

(2015) 08 UK CK 0001

In the Uttarakhand High Court

Case No : Special Appeal No. 173 of 2014

Amar Singh Rawat and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Citation : (2015) 3 UC 2358

Hon'ble Judges : K.M. Joseph, C.J.;V.K. Bist, J

Bench : Division Bench

Advocate : Rakesh Thapliyal and Sanjay Bhatt, for the Appellant; Puja Banga, Brief Holder, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bist, J—Appellants (except Mr. Krishna Chandra Sharma appellant No. 6) are the party respondents in the writ petition. Appellant No. 6, vide order dated 23.05.2014, obtained leave to file the appeal. Petitioners in the writ petition are respondent Nos. 5 to 13 and Mr. Narendra Kumar and Mr. Bachan Singh, who were respondent Nos. 11 and 6 in the writ petition, have been impleaded as proforma respondents (respondent Nos. 14 & 15) in this appeal. The writ petition was filed by the petitioners seeking the following reliefs:

"(i) To issue a writ, order or direction in the nature of mandamus declaring the promotion of Respondent No. 3 to 14 on the post of Constable (M), as arbitrary and illegal.

(ii) To issue a writ, order or direction in the nature of certiorari for quashing the impugned final merit list dated 03.09.2013. (iii) To issue a writ, order or direction in the nature of mandamus commanding the Respondents, particularly Respondent No. 2, to prepare final merit list afresh, strictly as per the Notification dated 10.07.2013 (Annexure No. 1 to the writ petition) for promotion to the posts of Constable (M). (iv) To issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 2 to consider and promote the

petitioners to the post of Constable (M) from due date, as per their merit in the final merit list prepared afresh. (v) To issue a writ, order or direction in the nature of mandamus commanding the Respondents to grant all consequential benefits to the petitioners."

2. The case of the writ petitioners before the Court is as follows:

The writ petitioners are Class-IV employees in the Police Department. In pursuance to the Uttarakhand Subordinate Offices Clerical Grade Employees (Direct Recruitment) Rules, 2004 (hereinafter referred to as "the 2004 Rules"), selection process took place for promotion from Class-IV posts to Class-III posts in the Police Department. For the said purpose, a notification was issued by the Police Authorities on 10.07.2013. As per this notification, last date for submission of application was 20.07.2013, date of Typing Test was 02.08.2013, Written Test was on 03.08.2013 and date of declaration of Written Test and Typing Test was 07.08.2013. The eligible candidates participated in the Typing Test on 02.08.2013 and in the Written Examination on 03.08.2013. The total number of marks was 100, out of which 50 marks were meant for Typing Test, 40 marks were meant for Written Examination and 10 marks were to be given to each candidate after evaluating their ACRs. The petitioners also participated in the said selection process. A merit list of 23 candidates was issued by the department, in which petitioners were placed at serial Nos. 17, 5, 13, 14, 21, 23, 9, 12 and 19 respectively. Thereafter, the petitioners came to know that out of 25 candidates, whose name found figure in the merit list, only private respondents (12 in number) were promoted. Few of these respondents were lower in the merit list. On 13.08.2013, the Rules were amended known as Uttarakhand Subordinate Offices Clerical Grade Employees (Direct Recruitment) (Amended) Rules, 2013 (for short "2013 Amended Rules"). By the said amendment, a new factor was introduced which was that for each years of satisfactory service rendered by a candidate, he was to be given two marks. Private respondents were given benefit of these Amended Rules.

3. The learned Single Judge allowed the writ petition and took the view that after the selection process had started under the 2004 Rules and a great measure of selection process had already come to an end, the rules of the game cannot be changed when once the game has started and the selection made as per the Amended Rules is absolutely wrong. This exercise undertaken by the State authorities is absolutely arbitrary and illegal. The learned Single Judge quashed the final merit list dated 03.09.2013 and directed the respondents to declare the result of selected candidates afresh as expeditiously as possible in view of the 2004 Rules. Learned Single Judge made it clear that selection will take place only for the vacancy which existed prior to the amendment. Learned Single Judge further observed that since 2013 Amended Rules are not under challenge, the State Authorities are at liberty to initiate a new selection as per the Amended Rules, however, it will not be applicable to the selection in question. It is feeling aggrieved by the said judgment, the appellants are before us.

4. We heard the learned counsel for the appellants Mr. Rakesh Thapliyal, learned Brief Holder for the State Ms. Puja Banga and also the learned counsel appearing for the respondent Nos. 5 to 13 Mr. Sandeep Kothari.

5. Mr. Rakesh Thapliyal, learned counsel for the appellants contended that the Amended Rules clearly stipulate that it shall also be applicable for the selection year 2012-2013 for which the selection was being made. The State, under the Amended Rules, promoted Class-IV employees to Class-III posts and also sent them for training. He submitted that the learned Single Judge totally failed to consider that the selection process was not an open selection for direct recruitment, but, in fact, was meant for promotion from Class-IV post to Class-III post. He submitted that the selection in question is nothing, but, in fact, a process of selection for the purpose of grant of promotion from Class-IV post to Class-III post and in this case, the amendments were notified on 13.08.2013 and by this amendment, quota for promotion was increased from 25% to 45%, as in 2004 Rules, it was 25% and by the 2013 Amended Rules, it was increased to 45%. He submitted that by the said amendment, the percentage quota against the posts meant for promotion for High School passed candidates was increased from 15% to 25% and for Intermediate passed candidates, it was increased from 10% to 20% and as such, by this amendment for the purposes of promotion, the number of posts were, in fact, increased. In the present selection, earlier as per the 2004 Rules, only 7 posts were meant for promotion, which after the amendment were increased to 13 posts. He submitted that by the amendment, two marks for each year work experience have been provided for each Class-IV employee and maximum fifty marks were fixed for the same. He submitted that amendment to this effect clearly reveals that the allotment of two marks for each year work experience of service is nothing but a benefit of length of service and in view of these two amendments, only the number of posts meant for promotion were increased and simultaneously, the percentage quota of High School passed candidates and Intermediate passed candidates was increased and further two marks for each year work experience of service have been provided. He submitted that these amendments were applied unilaterally and it, in any manner, is not disadvantageous to any person or incumbent who are in feeding cadre and under the zone of consideration for promotion to Class-III posts. He contended that the learned Single Judge totally failed to appreciate this aspect while rendering the judgment that the amendments, as made by notification dated 13.08.2013, did not curtail right of any candidate for promotion, therefore, a person, who is in the feeding cadre and who has rendered more length of service in feeding cadre should be given a preference. He submitted that the selection in question was commenced by holding a departmental examination and for that purpose, the Inspector General of Police, Headquarter issued a departmental circular dated 10.07.2013. The said circular was meant only for the promotion. He submitted that the respondents have not challenged the 2013 Amended Rules, which, in fact, includes also the vacancies of 2012-13 and in absence of challenge to the Rules, the selection of the appellants cannot be

questioned. He submitted that if the selection is done under the 2004 Rules, then the promotion will be made only against 7 vacancies. He submitted that it is settled principle of law that a right to be considered for promotion is a Fundamental Right, but, simultaneously, it is also a settled principle of law that no one can claim promotion as a matter of right. Here, undisputedly, the petitioners were also considered and their right to be considered for promotion was not taken away by the 2013 Amended Rules. He argued that the petitioners put up their claim as a matter of right to get promotion which, in fact, is not permissible under the service jurisprudence. Learned counsel for the appellants then submitted that the length of service in the feeding cadre is also a major deciding factor or aspect for promotion, which, in fact, was lacking in the 2004 Rules and to meet out this and further after taking into consideration that, in fact, the selection is meant for promotion, a provision for giving weightage for length of service was brought which was applied uniformly and two marks to each of candidate, who are in feeding cadre, were provided. He submitted that if for a moment, the weightage of length of service rendered in feeding cadre is ignored, then this selection which, in fact, meant for promotion cannot be treated to be a selection for promotion and it will be like an open selection by way of direct recruitment. Therefore, the judgment under appeal cannot sustain in the eyes of law and hence is liable to be set aside.

6. Per contra, Mr. Sandeep Kothari, learned counsel appearing for the respondent Nos. 5 to 13 submitted that change in merit list/selection criterion was made just with a view to bestow undue favour to the appellants. He submitted that the respondent Nos. 5 to 13 had done very well in the Written Test, Typing Test and their service record is also unblemished, as such, they were very much hopeful that they will be promoted on account of their merit in the selection. He submitted that due to arbitrary and illegal action, their legitimate claim has been taken away arbitrarily and against the settled legal position. He submitted that the Director General of Police, Uttarakhand, being a departmental authority subordinate to the State Government and who is only a Head of Department of a particular Department, has no authority whatsoever in the eyes of law to give retrospective effect to a legislation/statutory rules, while the law/rule making authority has not given the same. He has no authority to add/insert or to delete any provisions of Statutory Rules, which is in complete domain of legislature/rule making authority. As such, by doing so, the Director General of Police, Uttarakhand, has exceeded his jurisdiction/authority and has encroached upon the powers of the State Government, just with a view to bestow undue favour upon the appellants. He submitted that it is settled position of law that the Rules of the game cannot be changed midway and the entire game/selection is to be concluded on the terms and conditions fixed at the time of notifying the vacancies/issuance of notifications.

7. Ms. Puja Banga, learned Brief Holder for the State of Uttarakhand argued the same thing, which was argued by the State Counsel before the learned Single Judge. She submitted that 2 marks for each year of service were awarded as per

2013 Amended Rules. This was done as official respondents wanted to give benefit to the senior Class-IV employees. She further submitted that the petitioners have not challenged the validity of Rules, but simply challenged the "applicability" of such Rules and as such, relief should have been granted to them.

8. We have considered the submission of learned counsel for the parties. The only question to be considered in this appeal is that whether the action of the respondent department, in awarding 2 marks for work experience for each year of service to the candidates, is correct? The contention of official respondents as well as the appellants is that the amended provision will be applicable for the recruitment year 2012-13 also and, therefore, two marks for work experience for each year of service was rightly awarded by the department. They submitted that, in any case, no relief can be granted to the petitioners, as they have not challenged the amended provisions of the Rules. We have carefully gone through the 2013 Amended Rules. In the notification dated 13.08.2013, it is provided that the 2013 Amended Rules will become applicable with immediate effect. By the amendment, quota for promotion from Class IV to Class III posts was increased from 25% to 45% for the selection year 2012-2013 to 2015-2016. Out of these 45% posts, 25% posts were to be filled from the candidates having High School and remaining 20% from candidates having Intermediate Certificate. Thus, quota for promotion was increased from 25% to 45% retrospectively i.e. from recruitment year 2012-13. In the NOTE portion of the Amended Rules, it is further provided that two marks for work experience of each year of service will be given to Class IV employees and drivers subject to maximum 50 marks. In the NOTE, it is not mentioned that the benefit of experience will be given retrospectively. Therefore, in our view, the NOTE portion of the 2013 Amended Rules is prospective and benefit of 2 marks for each year of service was wrongly awarded to the appellants. Another argument of the learned counsel for the appellants as well as official respondents is that 2013 Amended Rules have not been challenged. This argument also lacks merit, as 2013 Amended Rules do not provide that benefit of 2 marks for work experience for each year of service will be awarded for the vacant posts of the recruitment year 2012-13 also. Undoubtedly, selection was made for the vacant posts available till the selection year 2012-13.

9. It is settled position of law that amendment in Rules is always prospective except in those cases where in the amendment itself, it is provided that amendment is retrospective. The Hon"ble Apex Court in the matter of Madan Mohan Sharma and Another Vs. State of Rajasthan and Others, AIR 2008 SC 1657 : (2008) 2 CLT 370 : (2008) 119 FLR 1 : (2008) 3 JT 304 : (2008) 2 SCALE 740 : (2008) 3 SCC 724 : (2008) 1 SCC(L&S) 885 : (2008) AIRSCW 1850 : (2008) AIRSCW 3296 , has held that recruitment could only be made only according to advertisement and change brought out in the Rules during the pendency of advertisement could not affect the eligibility condition. And, if changed policy was to be given effect, proper course is to recall the advertisement and issue fresh advertisement. In the matter of N.T. Bevin Katti,

etc., Vs. Karnataka public Service Commission and others, AIR 1990 SC 1233 : (1991) 5 JT 282(1) : (1990) 2 LLJ 456 : (1990) 1 SCALE 659 : (1990) 3 SCC 157 : (1990) 2 SCR 239 : (1990) 1 UJ 670 , the Hon"ble Supreme Court has held that if the recruitment Rules are amended retrospectively during the pendency of selection, in that event, selection must be held in accordance with the Amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. In the present case, we find that in the NOTE portion of the Amended Rules nothing has been said about the date of applicability of the provision, which provides 2 marks for work experience for each year of service. Therefore, provision provided in the NOTE will become applicable prospectively, that is, with effect from 2013-14 recruitment year. Therefore, the official respondents acted illegally in giving benefit of two marks for work experience for each year of service.

10. We find no merit in the appeal. Same is dismissed.

11. No order as to costs.