
(1986) 08 AHC CK 0008
In the Allahabad High Court
Case No : Writ Petition No. 6090 of 1986

Ganga Ram Nagar

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-08-1986

Acts Referred:

Constitution of India, 1950 — Article 309

Public Service Commission (Procedure) Rules, 1970 — Rule 17, 18

Citation : (1986) 08 AHC CK 0008

Hon'ble Judges : S. Saghir Ahmad, J;D.S. Bajpai, J

Bench : Division Bench

Advocate : D.S. Chaube, for the Appellant;

Judgement

S. Saghir Ahmad, J.—On the question of alternative remedy of filing a claim petition before U.P. Public Services Tribunal, the Petitioner submitted through his counsel that the U.P. Public Service Commission was not amenable to the jurisdiction of the Tribunal and since the Commission - is a party to this petition, this petition cannot be entertained by the Tribunal. We do not agree.

2. The jurisdiction of the Commission under the Constitution is advisory and it is open to the State Government to accept or not to accept the recommendations of the Commission. If the recommendations of the Commission are accepted by the State Government, then it is the act of the State Government which ultimately has to be challenged or assailed before the appropriate forum including the Tribunal which not only can judicially scrutinise the act of the State Government, it can also scrutinise the recommendations of the Commission atleast on the principle that if a Court, Tribunal or judicial body has jurisdiction to consider the main question, it has the power to consider all the incidental questions arising collaterally .We are, therefore, clearly of the opinion that in all cases where the recommendation of the Commission has been accepted or acted upon by the State Government, the Tribunal will have jurisdiction to scrutinise the recommendation of the Commission as also the act of the State Government

and both can be set aside or quashed in case the claim petition is allowed.

3. It has been further contended by the learned Counsel for the Petitioner that where the Public Service Commission functions under the rules made Under Article 309 of the Constitution, then the recommendations made by it are binding and cannot be ignored. Learned Counsel for the Petitioner in this regard has cited before us the U.P. Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970. He has referred to the provisions relating to preparation of the select list and the provisions contained in Rule 17 which provide that the candidates included in the list shall be appointed against the permanent vacancies. The provisions of Rule 18 under which temporary and officiating appointments are made were also referred to us. The appointment is made not by the Commission but by the appointing authority. The appointing authority is, therefore, not the Commission. It is the act of the appointing authority which is to be questioned before the Public Services Tribunal and while so questioning the act of the appointing authority, the Petitioner can agitate all incidental matters.

4. It will be noticed that the posts are either within the purview of the Commission or outside it. If the argument of the learned Counsel for the Petitioner is accepted, it would mean that the Services Tribunal has been created only in respect of posts which are outside the purview of the Commission which was neither the intention of the Legislature while enacting the U.P. Public Services Tribunal Act nor has such an intention been expressed anywhere in the Act so as to require us to carve out an exception and lay down unnecessarily that the posts within the purview of the Commission are outside the scope of the Tribunal.

5. In the instant case, the Petitioner who was originally appointed as a Mechanic and was promoted on adhoc basis to the post of Junior Engineer (Mechanical) had challenged the order of reversion on two principal grounds, namely, that there are 69 other ad hoc promotees who were not approved by the Commission for regular appointment, but they have been retained on the posts of Junior Engineer (Mechanical) while the Petitioner alone is being reverted which is discriminatory and secondly, the selection held by the Commission was not proper as it also ought to have interviewed the candidates. These questions in our opinion can well be agitated before the Tribunal which can quash the order of reversion in the instant case on the ground that the Petitioner was the victim of discriminatory treatment and that the equality before law was denied to him and he was also denied the equal opportunity in the matter of service which are guaranteed to him Under Articles 14 and 16 of the Constitution. The Tribunal shall also have the jurisdiction to scrutinise the process of selection adopted by the Commission to find out whether the selection was held according to law. If ultimately it is found by the Tribunal that the selection was not held according to law and that the appointing authority or any other authority competent in that regard had erroneously adopted the said selection illegally held by the

Commission, it will have the further jurisdiction of granting appropriate relief by declaring the selection as also the consequential order passed in pursuance thereof to be void.

6. Learned Counsel for the Petitioner has pointed out that the provisions of the Act have not been made applicable to the employees of the Commission. This contention is wholly irrelevant inasmuch as the Petitioner in the instant case is an employee of the State Government and not the employee of the (sic).

7. For the reasons stated hereinabove the writ petition, in our opinion, is without any merit and is dismissed summarily on the ground that the Petitioner has an alternative remedy of approaching the U.P. Public Service Tribunal.