

(2007) 03 AHC CK 0195
In the Allahabad High Court

Kumari Rita Yadav

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Citation : (2007) 6 AWC 6332 : (2007) 2 UPLBEC 71

Hon'ble Judges : H.L. Gokhale, C.J.; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

H.L. Gokhale, C.J. and Ashok Bhushan, J.—Heard Mr. Anil Kumar Dubey for the appellant, learned Standing Counsel for the State and Sri V.P. Mishra appears for respondent No. 6.

2. The appeal raises question with respect to the interpretation of the clarification issued by the State Government on 24th April, 2006 to clarify the earlier Government circular dated 10th October, 2005. The matter requires consideration.

3. The appeal is admitted.

4. Considering the facts and urgency of the case, the appeal is heard forthwith. The short facts leading to this appeal are as follows:

5. The appellant was selected to the post of a Shiksha Mitra. She has secured 64.46 marks as per the method provided for selection under the Government orders. The respondent No. 6 who was second in the last had obtained 64.40 marks and that is why the appellant came to be selected.

6. Now it so transpires that respondent No. 6 represented to the authorities concerned on the basis of the Government clarification dated 24th April, 2006. His case is that he is a handicapped person and under the particular clarification, if it is applied, he would be getting 68.55 marks. Therefore, he should have been selected.

7. The authorities of the Government accepted this submission of the respondent No. 6 and that is why the appointment of the petitioner came to be cancelled. Aggrieved by this decision, she filed a writ petition and the same has been dismissed by a learned Single Judge by the impugned order dated 31st January, 2007. Being aggrieved by that judgment and order, this appeal has been filed.

8. The learned Counsel for the appellant points out that under the earlier Government circular dated 10th October, 2005, as far as the disabled persons, widows or divorced women are concerned, 10% marks were to be added to the marks that they have secured. At the time when the petitioner was selected this circular dated 10th October, 2005 was in force. The circular dated 24th April, 2006 has come to be issued subsequently where under a certain method has been provided for calculating this 10% marks. As per this clarification average of the marks of 10th standard and 12th standard are first to be calculated and then 10 marks is to be added. As per this calculation respondent No. 6 will be getting 68.55% marks. The submission of the appellant is that this circular, which is issued subsequent to the selection of the appellant cannot be applied retrospectively and that being the position, the observation of the learned Single Judge that the clarificatory orders always relate back is not correct.

9. The counsel for respondent No. 6 submitted that circular was clarifying the position under the earlier circular. This being so, the learned Single Judge was right in taking the view that it will apply retrospectively.

10. In this connection, we must note that there is a recent judgment of the Apex Court in the case of Secretary, A.P. Public Service Commission v. B. Swapna and Ors. reported in 2005 (2) ESC 247 wherein the Apex Court has laid down that statutory rule is normally prospective unless it is expressly, or by necessary implication, made to have retrospective effect. There must be words in the Statute showing intention to affect existing right. If the rule is clear in its language then there is no difficulty. But if it is capable of two interpretation it ought to be considered as prospective. In the present case, we have gone through this circular issued on 24th April, 2006. It undoubtedly states to begin with that the Government order dated 10th October, 2005 has led to some confusion with respect to the addition of the weightage that was provided thereunder. However, the Government clarificatory order does not say anything to provide that it will govern the selection made earlier or made from any particular date in the past. There is no indication in this subsequent circular that it is to act retrospectively. Inasmuch as there is no specific indication therein, as stated by the Apex Court, assuming that two interpretations are possible, the circular will have to be operated as prospectively.

11. In the circumstances, the view taken by the learned Single Judge, namely, that the circular will apply retrospectively is not correct.

12. We have, therefore, no option but to allow this appeal and set-aside the order passed by learned Single Judge. The appellant has undoubtedly received

marks higher than the respondent No. 6 even after considering the weightage that was given to him under the earlier circular. That being so, the petition filed by the appellant will have to be allowed. Consequently the order passed by the District Magistrate on 4th December, 2006 canceling her selection will have to be set-aside. We allow this appeal and we allow the writ petition as well. The appellant will be permitted to join back at the place where she was expected to join.

13. The appeal is allowed. No order as to costs.