148 as an employee of the PWD. Not only this, but in the subsequent promotions which were conducted for the post of Assistant Engineer, PWD permitted the respondent-employee to participate in the said process and also called him for the interview.

9. It could thus clearly be seen that even in the documents maintained by the PWD, the respondent-employee continued to be in the employment of PWD and as such, it could be presumed that his request for the lien was positively considered.

10. In any event, the interim order dated 12th October, 2004 was not challenged by the State and in pursuance of the said order, the respondent-employee was permitted to join and was also permitted to retire from the services of the PWD on attaining the age of superannuation, i.e., 60 years.

11. In that view of the matter, we do not find any merits in the appeal. The appeal is dismissed.

12. Insofar as the contention of the appellants with regard to the respondent-employee receiving terminal benefits twice is concerned, the appellant-State can always adjust the amount which the respondent-employee has received from the Nigam and pay the remaining balance amount to him.

13. Taking into consideration the fact that the respondent-employee superannuated in the year 2006 and is deprived of his terminal benefits for 16 years, the appellants are directed to clear all the terminal benefits within a period of three months from today, after adjustment as aforesaid, failing which, the respondent-employee will be entitled to interest at the rate of 10%.

.....**J.**
(B.R. GAVAI)

.....**J.**
(HIMA KOHLI)

New Delhi;
June 01, 2022.

ITEM NO.103

COURT NO.5

SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 7243/2012

THE STATE OF U.P. & ANOTHER

Appellant(s)

VERSUS

IQBAL SINGH

Respondent(s)

Date : 01-06-2022 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MS. JUSTICE HIMA KOHLI
(VACATION BENCH)

For Appellant(s) Mr. S.R. Singh, Sr. Adv.
Mr. Ajay Vikram Singh, AOR
Ms. Priyanka Singh, Adv.
Mr. Narender Rana, Adv.
Mr. Neelambar Jha, Adv.

For Respondent(s) Mr. K.G. Bhagat, Adv.
Mr. Vineet Bhagat, AOR
Ms. Manju Bhagat, Adv.
Ms. Archana Midha, Adv.
Mr. Mohit Gulati, Adv.

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

The appeal is dismissed in terms of signed non-reportable Judgment.

All pending applications stand disposed of.

(NEETA SAPRA)
COURT MASTER (SH)

(RANJANA SHAILEY)
COURT MASTER (NSH)

(Signed non-reportable Judgment is placed on the file)