
(2006) 09 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition No. 630 of 2006 (S/S)

Bhuvan Chandra Pandey and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Administrative Tribunals (Amendment) Act, 1987 — Section 6(1), 6(7)

Administrative Tribunals Act, 1985 — Section 28

Constitution of India, 1950 — Article 226, 227, 309, 32, 323A

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 2, 28, 3, 3, 4

Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 4

Citation : (2007) 1 UC 489

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : S.N. Babulkar and M.C. Pant, for the Appellant; N.C. Gupta for Respondent Nos. 1 and 2, Beena Pande for Respondent Nos. 3 and 4, Alok Singh and Prabhakar Joshi, for Respondent Nos. 6 to 11, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—By means of this Writ Petition under Article 226 of the Constitution of India, the Petitioners have sought the following reliefs:

i) To issue writ, rule or direction in the nature of certiorari quashing the impugned order dated 2-05-2006 and order dated 6-3-1997 (Annexure 2 and 17 to the writ petition) and seniority list dated 19-02-1994 and 9-4-2002 passed by the Respondents contained in the Annexure-14 and 16 to this writ petition, so far as the placement of the private Respondents above the Petitioners by declaring the same illegal and de-hors the rules.

(ii) Issue any writ order or direction in the nature of mandamus commanding the Respondents to declare the Petitioners as senior to the Adhoc Junior Engineers those were conditional appointed adhoc basis and put on probation against the substantive post on 12-12-1990, whereas the Petitioners were directly selected

by the Public Service Commission on 06-01-1990.

(iii) Issue a writ order or direction in the nature of quo-warranto against the private Respondents for their induction in service and subsequent regularization and continuance in service and taking illegal benefit of promotions and seniority over the Petitioners and also restrained them to continue to be senior over the Petitioners.

(iv) Issue writ, rule or direction in the nature of mandamus commanding the Respondents that till the correction of the final seniority list the Respondents shall be restrained to consider the promotions on the basis of seniority list of 1994 and 9-4-2002 and further to restrain to the Respondents No. 1 and 2 not to made any promotion on the basis of tentative list and without determining the seniority of all the employees belongs to the junior engineer and Assistant Engineer also to maintain status-quo antique prior to 1994 and cancel all the promotions made on the basis of the aforesaid seniority list in respect of the adhoc junior engineers.

(v) issue any other direction as this Hon"bie Court may deem fit and proper under the circumstances of the case.

(vi) Award the costs of the writ petition to the Petitioner.

2. The U.P. Public Service Commission (hereinafter referred as "Commission") invited the applications for appointment on the post of 1400 Junior Engineers (Civil), out of which 1000 were for plain area and 400 were for hill area. Pursuant to the said advertisement, the Petitioners submitted their applications and were finally selected by the Commission on the post of Junior Engineers and the selection list was published on 6-01-1990. The Commission recommended and forwarded the list of the selected candidates to the Government according to U.P. Public Works Department Subordinates Engineering Rules, 1951. In pursuance of the recommendation, the Petitioners were appointed as Junior Engineer (Civil), P.W.D. on 27-7-1990. In the meantime, the Department has appointed several persons as Junior Engineer on adhoc basis for a period of one year in the year 1984 in order to meet the necessity of work. In exercise of its power conferred under Article 309 of the Constitution of India, the Government framed U.P. Regularization of Adhoc Appointment (within the purview of Public Service Commission) Rules, 1979 (hereinafter referred as Regularization Rules, 1979) and these Rules were enforced w.e.f. 14-05-1979. Rule 4 of U.P. Regularization Rules, 1979 provides that any person who was directly appointed on adhoc basis prior to 01-01-1977 and is continuous in service and also possesses the requisite qualification and had completed three years continuous service will be considered for regularization. Pursuant to the said Regularization Rules, 1979 the services of suitable adhoc Junior Engineers were regularized on 14-02-1990. Thereafter, the Engineer in Chief Respondent No. 4 issued the proposed seniority list of the Junior Engineers and the objections were invited from the aggrieved persons. In the said list, the names of the Petitioners were placed below the adhoc

appointees. The representation of the Petitioners was rejected and the final seniority list was issued placing the names of the Petitioners below the adhoc appointees. Thereafter, the Petitioners submitted their representations against the final seniority list. Ultimately, the said representations were rejected by the Respondent on 6-3-1997. The Petitioners had challenged the said seniority list and the regularization of services of the adhoc Junior Engineers on the ground that no selection committee was formed to recommend the names to regularize the services of the junior engineers. It was further challenged that the regularization of the Respondents was not in accordance with the Rules and no appointment letter had been issued to them prior to the joining of the Petitioners. The approval order of regularization dated 14-02-1990 passed by the Respondent nos. 1 to 4 cannot be treated as appointment and the adhoc Junior Engineers cannot claim seniority only on the basis of the approval for regularization. The competent authority should have issued appointment letter to those persons whose services had been regularized under said Rules. The seniority of the adhoc Junior Engineers would reckon from the date they would have received and joined the services in pursuance of the said appointment letter. When the Respondents No. 1 to 4 did not pay any heed to the requests of the Petitioners, the present writ petition has been filed before this Court.

3. Heard learned Counsel for the parties and perused the record.

4. Sri Alok Singh learned senior counsel for the Respondents Nos. 6 to 11 raised a preliminary objection with regard to the maintainability of the writ petition. It was submitted that the writ petition is liable to be dismissed on two grounds without going into the merits of this case. The first ground is that the writ petition of the Petitioners should not be entertained in view of the efficacious remedy available before the Public Service Tribunal. The grievances of the Petitioners could be redressed by the State Public Service Tribunal and the Petitioners cannot approach to this Court directly and they should have first approached to the Tribunal. Second ground is that some of the direct appointees have filed the petition before the Tribunal which is still sub-judice and pending disposal. Sri S.N. Babulkar learned senior counsel for the Petitioners refuted the contention and it was contended that the prayer made in the present writ petition cannot be granted by the Public Services Tribunal. Thus, the Petitioners cannot be directed to approach the Public Service Tribunal in this case. It was further contended that merely because the Public Services Tribunal has the jurisdiction to hear and decide the matters of public servant aggrieved by the order of the State pertaining to the service matters that cannot be a ground to deny the right of the Petitioners to approach the High Court by filing the writ petition.

5. Before dealing with the submissions of the parties, we would like to discuss the legal position. The U.P. Public Service (Tribunals) Act was enacted in the year 1976 for the adjudication of the disputes pertaining to employment matters of public servant of the State Government and the employees of the Government

Corporations, Companies and local authorities etc. and the jurisdiction of the civil courts for redressal of their grievances was taken away. This Act was amended time to time. The erstwhile State of U.P. had taken a decision considering the increased work load of the courts and delay in disposal of the service matters to have a separate Service Tribunal. The purpose of creating a Tribunal has been indicated in the Statement of Objects of the Act which reads as under:

The number of cases in the courts pertaining to the employment matters of the government servants was constantly on the increase. This, besides increasing the workload in the courts also delayed considerably the disposal of such cases. Such litigation also involved money and time of government servants. In these circumstances, it was decided to establish Public Services Tribunals to deal with cases pertaining to employment matters of government servants and also of the employees of the local authorities and government corporations and companies, so that the employees may get quick and inexpensive justice. It was also decided that after the establishment of the tribunals such suits be barred from being filed in the subordinate courts.

6. Section 4 of the U.P. Public Service (Tribunals) Act, 1976 provides as under

4. Reference of claim to Tribunal.-(1) Subject to the other provisions of this Act, a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.

Explanation.-For the purpose of this sub-section order means an order made by the State Government or a local authority or any other Corporation or company referred to in Clause (b) of Section 2 or by an officer, committee or other body or agency of the State Government or such local authority or Corporation or company:

Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant.

7. Thus, Sub-section (1) of Section 4 contemplates that subject to the provisions of the Act a person who is or has been a public servant being aggrieved by an order pertaining to the service matters within the jurisdiction of the Tribunal may make a reference to the Tribunal for redressal of his grievance. A petition was filed before the Allahabad High Court by the Public Service Bar Association, U.P. challenging the validity of the Act particularly Section 3, 4, 5B and 5C of the said Act. Section 3 of the Act deals with the constitution of Tribunals. Section 5B and 5C deal with regard to the prohibition made in the Act not to grant injunction or stay by way of interim relief in respect of the order made by the competent authority for the suspension, dismissal, removal, reduction in rank, termination, compulsory retirement, reversion or against adverse remark of a public servant. It is pertinent to mention here that in the rest of the cases the Tribunal has the power to pass interim orders on the application of aggrieved parties under 5(5)0) of the Act. The High Court had upheld the validity of the said Act as well as the

subsequent amendments made therein. The Hon"ble Supreme Court in appeal has held in Public Services Tribunal Bar Association Vs. State of U.P. and Another, that:

17. The newly added Sub-section (1) of Section 4 contemplates that subject to the provisions of the Act a person who is or has been a public servant being aggrieved by an "order" pertaining to the service matters within the jurisdiction of the Tribunal may make a reference to the Tribunal for redressal of his grievances. Counsel appearing for the Respondents fairly stated before us as had been stated by the Advocate General appearing for the State before the High Court that an "order" would also mean "omission" and "inaction" on the part of the authority concerned for which the public servant can move the tribunal. In the written statement filed by the Respondents in the High Court it was stated that an order would include an "omission" or "inaction" on the part of the authority concerned and open to challenge. Since no such amendment or clarification had come in the Act, the High Court observed that an "omission" and "inaction" on the part of the authority could be challenged by filing of writ petition under Article 226 of the Constitution of India in the High Court. It was observed that there is no remedy provided in the Act to the government employee to approach the services tribunal as far as nonaction of the State Government is concerned. The only remedy open is under Article 226 of the Constitution of India.

18. We agree with the view taken by the High Court that unless a clarification is made by the legislature in the Act clarifying that an order would include an "omission" or "inaction" on the part of the authority, the "inaction" on the part of the authority can be challenged in High Court by filing the writ petition under Article 226 of the Constitution of India. It cannot be said that the public servant is left without a remedy to challenge any omission or inaction on the part of the authority. Inaction by itself is an independent cause of action and the High Court can effectively deal with the same.

8. It is apparent from the above pronouncement that an "order" used in Sub-section 4 would not mean "omission" and "inaction" on the part of the authority concerned. The Hon"ble Supreme Court was of the view that unless a clarification is made by the legislature in the Act itself clarifying that the order would not include an "omission" or "inaction" on the part of the authority. Such omission or inaction can be challenged before the High Court and not before the Tribunal.

9. It is well settled principle of law that the High Court cannot lose sight of the fact that the matters of alternative remedy has nothing to do with the jurisdiction of the cases, normally the High Court should not interfere if there is an adequate efficacious alternative remedy available. If anybody approaches the High Court without availing the alternate remedy the High Court would ensure that he had made out a strong case or that there exist good ground to invoke the extraordinary jurisdiction. The rule of alternative remedy is essentially a rule of

policy, convenience and discretion. When the Petitioner files the petition before the High Court he should also state the reasons as to why he thought that the alternative remedy would not be efficacious. The High Court should not bypass the said Tribunal where the government servant is aggrieved by an order of the government pertaining to the service matter within the jurisdiction of the Tribunal.

10. In the year 1985, the Administrative Tribunals Act (Act No. 13 of 1985) was enacted by the Parliament for adjudicating disputes in respect of recruitment and condition of service of persons appointed under the Central Government and its undertaking in connection with the affairs of Union of India. In the case of S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, , the validity of the Administrative Tribunals Act, 1985 was challenged including Section 28 of the said Act whereby the High Courts were divested of their jurisdiction under Article 226 and 227 of the Constitution of India in respect of matters within the jurisdiction of the Administrative Tribunals, i.e. in respect of service matters pertaining to employees of the Central government or any undertaking of the Central government, which were brought within the jurisdiction of the Tribunal. S.P. Sampath Kumar's case and other connected cases were referred to and disposed of by a constitution bench of the Hon''ble Apex Court. By the said decision, the Hon''ble Apex Court upheld the constitutional validity of the Administrative Tribunals Act but directions were issued to the Central government to amend the Act, inter alia to delete the provisions providing for IAS officers to be appointed as chairman of the tribunal and providing for appointment of chairman, vice-chairman and other members of the tribunal in consultation with the Chief Justice of India. Thereafter in 1987 by Administrative Tribunals (Amendment) Act, Section 6(1)(c) of the said Act was omitted and Section 6(7) was substituted providing for appointment of chairman, vice-chairman and members of the tribunal in consultation with the Chief Justice of India.

11. Thereafter, again the validity of this Act was challenged before the Hon''ble Apex Court. The Division Bench of the Hon''ble Apex Court concluded that the decision by the Five Judges Constitution Bench of the Hon''ble Apex Court in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, needs to be reconsidered. Thereafter, a Seven Judges Bench was constituted in L. Chandra Kumar Vs. Union of India and others, in which it was held that

101. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323-A and Clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable

basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

12. To support his preliminary objection the learned senior counsel Alok Singh relied on the categorical observation of the Hon''ble Apex Court that the Tribunal will continue to act like courts of first instance in respect of the areas of law for which they have been constituted and it will not be open for litigants to directly approach the High Court by over looking the jurisdiction of the Tribunal concerned.

13. Pursuant to the creation of State of Uttaranchal the State Government also established the Public Services Tribunal in the year 2001 under the U.P. Public Service (Tribunals) Act applicable to Uttaranchal. The said Tribunals comprise of a chairman, two vice-chairmen, one judicial member and one administrative member. Section 3 of the said Act deals with the constitution of the Tribunal which reads as under:

Section 3. Constitution of the Tribunal-(1) As soon as may be after the commencement of the Uttar Pradesh Public Services (Tribunals)(Amendment) Act, 1992, the State Government shall, by notification, establish a tribunal to be called the State Public Services Tribunal.

(2) The Tribunal shall consist of a chairman, vice chairman (judicial), a vice-chairman (administrative) and such number of other judicial and administrative members not less than five in each category, as may be determined by the State Government.

(3) A person shall not be qualified for appointment as chairman, unless he (a) has been a judge of a High Court, or (b) has, for at least two years held the post of vice-chairman, or (c) has been a member of the Indian Administrative Service who has held the post of a Secretary to the government of India or any other post under the Central or the State government equivalent thereto and has adequate experience in dispensation of justice.

(4) A person shall not be qualified for appointment as vice chairman (judicial) unless he-(a) has held the post of district judge or any other post equivalent

thereto for at least five years; or (b) has, for at least two years, held the post of a judicial member.

(4-A) A person shall not be qualified for appointment as vice-chairman (administrative) unless he-(a) has, for at least two years, held the post of an administrative member; or (b) has, for at least two years, held the post of Additional Secretary to the government of India or any other post under the Central or a State government carrying a scale of pay which is not less than that of a Additional Secretary to the government of India and has, in the opinion of the State government, adequate experience in dispensation of justice.

(5) A person shall not be qualified for appointment as a judicial member, unless he has been held the post of district judge, or any other post equivalent thereto.

(6) A person shall not be qualified for appointment as an administrative member, unless he has held, or has been eligible to hold, the post of Commissioner of a division or Joint Secretary to the government of India and has in the opinion of the State government, adequate experience in dispensation of justice.

(7) The chairman, vice-chairman and every other member shall be appointed by the State government after consultation with the Chief Justice for which proposal will be initiated by the State Government.

Provided that no person shall assume the office of chairman, vice-chairman or other member, as the case may be, unless he has resigned or retired from, as the case may be, the judgeship of the High Court, or the Indian Administrative Service or the Uttar Pradesh High Judicial Service or any other service in which he was serving except the service as vice-chairman or member.

14. Perusal of the petition reveals that the case of the Petitioners is based on their status and rights as an employee of the State government. The grievances of the Petitioners are that they are regularly appointed Junior Engineers from the Commission and the regularization of the private Respondents who had been appointed on adhoc basis, had not been made in accordance with the provisions of the Regularization Rules, 1979 enacted by the State Government to regularize their services. It is also the grievance of the Petitioners that their seniority ought to have been fixed above the adhoc appointees and their promotion would have been considered prior to the adhoc junior engineers so regularized under Regularization Rules, 1979. The Petitioners are challenging the seniority list prepared by the Department in which the Petitioners had been placed junior to the private Respondents whose services have been regularized under Regularization Rules, 1979. All the reliefs of quashment of the seniority list prepared by the Respondent No. 4 and the quashment of the regularization of the adhoc junior engineers made by the Respondents No. 1 to 4 can be entertained by the Public Service Tribunal. The other reliefs contained in the petition are the consequential reliefs of the above relief and as such Tribunal is competent to grant the relief to the Petitioners. Thus, the Petitioners have got an alternative efficacious remedy of filing the claim petition before the Public Service

Tribunal. Therefore, we decline to exercise our discretionary jurisdiction under Article 226 of the Constitution of India in this case.

15. It is also pertinent to mention here that the Tribunal has a pendency of about 300 petitions and the Tribunal can dispose of these matters expeditiously in comparison to the High Court. To give the effect to the statements of objects indicated in Act, the State Government has constituted sufficient number of Tribunals for the redressal of the grievances of the State Government servants.

16. It is evident from the record that a Writ Petition No. 714 (S/S) of 2005 Gopal Singh Bisht and Anr. v. State of Uttaranchal and Ors. had been filed for the similar controversy by some of the directly recruited junior engineers. In the said petition, the Court was of the view that the Petitioners have an alternative remedy to seek their redressal against their grievances before the State Public Service Tribunal and as such the writ petition was not entertained by the Court. The Petitioners were directed to approach the Public Services Tribunal. The said petition for the similar controversy is still sub-judice and pending disposal before the Public Services Tribunal. It would be expedient in the interest of justice that the present petition should also be heard and disposed of by the Public Services Tribunal.

17. It was further pointed out by the learned senior counsel for the Petitioners that since the Public Services Tribunal has no power to pass interim orders, the Petitioners will have to suffer a lot till the final decision is taken by the Tribunal. Thus, the writ petition can be entertained under Article 226 of the Constitution of India. Learned senior counsel for the Respondents contended that the argument of the learned senior counsel for the Petitioner is misconceived. According to Section 5(5)(j) of the U.P. Public Service (Tribunals) Act, 1976 which is applicable to the State of Uttaranchal has the power to pass an interlocutory order pending the final decision of the petition on such terms, if any, as it thinks fit to impose. Perusal of Section 5B and 5C of the Public Services Tribunal Act reveals that the U.P. Public Service (Tribunals) Act only prohibits to make an interim order (whether by way of injunction or stay or in any other manner) in respect of order made or purporting to be made by an authority for the suspension, dismissal, removal, reduction in rank, termination, compulsory retirement or against adverse remark, reversion of a public servant. In rest of the cases, the Tribunal can pass interim orders pending the decision of the petition on such terms and conditions as it deems fit. Section 5(5)(i) of the Public Service (Tribunals) Act provides as under:

5. Powers and procedure of the Tribunal.-

(1)

(2)

(3)

(4)

(5) The Tribunal shall, for the purpose of holding any enquiry under this Act, have, subject to the provisions of Sub-section (1), the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), while trying a suit, in respect of the following matters-

(a)

(b)

(j) passing interlocutory orders pending final decision of any reference on such terms, if any, as it thinks fit to impose?

18. Thus, the statute had provided for the constitution of the Tribunal for adjudicating the disputes of a government servant, the fact that the Tribunal has no authority to grant an interim order is no ground to bypass the said Tribunal. The dispute involved in this case is not a matter which attracts the prohibitions contained in Sub-section 5B and 5C of the said Act.

19. It has been held by the Hon"ble Apex Court in Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, :

11. These appeals are preferred against the order made by the High Court of Judicature at Allahabad in Civil Misc. WP No. 47130 of 2000 etc. on 1-2-2001. A Division Bench of the High Court of Allahabad by the impugned judgment has held that the Petitioner in the said writ petitions has an alternate remedy byway of petitions before the U.P. Public Services Tribunal (the Tribunal) and had permitted the writ Petitioner therein to approach the Tribunal and directed the Tribunal to entertain any such petition to be filed by the writ Petitioner without raising any objection as to limitation. There was a further direction to the Tribunal to decide the matter expeditiously.

12. Mr. Sunil Gupta, learned Counsel appearing for the Petitioner contended that the remedy before the Tribunal under the U.P. Public Services (Tribunals) Act is wholly illusory inasmuch as the Tribunal has no power to grant an interim order. Therefore, he contends that the High Court ought not to have relegated the Petitioner to a fresh proceeding before the said Tribunal. We do not agree with these arguments of the learned Counsel. When the statute has provided for the constitution of a Tribunal for adjudicating the disputes of a government servant, the fact that the Tribunal has no authority to grant an interim order is no ground to bypass the said Tribunal. In an appropriate case after entertaining the petitions by an aggrieved party if the Tribunal declines an interim order on the ground that it has no such power then it is possible that such aggrieved party can seek remedy under Article 226 of the Constitution but that is no ground to bypass the said Tribunal in the first instance itself. Having perused the impugned order, we find no infirmity whatsoever in the said order and the High Court was justified in directing the Petitioner to approach the Tribunal. In the said view of the matter, the appeals are dismissed. No costs.

20. In view of the foregoing discussion, we are of the considered view that the

Petitioners have an alternative remedy to seek their redressal against their grievances before the State Public Service Tribunal. Hence, the writ petition cannot be entertained under Article 226 of the Constitution of India and is liable to be dismissed.

21. The petition is accordingly dismissed. The Tribunal while computing the period of limitation to entertain such petition to be filed by the Petitioners before the Tribunal will exclude the time spent in prosecuting this writ petition in this Court.

22. The parties will bear their own costs.

23. Consequently, the stay order dated 23-06-2006 stands vacated.