
(1997) 12 AHC CK 0084
In the Allahabad High Court
Case No : C.M.W.P. No. 42353 of 1997

Keshav Ram Pandey

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 11-12-1997

Acts Referred:

Constitution of India, 1950 — Article 309
Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service (Rescission of Rules) Rules, 1991 — Rule 3
Uttar Pradesh Public Service Commission (Limitation of Functions) Regulations, 1954 — Regulation 4

Citation : (1998) 2 AWC 979 : (1998) 79 FLR 78

Hon'ble Judges : S.H.A. Raza, J; Bhagwan Din, J

Bench : Division Bench

Advocate : R.B. Singhal, for the Appellant;

Final Decision : Partly Allowed

Judgement

S. H. A. Raza and Bhagwan Din, JJ.—Before the closure of the Auto Tractors Ltd., Pratapgarh a Public Undertaking--the petitioner was working therein as an Assistant Manager (Personnel and Administration) at a Basic Pay of Rs. 1,770 per month in the pay scale of Rs. 1.350-2,100 which was revised to Rs. 3,100-4.500 with effect from 1.1.1986 and the same was approved by the Board of Directors for its implementation. However, as the Auto Tractors Ltd., closed down, the revised pay scale of the petitioner could not be implemented.

2. After the closure of the Auto Tractors Ltd., a retrenchment certificate was issued to the petitioner on 24.3.1994. According to the retrenchment certificate, the petitioner worked in the Auto Tractors Ltd., from 17.5.1980 to 20.11.1980. The petitioner was retrenched on 21.11.1990. At the time of retrenchment, the petitioner was drawing the pay scale which has been indicated in the foregoing paragraph.

3. The Auto Tractors Ltd., Pratapgarh, was closed down by the State Government

as it was running into deficit and was sold/transferred to some private entrepreneurs.

4. In the year 1991, the Governor of Uttar Pradesh in exercise of its powers conferred under Article 309 of the Constitution framed the Rules known as the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules. 1991. Rule 3 of the aforesaid Rules reads as under:

"3. (1) Notwithstanding anything to the contrary 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)."

The aforesaid Rules define "retrenched employee" in Section 2 (c) and the petitioner undoubtedly comes within the said definition.

5. On 21.12.1992, the State Government issued Government Order in continuation to the earlier Government Orders, dated 16.4.1991 and 6.3.1990 and directed that reduction of post to the strength of 5% shall not be applicable in case of retrenched employees. On 12.10.1993, the State Government further passed an order regarding retrenchment of employees of Auto Tractors Ltd. by means of which certain relaxation for retrenched employees of Auto Tractors Ltd. were made. The Government Order reads as under :

"(1) Only such retrenched employees would be entitled for absorption who were in the service of A. T.L. on or before 1.10.1986.

(2) The retrenched employee of A.T.L. shall be provided equivalent posts in the State Government on priority basis provided they hold the same qualifications which were required in the State Government.

(3) The retrenched employee shall be provided relaxation in age and there would be no upper age limit for such retrenched employees.

The retrenched employees after their absorption in Government Service shall get the starting salary which they had been drawing at the time of the closure meaning thereby their pay shall be protected."

6. The Government Order, dated 11.11.1993 further provided that on the posts which fall outside the purview of the Public Service Commission, the appointments would be made on the basis of eligibility. Later on the State Government received certain complaints that the appointments were not made in accordance with the Government Orders. Thereafter on 21.1.1994 another

Government Order was issued which provided that in spite of the Government Orders the absorption of the retrenched employees were not made, hence in the context of the retrenched employees all those vacancies would be filled up in Government Departments by the retrenched employees and they would be absorbed in the Government Services according to their eligibility. It was also directed that the direction contained in this Government Order should be strictly followed by all the departmental heads who will ensure that in future vacancies, appointments would be made from the retrenched employees and on the basis of their eligibility they would be given preference in matters of appointment.

7. But as the said Government Order was not followed strictly, the State Government was constrained to Issue another Government Order on 13.4.1994 which provided that in spite of the Government orders the appointments were made by the departmental heads, but the retrenched employees were not absorbed. Keeping in view that position the State Government resolved that explanation be called from departmental heads as to why in spite of the availability of the posts the retrenched employees have not been absorbed and other persons were employed. On 2.6.1994 another Government Order was issued that in future whenever any appointment would be made the retrenched employees would be given preference. It appears that in spite of several reminders the petitioner was not appointed even when his name was sent to various departments including Bal Vikas Vibhag under the Ministry of Social Welfare Government of U. P. The authorities of the Social Welfare Department have refused to appoint the petitioner on the pretext that the post of Project Manager/District Programme Officer in the Child Welfare is within the purview of the Public Service Commission and 50% seats are reserved for promotees and 50% seats are meant for direct recruitments.

8. In Regulation 4 of the Uttar Pradesh Public Service Commission (Limitation of the Functions) (Tenth Amendment) Regulations, 1990, clause (e) has been added which reads as under :

"4. It shall not be necessary for the Commission to be consulted on matters relating to method of recruitment to Civil Services and posts or the principles to be followed in making appointments to such services and posts or suitability of the candidate for such appointments in the following cases : (a)

(b)

(c)

(d)

(e) When it is proposed by the Governor or an authority other than the Governor on specific Instructions of the Governor to make appointment to any service or post by absorption of any employee of a Government Department or of an undertaking."

9. It was contended by the learned counsel for the petitioner that since the

petitioner was retrenched, he was running from pillar to post for his absorption in the Government Service. In a similar identical situation, two retrenched employees of the Auto factors Ltd. filed a Writ Petition bearing No. 502 of 1995 in re Anukool Prakash and another v. State of U. P. and another, at Lucknow Bench of this Court praying for their absorption on equivalent posts which fall within the purview of the Public Service Commission. A Division Bench of this Court at Lucknow Bench of which one of us (Hon"ble S. H. A. Raza. J.) was a member, directed the respondents and the Government of U. P. to amend the Government Order, dated 11.11.1993 or to issue a fresh Government Order Indicating that the retrenched employees of the Auto Tractors Ltd. may be appointed on the posts which fall within the purview of the Public Service Commission as was done in the case of the retrenched employees of Chalchitra Nigam. The State of U. P. filed a SLP against the aforesaid order, dated 22.2.1996 before the Hon"ble Supreme Court but the same was dismissed. The petitioner preferred several applications for his absorption, one of which was forwarded by the Department of Heavy Industries of the Government of U. P. to the Social Welfare Department. It was asserted that the petitioner also met the Secretary of the Social Welfare Department for his appointment/ absorption but of no avail. The petitioner as stated staked a claim for his appointment/absorption in Government Service in the pay scale which he was getting at the time of his retrenchment.

10. It was asserted that by refusing to appoint the petitioner on a post within the purview of the Public Service Commission, Regulation 4 (e) was not considered by the authorities of the Child and Women Welfare or Social Welfare Department. It was urged that posts were vacant even for the quota of direct recruitments but the petitioner was not appointed by the authorities in violation of the Government Orders issued from time to time, as indicated in the foregoing paragraphs.

11. Learned standing counsel submitted that Regulation 4 (e) which was inserted by amendment dated 23.9.1993 pertains to the promotional posts, hence the authorities of the Child and Women Welfare/Social Welfare Department were unable to appoint the petitioner.

12. A similar dispute cropped up when in pursuance of the orders passed by this Court in the matter of retrenched employees of Chalchitra Nigam. Government of U. P. issued a Government Order on 6.3.1990 which provided that the posts which fell within or outside the purview of the Public Service Commission or the Subordinate Public Service Commission, the appointment of the retrenched employees would be made on the basis of their eligibility.

13. We are of the view that If the Government would have been interested in getting the petitioner absorbed, then for that purpose to remove the anomaly the Government would have issued a similar Government Order, dated 6.3.1990 which was issued for the absorption of the retrenched employees of the Chalchitra Nigam and similar Government Order could have been issued with regard to the retrenched employees of Auto Tractors Ltd., then no department

would have refused to absorb the petitioner. Although the State Government while issuing Government Order, dated 11.11.1993 has ensured that the retrenched employees of Auto Tractors Ltd. would be absorbed in services which fall within or outside the purview of the Public Service Commission, but no order has yet been issued for the retrenched employees of Auto Tractors Ltd. for their absorption on the posts which fall within the purview of the Public Service Commission.

14. It appears from the various Government Orders which have been mentioned in the body of this Judgment, that the Government of U. P. has taken a policy decision honestly and sincerely to absorb the retrenched employees of Auto Tractors Ltd. but due to this anomaly in the Government Order, dated 11.11.1993, the Department of Child Welfare/Social Welfare has expressed its inability to appoint the petitioner, as the post upon which his name was forwarded is within the purview of the Public Service Commission.

15. Although this Court generally does not interfere into the policy decisions which are taken by the State Government, but in the present case, we are of the view that non-mention of the words "within the purview of the Public Service Commission" in the Government Order, dated 11.11.1993 was accidental and deserves to be clarified by the State Government which has taken a policy decision to appoint the retrenched employees of Auto Tractors Ltd. We are of the view that the question of absorption of the petitioner should be considered at the highest level, i.e., at the level of the Chief Secretary of the Government of U. P. who. if so pleases may either amend the Government Order or issue another Government Order, indicating that the retrenched employees of Auto Tractors Ltd. may be appointed on the posts which fall within the purview of the Public Service Commission as was done in the case of the retrenched employees of Chalchitra Nigam.

16. In view of the aforesaid reasons, this writ petition succeeds in part and the petitioner is directed to place a copy of this order before the Chief Secretary, Government of U. P. for taking a policy decision about his appointment and the Chief Secretary will pass appropriate orders within a month from the date of the receipt of a copy of this order for the absorption of the petitioner either in the Department of Child and Women Welfare or Social Welfare Department or in any other department of the State Government in consonance with the policy decisions taken earlier. Office is directed to send a copy of this judgment to the Chief Secretary, Government of Uttar Pradesh for necessary action in the matter.