
(2016) 09 AHC CK 0065
In the Allahabad High Court
Case No : Writ A No. 37146 of 1996

Amal Kumar Ganguly

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-09-2016

Acts Referred:

Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service (Rescission of Rules) Act, 2009 — Section 3

Citation : (2016) 9 ADJ 342 : (2016) 6 AllWC 6261 : (2016) 4 UPLBEC 2801

Hon'ble Judges : Sudhir Agarwal and Shamsheer Bahadur Singh, JJ.

Bench : Division Bench

Advocate : Km. Usha Kiran, K.C. Vishwakarma and Ramsheel Sharma, Advocates, for the Petitioner; S.C, S.P. Gautam, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Petitioner was employed and appointed as Junior Office Assistant-cum-Typist on 22.10.1980 in Auto Tractors Limited (hereinafter referred to as "ATL"), a company registered under Companies Act, 1956 (hereinafter referred to as "Act, 1956"), owned by State Government of Uttar Pradesh. He got promotion as Accountant and thereafter Assistant Account Officer.

2. ATL management declared closure of unit vide notice dated 20.11.1990 on the ground of consistent loss and unit was closed with effect from year 1989-90.

3. A Government Order dated 11th November, 1993 was issued stating that retrenched employees and Officers of ATL would be absorbed in Government Service, subject to their qualifications and eligibility in Government service, appointed in ATL on or before 1.10.1986 and were working at the time of closure of the unit. Management of ATL submitted a list to State Government, giving names of its "retrenched employees", wherein name of petitioner was also shown. Moreover, a certificate dated 11.12.1993 was issued to petitioner verifying that he was a retrenched employee of ATL, having been appointed on

22.10.1980 as Junior Office Assistant/Typist and on 20.11.1990 he was working as Assistant Account Officer.

4. State Government, thereafter, issued various orders on 13.4.1994, 4.5.1994, 2.6.94 and 8.7.1994 to all departments that it has learnt that instead of absorbing retrenched employees of Chal Chitra Nigam, U.P. Hortico Brasware Corporation, Non Feros Rolling Mill, Mandaliya Vikas Nigam, ATL, etc., the departments are making new recruitments from open market which is not proper, hence "retrenched employees" of aforesaid Government Bodies should be absorbed.

5. Since no action was taken towards absorption of petitioner, he filed Civil Misc. Writ Petition No. 34296 of 1995 which was disposed of vide judgement dated 29.11.1995, permitting petitioner to make a representation to respondent-government who was directed to decide the same in the light of various Government Orders issued for absorption of retrenched employees of ATL.

6. Pursuant thereto, petitioner submitted a representation dated 9.12.1995 to Chief Secretary, Uttar Pradesh Government, Lucknow, requesting for his absorption on a post equivalent to Assistant Accounts Officer. No action was taken, compelling petitioner to file a Contempt Application wherein a statement was made by Standing Counsel that petitioner's representation was decided on 22.7.1996 and matter has been referred to different departments of Government with relevant Government Orders. Contempt application stood dismissed vide order dated 24.7.1996.

7. Petitioner then further pursued matter for absorption. Ultimately vide order dated 30th April, 2002, request of petitioner for absorption was rejected.

8. Petitioner filed writ petition seeking only a writ of mandamus directing respondents to absorb him in any Government department according to his grade in which he was working in the light of Government Orders dated 11.11.1993, 3.6.1996 and 3.7.1996. Subsequently by way of amendment, orders dated 30th April, 2002 and 26.2.2003 have also been challenged, praying for issuance of a writ of certiorari quashing the same.

9. The request of petitioner to Government departments was, since he was working in pay scale of Rs. 8501660 at the time of retrenchment, therefore, he is entitled for absorption in equivalent grade, that is why, he requested for his absorption on the post of District Programme Officer. Director, Women and Child Development Department has said that this is not permissible since it is a Group "B" post. Vide order dated 30th April, 2002, similar request of petitioner for appointment as District Programme Officer and Child Development Project Officer was rejected on the ground that both are Group "B" posts and recruitment thereon is through Uttar Pradesh Public Service Commission, governed by "The Uttar Pradesh Bal Vikas Evam Pushtahar (Samuh "Ka" Evam Samuh "Kha") Service Rules, 1996" (hereinafter referred to as "Rules 1996").

10. Learned counsel for petitioner has submitted that petitioner has a right for absorption in view of Government Order dated 11.11.1993 and denial of same is patently illegal and arbitrary.

11. Supplementary affidavit has also been filed giving certain illustrations of absorption of some other retrenched employees of ATL, which is as under:

(a) Vipin Chandra Srivastava, who was working as Accounts Officer in ATL, has been absorbed as Assistant Viklang Officer in pay scale of Rs. 650010500/-.

(b) Anukool Prakash was appointed as Zila Pichhada Varga Kalyan Adhikari.

(c) Sher Singh was absorbed on the post of Sambhagiya Nirikshak (Pravidhik) in pay scale of Rs. 650010500/-.

(d) One K.R. Pandey was absorbed as Administration Officer in Acharya Narendra Deo Agriculture University, Faizabad and it is a post which comes within purview of Uttar Pradesh Public Service Commission, pursuant to judgement of this Court in K.R. Pandey and others v. State of Uttar Pradesh and others, reported in LBESR 1998(Volume II), 245.

(e) Sanna Ullah Khan, working as Senior Engineer in ATL, was absorbed as Assistant Road Transport Officer, pursuant to the judgement of this Court.

(f) Mohan Gupta, working as Accounts Officer in ATL, was absorbed as Special Officer on Duty in Child Development and Women Welfare Department.

12. Respondents 1 and 3 have filed counter affidavit, stating that there is no direction that retrenched employees of Government or Public Corporation in Government Service shall be absorbed in Government service but Government Orders dated 11.11.1993 and 3.6.1996 only provide certain concessions and relaxations for appointment of "retrenched employees" in Government Service. Petitioner applied for appointment/absorption in Tourism Directorate U.P. Lucknow and office of Commissioner, Rural Development, Lucknow but did not participate in interview.

13. Petitioner, in rejoinder affidavit, has relied on a Single judge judgement of this Court in Bagheshwari Prasad Srivastava and others v. State of U.P. and others in Civil Misc. Writ Petition No. 17195 of 1998, decided on 24th September, 1999, dealing with absorption of an employee of Bhadohi Woolens Ltd., a Government company which was also closed.

14. We have heard learned counsel for the parties and perused the record.

15. Recruitment and appointment on various posts in various departments in Uttar Pradesh are governed by statutory Rules framed under proviso to Article 309 of Constitution of India. Since petitioner is not claiming appointment/absorption in a particular department and on a particular post, therefore, at this stage we are not referring to any particular law or particular set of Rules but would refer to relevant provisions as and when occasion arises in subsequent

discussion.

16. Between 1985 to 1990, a number of undertakings/companies owned by Government were closed on account of colossal losses, etc. A large number of employees were retrenched. In some matters judicial orders were passed directing for absorption looking to general public interest and the fact that a large number of employees rendered unemployed due to closure of such Government undertakings. In some matters, Court expressed its doubt that in the teeth of statutory Rules governing recruitment and appointment of "retrenched employees" of companies or undertakings, not holding a civil post, cannot be directed to be appointed on a civil post or any Government service governed by statutory Rules.

17. Faced with this situation, in exercise of power, under proviso to Article 309 of Constitution of India, Governor promulgated "The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service Rules, 1991" (hereinafter referred to as "Absorption Rules, 1991"), vide Notification dated 9th May, 1991. These Rules came into force immediately. Rules 2 and 3 thereof, read as under:5

"2. Unless there is anything repugnant in the subject or context, the expression

(a) "appointing authority" in relation to any post for which an employee was retrenched means the authority empowered to make appointment to such post;

(b) "Public corporation" means a body corporate established or constituted by or under any Uttar Pradesh Act except a University or local authority constituted for the purpose of Local Self Government and includes a Government Company within the meaning of section 617 of the Companies Act, 1956 in which the State Government has prepondering interest;

(c) "retrenched employee" means a person who was appointed on a post under the Government or a public corporation on or before October 1, 1986 in accordance with the procedure laid down for recruitment to the post and was continuously working in any post under the Government or such corporation upto the date of his retrenchment due to reduction in, or winding up of, any establishment of the Government or the public corporation, as the case may be and in respect of whom a certificate of being a retrenched employee has been issued by his appointing authority.

(d) "service rules" means the rules made under the proviso to Article 309 of the Constitution, and where there are no such rules, the executive instructions issued by the Government, regulating the recruitment and conditions of service of persons appointed to the relevant service.

3. (1) Notwithstanding anything to the contrary contained in any other service rules for the time being in force, the State Government may by notified order require the absorption of the retrenched employees in any post or service under the Government and may prescribe the procedure for such absorption including

relaxation in various terms and conditions of recruitment in respect of such retrenched employees.

(2) The provisions contained in relevant service rules shall be deemed to have been modified to the extent of their inconsistency with the provisions made in the notified order referred to in sub-rule (1).

(emphasis added)

18. Perusal of Absorption Rules, 1991 shows that State Government is empowered to issue a notified order requiring absorption of "retrenched employees" as defined under Rule 2(c) in any post or services under Government. State Government in the said notified order is also empowered to prescribe procedure for such absorption including relaxation in various terms and conditions of recruitment in respect of such retrenched employee. Rule 3(2) declares that provisions made in notified order shall prevail over service Rules of relevant post or cadre in which absorption is to be made and the relevant service Rules shall be deemed to have been modified to that extent. The term "notified order" has been defined under Section 4(29A) of The Uttar Pradesh General Clauses Act, 1904 (hereinafter referred to as U.P. Act, 1904), which reads as under:

"4(29A). "notification" or "public notification" shall mean a notification published in the Gazette of the State, and the word "notified" shall be construed accordingly."

19. Notified order, therefore, when read in the light of Section 4(29A) of U.P. Act, 1904 would mean an order which is published in Gazette of State. Said order, therefore, would partake the nature of "statutory instrument" as defined under Section 4(42B) of U.P. Act, 1904, which reads as under:

"4(42B). "statutory instrument" shall mean any notification, order, scheme, rule or bye-law issued under any enactment and having the force of law."

20. Absorption Rules, 1991, therefore, contemplates absorption pursuant to a notified order and not by mere administrative orders issued in exercise of power under Article 166 of Constitution of India. We are not shown any such "notified order" issued in exercise of power under Rule 3(1) of Absorption Rules, 1991 which may have effect of modifying existing service Rules of respective posts and services in which absorption may be made so as to have effect of modification thereof to the extent of otherwise provisions contained in a "notified order" and in respect of ATL no such order has been placed before us except Government Order dated 11th November, 1993 which by itself does not provide for absorption but lays down certain relaxation and concessions for "retrenched employees" of ATL for absorption in Government services and posts other than those which are within purview of U.P. Public Service Commission. Be that as it may, subsequent developments have fatal consequences upon petitioner's claim for absorption, hence we may proceed to refer and discuss same hereafter.

21. Absorption Rules, 1991 have been rescinded by promulgating another set of Rules vide Notification dated 8th April, 2003 i.e. "The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003" (hereinafter referred to as "Recession Rules, 2003"). Rule 3 of said Rules, reads as under:

"3.(1) The Uttar Pradesh Absorption of Retrenched Employees of Government Rescission and Public Corporations in Government Service Rules, 1991 are hereby rescinded and as a consequence of such rescission.

(i) the right of a retrenched employee to be considered for absorption accrued under the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 but who has not been absorbed till the date of the commencement of The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003 shall stand terminated from such date.

(ii) the orders of the Government issued from time to time prescribing the norms of absorption for retrenched employees of a particular Government department or Public Corporation in Government Service and granting of consequential benefits including pay protection, shall stand abrogated from the date of the commencement of The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003.

(2) Notwithstanding such rescission:

(i) the benefit of pay protection granted to an absorbed retrenched employee prior to the date of the commencement of The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003 shall not be withdrawn.

(ii) a retrenched employee covered by The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 prior to the date of the commencement of The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003, but who has not been absorbed till such date shall be entitled to get relaxation in upper age limit for direct recruitment to such Group "C" and Group "D" posts which are out side the purview of the Uttar Pradesh Public Service Commission to the extent he has rendered his continuous services in substantive capacity in the concerned Government Department or Public Corporation in completed years."

(emphasis added)

22. Rescission Rules, 2003 declare to rescind Absorption Rules, 1991. Consequences of such rescission has been provided under Rule 3(1), stating that right of a "retrenched employee" accrued under Absorption Rules, 1991 but who has not been absorbed till 8th April, 2003 i.e. a date on which Rescission Rules

became effective. Such accrued right of "retrenched employee" shall stand terminated from the said date of rescission i.e. 8th April, 2003.

23. Another consequence of Rescission Rules, 2003, stated in Rule 3(1)(ii) is that orders of Government issued from time to time prescribing norms for absorption of "retrenched employees" shall stand abrogated from the date of enforcement of Rescission Rules, 2003 i.e. 8th April, 2003. Having said so, Rule framing authority has also saved certain benefits already granted. Rule 3 (ii) of Rescission Rules, 2003 provides for following protections:

(i) Benefit of pay protection already granted to an absorbed "retrenched employee" before enforcement of Rescission Rules, 2003, shall remain intact and such employee would continue to avail same and it shall not be withdrawn.

(ii) Retrenched employee covered by Absorption Rules, 1991 as it was upto the date of enforcement of Rescission Rules, 2003 who has not been absorbed till the date of rescission, shall be entitled to get relaxation in upper age limit for direct recruitment in Group "C" and "D" posts which are outside the purview of Uttar Pradesh Public Service Commission. This relaxation in upper age limit is confined to the extent such a "retrenched employee" has rendered continuous service in substantive capacity in public corporation in completed years or the Government department as the case may be.

24. Therefore, there are two types of protections which are saved in Rescission Rules, 2003. Firstly, pay protection already granted to those who are already absorbed. Secondly relaxation in the matter of upper age limit to the extent one has served in substantive capacity till the date of retrenchment in public corporation in completed years for the purpose of direct recruitment under relevant Rules to Group "C" and "D" posts which are outside purview of Uttar Pradesh Public Service Commission. No other benefit has been provided or saved and right, which may be claimed by "retrenched employee" governed by Absorption Rules, 1991, has been wiped out with enforcement of Rescission Rules, 2003.

25. Aforesaid Rules, 2003 came into force on 8th April, 2003. Due to different sets of litigation wherein several orders in different manners were issued, State Legislature intervened and issued U.P. Act No.26 of 2009 i.e. "Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Act, 2009 (hereinafter referred to as "Recession Act, 2009"), published in Uttar Pradesh Gazette (extraordinary) dated 27th August, 2009. The statement of "Object and Reasons" of aforesaid Act says that retrenched employees of Government companies/undertakings sought their absorption against Group "B" posts which were within purview of Uttar Pradesh Public Service Commission and as per Government policy, absorption against such posts was not permitted and the situation became difficult, as a result whereof, Rules, 1991 were rescinded vide Rules, 2003. Still various Court cases have not rendered the things very clear, therefore, State Legislature decided to

promulgate Recession Act, 2009, to deal with the situation.

26. By Section 3 of Recession Act, 2009, Absorption Rules, 1991, have been rescinded and deemed to have been rescinded on 9th May, 1991. The consequences of said rescission and the extent of savings are also provide thereunder. Section 3 of Recession Act, 2009 reads as under:

"3. Rescission and savings. (1) The Absorption Rules which was rescinded with effect from April 8, 2003 by the Rescission Rules shall be rescinded and be deemed to have been rescinded on May 9, 1991 and consequent upon such rescission:

(a) the retrenched employees except those who were absorbed during the period from May 9, 1991 to April 8, 2003 shall have no claim with regard to their absorption under the said absorption rules or under any Government orders issued in regard thereto and their right regarding absorption accrued under the Absorption Rules shall be deemed terminated.

(b) the orders of the Government issued from time to time prescribing the norms of absorption for retrenched employees of a particular Government Department or Public Corporation in Government Service and granting of consequential benefits including pay protection shall stand revoked ab initio.

(2) Notwithstanding such rescission,

(a) the benefit of absorption provided to the retrenched employees absorbed before April 8, 2003 under the provisions of the Absorption Rules, shall not be withdrawn.

(b) the benefit of pay protection granted to the retrenched employees absorbed prior to April 8, 2003 shall also be maintained.

(c) a retrenched employee covered by the Absorption Rules, but who has not been absorbed till April 8, 2003 shall be entitled to get relaxation in upper age limit for direct recruitment to such Group "C" and Group "D" posts which are outside the purview of the Uttar Pradesh Public Service Commission to the extent he has rendered his continuous services in substantive capacity in the concerned Government Department or the Public Corporation in completed years."

(emphasis added)

27. By Section 4, Rules 2003 have been rescinded with effect from 8th April, 2003. Therefore, Recession Act, 2009 in fact has made entire slate clear which was initiated by Rules, 1991 and ended by Rules, 2003. Still litigation continued, hence State Legislature intervened and both the Rules, from the date of their enforcement, have been rescinded. In respect of Rules, 1991, there is a deeming clause, rescinding the same with effect from 9th May, 1991 but subject to some protection in Section 3.

28. Section 3(1)(a) of Recession Act, 2009 clearly declares that except those

retrenched employees who were absorbed during 9th May, 1991 and 8th April, 2003, all unabsorbed retrenched employees shall have no claim with regard to their absorption under Absorption Rules, 1991 or under any Government Order issued in that regard and their right relating to absorption accrued under absorption Rules shall be deemed terminated. Thus no protection has been made to a person not already absorbed till 8.4.2003. Section 3(1)(a) of Recession Act, 2009 clearly bars any right of absorption to any retrenched employee governed by Rules, 1991, if not already absorbed and now no such right survive.

29. There is a little protection provide under Section 3(2)(c) to retrenched employees who have not been absorbed with regard to relaxations in upper age limit for direct recruitment on Group "C" and "D" posts. Except protection with regard to relaxations in upper age limit given vide Section 3(2)(c), petitioner or any other person like him, after promulgation of Recession Act, 2009, cannot be allowed any absorption as Absorption Rules, 1991 have been rescinded from the date of their promulgation, i.e. 9th May, 1991, leaving no such right open to the petitioner or any person like him.

30. With regard to relaxations, some are even otherwise provided under different Service Rules framed under proviso to Article 309 of Constitution, applicable to different departments and a detailed discussion we find in a Single Judge judgement rendered in *Ajit Raizada and others v. State of U.P. and others*, 2011 (6) ADJ 511.

31. A decision of Hon"ble Apex Court in *Sunil Kumar Verma and others v. State of U.P. and others* in Civil Appeal Nos. 9165 to 9172 of 2010, decided on 09.09.2016 has been relied upon by Counsel for petitioner but we find that therein incumbents were appointed and Court had no occasion to look into the effect and consequences under Recession Act, 2009. Therefore, in our view, aforesaid judgement has no application to the case of petitioner.

32. Counsel for the petitioner has also argued that impugned orders dated 30th April, 2002 and 26.2.2003, declining absorption/appointment to petitioner on the ground that posts, on which petitioner has sought absorption, were within the purview of Uttar Pradesh Public Service Commission, are bad. Therefore, impugned orders are liable to be set aside but here also we find no merit in the petition. The very Government Order dated 11.11.1993, (Annexure-3 to the writ petition), where under, petitioner claims his right for absorption being a "Retrenched Employee" of ATL, provides in para 2 as under:

"yksd lsok vk;ksx dh ifjf/k ds ckgj] v/khuLFk lsok p;u vk;ksx dh ifjf/k ds Hkhrj] ;k ckgj ds inksa ij mi;qDrrk ds vk/kkj ij fu;qfDr gsrq vgZrk ekuh tk;sxhA ,slh lsokvksa@inksa gsrq ftuds fy;s HkrhZ@p;u ds fufeRr fdlh lsok fu;ekoyh@dk;Zokgh vkns"k esa dksbZ izfdz;k fo|eku gks] NVuh"kqnk dkfeZdksa ds fo"k; esa mDr izfdz;k ls f"kfFkyrk cjrrs gq,s] mi;qDrrk vkadus ds fy, vyx ls mRrj izns"k ljdkj ;k lkoZtfud fuxeKsa ds NVuh"kqnk deZpkfj;ksa dk ljdkj lsok esa vkesyu fu;ekoyh 1991 iz[;kfir dh x;h gSA"

"For the posts outside the purview of the Public Service Commission, within or outside the purview of Subordinate Service Selection Commission, qualification for appointment shall be based upon "suitability". For recruitment/selection for those services/posts for which a procedure exists in any service rules/executive order, The Uttar Pradesh Absorption of Retrenched Employees of Government/Corporations in Government Service Rules, 1991 have been separately promulgated for assessment of "suitability" by relaxing the said procedure in respect of the retrenched employees."

33. Aforesaid para clearly shows that benefit with regard to absorption was not available against such posts or cadres which were within purview of Uttar Pradesh Public Service Commission. Moreover, a reading of entire Government Order dated 11.11.1993 shows that it declares qualifications and eligibility for retrenched employees subject to certain conditions for Government service but no positive direction has been issued in the said Government Order that retrenched employees of ATL shall be absorbed in Government service, if they satisfy eligibility conditions and qualifications mentioned in said Government Order. For that purpose para 2 has clearly referred to Rules, 1991.

34. Be that as it may, we have already discussed Rules, 1991 in the light of present scenario, where State Legislature has rescinded aforesaid Rules vide Rescission Act, 2009 with deeming clause with effect from 9th May, 1991, i.e. the date on which aforesaid Rules came into force and, in that view of the matter, petitioner has no right now to claim absorption nor any direction in the teeth of Rescission Act, 2009 can be issued.

35. In these facts and circumstances, the impugned orders, in our view, cannot be faulted and relief as prayed for cannot be granted.

36. In the result, the writ petition lacks merit. Dismissed.

37. No order as to costs.