
(1998) 08 SC CK 0122

In the Supreme Court Of India

Case No : SLP (C) No's. 12314-15 of 1997 and No. ... of 1997 (CC No's. 6743-44 of 1997)

Maresh Chand and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-08-1998

Acts Referred:

Citation : (2000) 10 SCC 492

Hon'ble Judges : S. P. Bharucha, J;M. K. Mukherjee, J;G. T. Nanavati, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. Delay condoned.

2. The special leave petitions were placed before this Bench of three Judges by reason of the following order:

"Shri S.B. Sanyal, the learned Senior Counsel appearing for the petitioner submits that in the impugned judgment, the High Court has placed reliance on the earlier judgment of this Court in Dilbag Singh Vs. State of U.P. and Others, The learned counsel has submitted that in Dilbag Singh case this Court has failed to take note of the provisions contained in Rule 4 of the U.P. Non-technical (Class II) Services (Appointment of Demobilised Officers) Rules, 1980 which fixes the cut-off date 6-8-1978 and that the benefit of seniority under Rule 5 is available only in respect of persons in whose case the process of recruitment was concluded or commenced prior to that date. The submission is that Dilbag Singh case needs reconsideration. We consider it appropriate that the matters may be placed before a Bench of three Hon'ble Judges. We order accordingly."

3. The Uttar Pradesh Non-technical (Class II/Group 'B') Services (Appointment of Demobilised Officers) Rules, 1980, are the rules which require consideration. For the purposes of showing that the aforesaid judgment in Dilbag Singh case is per incuriam and requires reconsideration, it must be demonstrated that Rules 4 and

5 of the said rules are interconnected and that Rule 5 applies only to those who are appointed pursuant to Rule 4.

4. Rules 4 and 5, so far as they are relevant, read thus:

"4. Appointment.--A person selected for appointment to a non-technical Class II/ Group 'B' service or post against the vacancies reserved for demobilised officers, as a result of recruitment, the process of which was concluded or commenced prior to August 6, 1978, in accordance with the provisions of the Uttar Pradesh Non-technical (Class II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1973 (hereinafter to be referred to as the said rules), shall be eligible and be considered for appointment against the vacancies reserved for demobilised officers under the said rules:

Provided that the reserved vacancies shall be utilised first for the appointment of disabled defence service officers, and, if any such vacancies still remain unfilled, the same shall then be made available to other emergency commissioned officers and short service commissioned officers.

Explanation.--The notification of vacancies or the advertisement thereof by the Commission shall, among others, be a process of recruitment within the meaning of this rule.

5. Seniority and pay.--(1) Seniority and pay of persons appointed against the vacancies referred to in the said rules shall be determined on the assumption that they entered the service concerned at the second opportunity of competing for recruitment, and they shall be assigned the same year of allotment as successful candidates of the relevant competitive examination:

* * *"

5. Rule 4 enables the appointment of persons selected for appointment against vacancies reserved for demobilised officers, as a result of recruitment, the process of which was concluded or commenced prior to 6-8-1978; these persons are made eligible and can be considered for appointment against vacancies reserved for demobilised officers under the 1973 Rules.

6. The scope of Rule 5 is wider. It regulates the seniority and pay of persons appointed against vacancies referred to in the 1973 Rules. Therefore, while it may cover those who are appointed under Rule 4, it also covers all others who are appointed against vacancies referred to in the 1973 Rules. That being so, the judgment in the case of Dilbag Singh which construed Rule 5, does not require reconsideration on the ground that Rule 4 was omitted from consideration.

7. We have heard Mr Sanyal, learned counsel for the petitioner also on two additional grounds and found no merit therein. The SLPs are dismissed accordingly.