
(2019) 01 SC CK 0313

In the Supreme Court Of India

Case No : Civil Appeal No. 3507, 3806, 3807, 5521, 5522, 5524, 5523, 8297, 7259, 8305, 8304, 8786, 8303, 8306, 8302, 8421, 8417 Of 2016

Dharmendra Singh Yadav And Others

APPELLANT

Vs

State Of U.P. And Others

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

General Clauses Act, 1897 — Section 24

Citation : (2019) 01 SC CK 0313

Hon'ble Judges : Ranjan Gogoi, CJ; L. Nageswara Rao, J; Sanjiv Khanna, J

Bench : Full Bench

Advocate : Jitendra Mohan Sharma, Ajit Sharma, Pranshu Kaushal, Asutosh Senger, Sanchit Garga, Arunima Bhattacharjee, Vibha Datta Makhija, Anil Kumar Tandale, Kaushal Yadav, Ram Kishor Singh Yadav, Nandlal Kumar Mishra, Pramod Kumar, Ram Awadh Yadav, Aditya K. Dubey, M.P. Singh, Rajeev Kumar Bansal, Pahlad Singh Sharma, Swarupama Chaturvedi, Kamendra Mishra, M. R. Shamshad, Aviral Saxena, Sushil Kr. Tomar, Sandeep Singh, Sanjay Kr. Tyagi

Final Decision : Dismissed

Judgement

The appellants before this Court are police personnel in different ranks, who had moved the High Court claiming out of turn promotions in accordance with the government policy circulated by Office Memorandum No.665/VI-Police-1-24/93 dated 3rd February, 1994 . The said office memorandum visualised out of turn promotions to police personnel who had to their credit acts of exemplary courage and valour while on duty. According to the appellants, while their cases were recommended and were pending for finalization, on 7th June, 2014, another office memorandum bearing No.901/6 Police/1/14-500(8)/14 was issued terminating with immediate effect the arrangement made by the office memorandum dated 3rd February, 1994 and clarifying that henceforth the police personnel, for their courageous acts and deeds, will be awarded only cash prize(s).

Before the High Court, two principal prayers were made. The first was with

regard to the validity of the Office Memorandum No.901/6 Police/1/14-500(8)/14 dated 7th June, 2014 and the second was for a direction to consider the cases of the writ petitioners for out of turn promotion. The learned Single Judge of the High Court hearing the matter without going into the validity of the office memorandum dated 7th June, 2014, took the view that all cases of out of turn promotions where the courageous acts or acts of bravery were prior to 7th June, 2014, had to be finalized in the light of the office memorandum dated 3rd February, 1994. The Division Bench overturned the verdict rendered by the learned Single Judge by holding that as the practice of out of turn promotions had been expressly terminated by the subsequent office memorandum dated 7th June, 2014, the learned Single Judge had fallen into error in issuing the directions as noticed above.

Before us, Shri Jitendra Mohan Sharma, Ms. Vibha Datta Makhija, learned senior counsel and other learned counsels appearing for the appellants, have vehemently contended that the office memorandum dated 7th June, 2014 cannot have any retrospective effect and must be applied prospectively. The cases of the appellants, therefore, should have to be considered in terms of the office memorandum dated 3rd February, 1994. It has been further urged that the appellants have a right of fair consideration of their cases for out of turn promotion which needs to be enforced as has been done by the learned Single Judge of the High Court.

We have considered the matter.

While admitting the appeal by order dated 4th April, 2016, the Bench relied on a decision of this Court in Mohammad Aftab Mir vs. State of Jammu & Kashmir and Others (2011) 11 SCC 82. At the same time, the Bench thought it appropriate to refer the matter to a larger Bench as according to the learned Judges, the provisions of Section 24 of the General Clauses Act were overlooked while rendering the decision in Mohammad Aftab Mir vs. State of Jammu & Kashmir (supra).

We have considered the provisions of Section 24 of the General Clauses Act and we are of the opinion that in view of the express contents of the office memorandum dated 7th June, 2014, by which the earlier office memorandum dated 3rd February, 1994 was negated and cancelled and a new policy was laid to be followed for future cases, it is not necessary for this Bench to deal with Section 24 of the General Clauses Act. The decision rendered in Mohammad Aftab Mir vs. State of Jammu & Kashmir and Others (supra) turns on its own facts. The circular of 1990 on which the claim for out of turn promotion was based was continued and was in addition to a subsequent circular of 2000 (para 16).

The question(s) referred to lies within a short compass. The appellants do not have any vested right under any law in force for out of turn/accelerated promotions. The facility of out of turn promotion is a matter of policy which the

government had thought proper to promulgate in the year 1994. This was subsequently withdrawn in 2014 by the office memorandum dated 7th June, 2014, wherein it is expressly recorded that the earlier office memorandum dated 3rd February, 1994 is determined and terminated. It is further recorded in the office memorandum dated 7th June, 2014 that henceforth all the acts of bravery etc. will be awarded with cash prize only. If the appellants do not have any vested legal right for consideration which is governed by the government policy and such policy has been altered with no trace of continuance of the old policy to pending cases, we do not see how the order of the Division Bench reversing the order of the learned Single Judge can be faulted with. The policy in terms of which the cases of the appellants have to be considered, itself, is not in force and a new policy has come into effect. We do not see how on the plea of retrospective operation of the policy, any right of the appellants can be recognized to any consideration of their cases for out of turn promotion under the superseded policy.

For the aforesaid reasons, we do not find any merit in these appeals and the same are, accordingly, dismissed. Undoubtedly, this order will not foreclose a fair consideration of the cases of the appellants in terms of the new policy contained in the office memorandum dated 7th June, 2014. Such consideration will be initiated and finalized at the earliest.