

(2004) 05 AHC CK 0186
In the Allahabad High Court
Case No : Special Appeal No. 460 of 2004

Ajay Brahm Tiwari, Santosh Singh, Ajeet Singh Chauhan and
Dhirendra Sisodia

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 12-05-2004

Acts Referred:

Constitution of India, 1950 — Article 16(4B)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16F, 16F(4)
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 3(2), 6
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backwards Classes) Amendment Act, 2001 — Section 3(1), 3(3), 3(3A), 3(3B), 3(4)
Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backwards Classes) Amendment Act, 2002 — Section 3, 3(2)

Citation : (2004) 5 AWC 4070

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : O.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This appeal has been filed against the judgment of the learned Single Judge dated 26.2.2004.

2. We have heard the learned counsel for the parties and have carefully perused the judgment in great detail.

3. A written examination for recruitment of Sub-Inspectors, civil police platoon commander, P.A.C. 2001 was held in pursuance of the advertisement dated 1.9.2001 issued by the Deputy Inspector General of Police (E) and Secretary Police PAC Recruitment Board, U.P. Police Head Quarters at Allahabad. A press release which preceded the advertisement, provided for selection of 799 posts of Sub Inspectors, civil police (Male), 89 posts of Sub Inspectors, civil Police

(Female) and 99 posts of Platoon Commanders PAC (Male). The advertisement provided that the vacancies included carry forward vacancies of S.C./S.T., which can be varied. According to the necessity. Out of these posts 469 posts belonged to carried forwards backlog posts of 1999 examination and out of 99 posts of platoon commanders 67 posts of other backward class category backlog posts, which were not added by mistake on account of pendency of a writ petition were subsequently added vide Government Order dated 27.5.2003. In all the recruitment included 880 posts of Sub- Inspectors, civil police and 165 posts of platoon commanders. PAC. The breakup of these posts according to the reservation given in the counter affidavit of Sri Ajay Amohan Sharma, Addl. Superintendent of Police (E) U.P. Police Head Quarters, Allahabad, filed in the writ petition are as follows:

Sl. No. Category S.I. civil police Platoon commander, PAC 1 General category 206 20 226 2 Scheduled castes 344 61 405 3 Scheduled Tribes 32 6 38 4 OBC category 298 78 376 Total 880 165 1045 4. The examination was to be held in four stages, namely, written examination, physical ability test, main written examination and interview/Medical examination. A merit list was to be prepared only after all the stages are completed. The preliminary written examination was the qualifying examination. Every candidate has to fulfil the requisite standard in the physical ability test. Those candidates who did not fulfil the minimum standard in any item are declared unsuccessful and are not qualified to appear in the main written examination. The minimum qualifying marks in the main written examination was 40% in every subject. Those who were successful after qualifying in the interview and medical examination were thereafter to be sent for training.

5. It appears that the main written examination was cancelled on account of leakage of question papers. It was held afresh after advertisement on 25.3.2003 under the supervision of the police department. As the appellants were not successful in the main written examination they have challenged the entire process of selection.

6. The learned Single Judge has given the dated on which the matter was adjourned on several dates to accommodate the learned advocate General to address the Court. The interview was delayed on account of court proceeding. The new government place a ban on all the appointments on 29.8.2003 and the matter was heard only after the ban was lifted on 15.1.2004. In the meantime the matter was re-examination by the State Government and decision was taken to proceed with the selections.

7. The learned Single Judge has rejected all the arguments raised on behalf of the petitioners. He has found that the backlog vacancies could be included in the subject selections and that these vacancies shall not be considered together with the vacancies of the year of recruitment in which they were filled and also for the purposes of determining the ceiling of 50% reservations of the total vacancies of that year. He has found that U.P. Public Service (Reservation for Scheduled

Castes/Scheduled Tribes/Other Backward Classes) Act 1994, was amended by U.P. Act No. 21 of 2001 which inserted Section 3(4) and amended Section 3 (2) and came into effect from 15.9.2001. By this amendment the carried forward vacancies could be included in the number of vacancies in the succeeding years of recruitment as a separate class of vacancy. The learned single Judge has also found that the amended Section 3(2) which was introduced by U.P. Act No. 1 of 2001 amending U.P. Act No. 4 of 1994, in pursuance of the enabling powers under Article 16(4-B) of the Constitution of India came into fore w.e.f. 15.9.2001, and enables the State Government to carry forward the vacancies of the previous years, which are not to be accounted for in determining the ceiling of 50% reservation. He also found that the change in the number of question for deciding the numerical ability was uniform to all the candidates and does not discriminate against any candidate. There is not statutory rules prescribing the number of question or marks to be allotted to any subject, and thus the change of pattern in asking lesser questions for numerical ability did not vitiate the selection. The learned Single Judge has also found that all those who secured 40% qualifying marks in the main written examination were called for the interview, and thus it was not necessary to maintain the ratio of 2:5 against every vacancy. The number of candidates of prescribed percentage for their reservation.

8. The learned counsel for the appellant submitted that the learned Single Judge has committed illegality in ignoring the commitment express in Sub-clause (2) of Section 6 of the Advertisement dated 1.9.2001 that after the adjustment of the vacancies reservation should not have exceeded 50% and that the amendment to U.P. Act No. 4 of 1994 could not have taken away the legal position laid down by the Supreme Court in the matter of reservation. He submitted that the learned Single Judge has misread and misinterpreted the provision of Article 16(4-B) of the Constitution of India while he considered the applicability of the provisions of U.P. Act No. 21 of 2001 and U.P. Act No. 1 of 2002 on the vacancies which were advertised on 1.9.2001. According to the learned counsel for the appellants, the backlog vacancies could have been advertised as a separate class of vacancies could have been advertised as a separate class of vacancies and not together with the vacancies of the years which were subject to a ceiling limit of 50% reservation on the total number of vacancies. Both could not have been considered together. According to the learned counsel for the appellant the question of reservation has been considered in a most unreasonable manner. By mixing the backlog vacancies of the other class which vacancy was already advertised on 1.9.2001. The rules of reservation are to be complied with on the date when the advertisement was published and the amendment in Act No. 4 of 1994 was not applicable to the pending selection. He has relied on the judgment of the Supreme Court in P. Mahendran and others Vs. State of Karnataka and others, , N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, A.A. Calton Vs. Director of Education and Another, and State Bank of India Scheduled Caste/Tribe Employees Welfare Association and another Vs.

State Bank of India and others,

9. In *P. Mahendran v. State of Karnataka* (Supra) the Karnataka Public Service Commission invited applications for appointment of Motor Vehicle Inspectors from holders of Diploma in Automobile Engineering or Mechanical Engineering. The Commission commenced the interview in 1984 but due to a stay order by the Karnataka High Court the interview had been suspended and could be completed in June 1987 and the result published on 23.7.1987. Meanwhile the recruitment rules were amended by notification dated 4.5.1987 published on May 14, 1987 omitting Diploma in Mechanical Engineering from the prescribed qualification. The Karnataka Administrative Tribunal quashed the select list as well as the relevant advertisement inviting applications on the ground that the subsequent to the 1987 amendment selection could not be made on the basis of the pre-amendment eligibility criteria. The Supreme Court found that the amending rule did not contain any provision enforcing the amending rules with retrospective effect. In the absence of any express provision in the amending rule the Supreme Court held that this has to be treated as prospective in nature, and cannot take away or impair the right of the candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission when they were qualified for selection and appointment. The Supreme Court followed the judgment in *A.A. Kalton's case* (Supra) in which the validity of the appointment of the Principal by the Director of Education u/s 16-F of the U.P. Intermediate Education Act 1921 was under consideration. Pursuant to the direction of the post of Principal by his order dated 8.3.1977 but before that date Section 16-F (4) of the Act was amended on 18.8.1975 taking away the power of the Director to make appointment u/s 16-F (4) of the Act. The validity of the order of the Director of Education dated 8.3.1977 was questioned. The Supreme Court held that the amending Act did not provide expressly that the amendment in question would apply to pending proceedings u/s 16-F of the Act, nor did they find any word in it which by necessary intendment would affect such pending proceeding. The process of selection commences from all the stages of calling for applications for a post up to the date on which the Director became entitled to make a selection. At every stage in the process certain rights are created in favour of one or the other candidate. Section 16-F of the Act could not be construed as a procedural provision. The legislature may pass laws with retrospective effect subject to the recognized constitutional limitation by no retrospective effect should be given to any statutory provision so as to impair or take away an existing right unless the statute either expressly or by necessary implication directs that it should have such retrospective effect.

10. In *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, it was held by the Supreme Court that where the selection process was initiated by issuing an advertisement, the selection should normally be regulated by the rule or order then prevailing. When the advertisement expressly or impliedly indicated.

11. In *State Bank of India Scheduled Caste/Tribe Employees Welfare Association and another Vs. State Bank of India and others*, the Supreme Court held that the provision in the circular with regard to carry forward of reserved vacancies for three years at the end of which they lapse and the provision that not more than 50% of the available vacancies should be reserved was constitutionally valid. The subsequent relaxation in service norms cannot be applied retrospectively and the lapsed vacancies could not be revived. In that case the State Bank of India made reservations at the promotional state. These reservations were made by circulars. The circular of 28.7.1983 gave a further relaxation in service norms exceeding the relaxation prescribed in the first circular of 3.4.1978. As a result service norms for the reserved category could be relaxed to five years of service. The circular also gave the power to relax the service norms even further but with the sanction of the Central Office of the State Bank of India. Thus relaxation was not to be granted retrospectively. It became available from the date when it is granted and is not a matter of right. The reserved vacancies in the promotional posts during this period lapsed after three years as per the scheme framed under the earlier circular dated 3.4.1978. These lapsed vacancies could not be revived. Following the judgments of the larger Bench of the Court in the case of *National Federation of S.B.I. and Others, etc. Vs. Union of India and Others*, the Supreme Court held that in the absence of a rule providing for retrospective grant of concession the absence of a rule providing for retrospective grant of concession the relief for promotion on the lapsed vacancies could not be granted.

12. In our opinion the law laid down by the Supreme Court in all the aforesaid decisions does not help the appellants. In all the aforesaid decisions it was held that every statutory rule is prospective unless it is expressly or by necessary implication made retrospective. Unless there are words in the statute or in the rules showing the intention to effect the existing rights the rules must be held to be prospective. In the present case the backlog vacancies which could not be filled up in the year 1999 were added to the recruitment advertised on 1.9.2001 U.P. Act No. 21 of 2001.

13. Section 3(4) added to the Act in pursuance of the enabling powers under Article 16(4-B) of the Constitution of India which came into force w.e.f. 15.9.2001 states:

"Where, in respect of any year of recruitment any vacancy reserved for any category of persons under Sub-section (1), remains unfilled even after recruitment made under Sub-section (3-B) or even after special recruitment under Sub-section (3-B), such unfilled vacancy may be filled up in any succeeding year, or years of recruitment as a separate class of vacancy and such class of vacancy shall not be considered together with the vacancies of the year of the recruitment in which it is being filled up, for the purpose of determining the ceiling of 50% reservation of the total vacancies of that year."

14. The Act was further amended by U.P. Act No. 1 of 2002 Section 3 of the Act

was substituted and Sub-section (4) was omitted. The substituted and redrafted Section 3(2) by U.P. Act No. 1 of 2002 is quoted below:

"If, in respect of any year of recruitment any category of persons under Sub-section (1) remains unfilled, such vacancy shall be carried forward and filled through special recruitment in that very year or in succeeding year or year of recruitment as a separate class or vacancy and such class or vacancy shall not be considered together with the vacancies of the year of recruitment in which it is filled and also for the purpose of determining the ceiling of 50% reservation of the total vacancies of that year notwithstanding anything to the contrary contained in Sub-section (1)."

15. The U.P. Act No. 1 of 2002 provided different dates for enforcement of the amendments. Section 3(4) of the Act as amended by U.P. Act No. 21 of 2001 was only redrafted as Section 3(2) by U.P. Act No. 1 of 2002 to suit the other amendments carried out by U.P. Act No. 1 of 2002 and thus we find that the amendment for clubbing unfilled vacancies in the succeeding year without violating 50% ceiling came into force w.e.f. 15.09.2001. The advertisement dated 1.9.2001 specifically provided that the backlog vacancies have been included in the selections. Clause 6 of the advertisement provided that the benefit of reservation shall be given in accordance with the provisions of reservation applicable at the time of declaration of the result of the recruitment. The learned Single judge has rightly found that although Sub-clause 2 of Clause 6 provided that after the adjustment of the vacancies the reservation shall not exceed 50% in pursuance of the judgment of the Supreme Court. Subsequent to the advertisement the U.P. Act No. 4 of 1994 was amended and that Section 3(4) of the amended Act was given retrospective effect and came into force on 15.9.2001. Redrafted Section 3(2) of the Act came into force w.e.f. 25.6.2002. The carried forward vacancies therefore could be included in the number of vacancies in the succeeding years as a separate class of vacancies which were not considered together with the vacancies of the year of recruitment in which they were filled up and also for the purpose of determining of the ceiling of 50% reservation of total vacancies of that year.

16. We find that had these backlog vacancies been separately advertised the appellants could have applied separately for selection. The question that was answered by the learned Single Judge was whether these could be clubbed together and whether by clubbing these vacancies the appellant suffered any prejudice. The appellants have not challenged the vires of the amendment in U.P. Act No. 4 of 1994 before the learned Single Judge. We do not find that the learned Single Judge has committed any error in interpreting the amendment made to U.P. Act No. 4 of 1994.

17. Learned Counsel for the appellant lastly submitted that the backlog vacancies could have been filled up by advertising them as a separate class of vacancies but this could not be considered together with vacancies of the years which are subject to a ceiling limits of 50% reservation on total number of vacancies of that

year and that the learned Single Judge has committed serious illegality in failing to consider this aspect of the matter. We see no merit in this contention. The general class, and are not claimants to the reserved SC/ST/OBC category. Clubbing of vacancies were advertised afresh the appellant could not have applied for the same. We therefore do not find any substance in this argument.

18. Learned counsel for the appellant made an attempt in submitting that the syllabus was changed at the last minute and instead of 75 question for numerical ability only 48 question were to be asked and this change has vitiated the selection as those candidates who had special aptitude in numerical ability had prepared for giving to the question relating to numerical ability

19. In our opinion the learned Single Judge has rightly held that there was no statutory provision regarding the numbers of question to be asked in a particular subject in the main written examination. While it is true that the advertisement which provided for 75 question for testing the numerical ability reduced the number of the question in this category, it did not prejudiced any candidate or class of candidate. We are of the opinion that the recruitment to test of Sub Inspector, civil police and platoon commander does not require any special ability in numerical mathematics of the candidates who were subject to the same set of question in the written examination, and the reduction or increase of questions in any category cannot be treated to be an arbitrary action on the part of the examiner to vitiate the main written examination.

20. In view of the above we uphold the impugned judgment of the learned Single Judge. The appeal is dismissed.