
(2016) 02 AHC CK 0229

In the Allahabad High Court

Case No : Service Bench No. 1185 of 2014

Mamta Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Citation : (2016) 3 ADJ 535

Hon'ble Judges : Narayan Shukla and Rakesh Srivastava, JJ.

Bench : Division Bench

Final Decision : Dismissed

Judgement

Narayan Shukla, J.—1. Heard Dr. L.P. Mishra, learned counsel for the petitioner as well as Mr. Vivek Kumar Shukla, learned Additional Chief Standing Counsel.

2. The petitioner had claimed her candidature for selection in U.P. Upper Subordinate Services notified through the advertisement dated 15.12.1994 under the quota reserved for the dependents of freedom fighters. The petitioner's grand father Shri Brij Nath Prasad Srivastava was a freedom fighter. Earlier her name was not enlisted amongst the successful candidates, but later on, on the basis of recommendation done by the Commission, her name was recommended for appointment on the post of Assistant Accounts Officer. Since she could not submit the requisite certificate of dependent of freedom fighter in the prescribed proforma, a letter was issued by the U.P. State Public Service Commission (in short Commission) on 26.4.1999, whereby the petitioner was required to submit a requisite certificate, she submitted the said certificate to the Commission. However, vide letter dated 2.7.1999 issued by the Secretary of the Commission the petitioner's candidature was rejected on the ground that in her application the petitioner had mentioned that she was married, whereas the benefit provided under the U.P. Public Services (Reservation for Physically handicapped, dependents of freedom fighters and ex-servicemen) Act, 1993 (in short Act 1993) was not available to the married men/women.

3. Aggrieved petitioner submitted a representation to the Secretary of the Commission stating therein that at the time of submission of application pursuant to the advertisement dated 15.12.1994 the petitioner was not married, therefore, in her application against the Column of marital status she marked as "unmarried". Later on she got married on 20.1.1995. The Secretary of the Commission rejected the petitioner's representation vide order dated 16.11.1999. The petitioner had instituted a writ petition being writ petition No. 2024 (SB) of 1999, in which the petitioner had challenged the order dated 2.7.1999 as well as 16.11.1999, passed by the Commissioner rejecting the petitioner's representation.

4. Section 2(b) of the Act 1993 defines the word "dependents" with reference to a freedom fighter as follows:--

"(i) Son and daughter (married or unmarried) of freedom fighter.

(ii) Grand-son (son of a son) and unmarried grand-daughter (daughter of a son) of freedom fighter."

5. The relationship between the petitioner and her grand-father is not disputed. Thus she is a grand-daughter of Shri Brij Nath Prasad Srivastava, who had been declared as a freedom fighter. The provisions of Section 2(b) of the Act 1993 being discriminatory were amended and a married-grand daughter was included within the definition of "dependents" of freedom fighters, therefore, the writ petition was dismissed as having become infructuous.

6. Since the married grand-daughter of the freedom fighter was included within the definition of dependents of freedom fighters, the State Government took a decision vide letter dated 12 April 2010 to appoint her on the post of Assistant Accounts Officer, however, no appointment order was issued, therefore, she submitted a representation dated 30.5.2014 before the State Government to appoint her on the post of Assistant Accounts Officer, but has failed to get an appointment.

7. Dr. L.P. Mishra, learned counsel for the petitioner drew attention of this Court towards the statement of objects and reasons of amendment introduced in the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment) Act, 2009 notified on 20 August 2009 and submitted that since the purpose of amendment was to remove the discrimination between the daughter and granddaughter the State Government decided to amend the said Act to include the married grand-daughter of a freedom fighter in the said definition of word "dependents". He vehemently submitted that in case of daughter of the freedom fighter married or unmarried both had been included to be dependents of the freedom fighter, but in case of grand daughter only the unmarried grand daughter was defined to be dependent of the freedom fighter. The statement of objects and reasons of the amendment Act 2009 is extracted below:--

"Statement of Objects and Reason.- The Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Serviceman) Act, 1993 (U.P. Act No. 4 of 1993) has been enacted to provide for the reservation of posts in favour of physically handicapped, dependents of freedom fighters and ex-servicemen. Clause (b) of Section 2 of the said Act defines the word "dependent". In accordance with the said definition son and daughter (married or unmarried) and grand son and unmarried grand daughter were the dependents of a freedom fighter. In order to remove the discrimination between daughter and grand daughter it was decided to amend the said Act to include the married grand daughter of a freedom fighter in the said definition of the word "dependent".

8. The amended provision of Section 2 of the Act 1993 is reproduced hereunder:--

"2. Amendment of Section 2 of U.P. Act No. 4 of 1993.- In Section 2 of the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993, hereinafter referred to as the principal Act, in clause (b) in sub-clause (ii) for the words "unmarried grand daughter (daughter of a son)" the words "grand daughter (daughter of a son) (married or unmarried)" shall be substituted."

9. In the present case the main facet of problem is the date of application of the said amendment published in the Gazette on 20 August 2009. Dr. Mishra has contended that since the purpose of amendment was to remove the discrimination between the daughter and grand daughter and once the grand daughter has been put at par with the daughter (married or unmarried) this amendment has to be given effect to from the date of incorporation of the Act 1993. He further tried to fortify his argument with the contentions that the amendment is purely clarificatory in nature, therefore, it becomes applicable from the previous date of enforcement of the Act 1993. In support of his submission he cited the following decisions:--

"(1) Zile Singh versus State of Haryana and others reported in , (2004) 8 SCC, relevant paragraphs 16 and 19 of the same are reproduced hereunder:--

"16. Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to "explain" a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. A classic illustration is the case of Attorney General v. Pougett (1816) 2 Price 381 : 146 ER 130 (Price at p.392). By a Customs Act of 1873 (53 Geo. 3), c.33) a duty was imposed upon hides of 9s 4d, but the Act omitted to state that it was to be 9s 4d per ewt., and to remedy this omission another Customs Act (53 Geo. 3, c.105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s 4d per ewt., but

Thomson, C.B., in giving judgment for the Attorney General, said: (DR p.134).

"The duty in this instance was, in fact, imposed by the first Act; but the gross mistake of the omission of the weight, for which the sum expressed was to have been payable, occasioned the amendment made by the subsequent Act; but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act;" (Price at p.392).

(2) Shyam Sunder and others versus Ram Kumar and another, reported in , (2001) 8 SCC 24, relevant paragraphs 39 and 40 of the same are reproduced hereunder:--

"39. Lastly, it was contended on behalf of the appellants that the amending Act whereby new Section 15 of the Act has been substituted is declaratory and, therefore, has retroactive operation. Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word "declaration" in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective. Conversely where a statute uses the word "declaratory", the words so used may not be sufficient to hold that the statute is a declaratory Act as words may be used in order to bring into effect new law.

40. Cries on Statute Law, 7th Edn. stated the statement of law thus:

"If a doubt is felt as to what the common law is on some particular subject, and an Act is passed to explain and declare the common law, such an Act is called a declaratory Act."

(3) Commissioner of Income Tax (Central)-I, New Delhi versus Vatika Township Private Limited, reported in , (2015) 1 SCC, relevant paragraph 32 of which is reproduced hereunder:--

"32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh Principles of Statutory Interpretation, (13th Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2012) in the following manner:

"Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES and approved by the Supreme Court: "For modern

purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted". But the use of the words "it is declared" is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to be substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language "shall be deemed always to have meant" is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

The above summing up is factually based on the judgments of this Court as well as English decisions."

10. In view of the principles propounded above, the learned counsel for the petitioner has submitted that the amendment made in the Act 1993 is purely declaratory as it declares that through the amendment 2009 the married grand-daughter shall also be included in the definition of "dependent", this amendment shall come into force from the date of enactment of the Act itself. Therefore, the petitioner's candidature, which was considered for appointment on the post of Assistant Accounts Officer being "dependent" of her grand-father a freedom fighter cannot be rejected.

11. Per contra Mr. Vivek Kumar Shukla, learned Additional Chief Standing Counsel contended that the statement of objects and reasons of the amendment Act 2009 itself speaks that in order to remove the discrimination between daughter and grand-daughter Section 2 of the Act 1993 was amended to include the married grand daughter of a freedom fighter in the definition of word "dependent". Since in the case of daughter, the Act has covered both married and unmarried daughter, whereas in the case of grand-daughter only unmarried grand daughter was included in the definition of "dependent" of freedom fighter, the legislatures felt that non inclusion of married grand daughter of a freedom

fighter appears to be discriminatory, therefore, it legislated a law to include the married grand daughter also in the definition of "dependents" of freedom fighters. There was no ambiguity in the provisions of the Act, which had required clarification of the Act by way of legislation nor have the provisions of the Act stated clearly that the amendment in question is in a declaratory form, rather the provisions of the Act are very clear. Earlier only unmarried grand daughter was included in the definition of "dependents" of freedom fighter and now married grand daughter of the freedom fighter has also been included in the definition of "dependents". The reasons assigned in the statement of objects and reasons of amendment that Section 2 of the Act 1993 has been amended in order to remove the discrimination between the daughter and grand daughter does not mean that there was ambiguity in the legislation, which has been clarified by way of amendment. The intention of the legislation to include married grand daughter is very much obvious i.e. to remove the discrimination between two, therefore, it cannot be said that the amendment in the Act being declaratory in nature shall become effective from the date of original enactment of the Act 1993.

12. Without disputing the proposition of law laid down by the Hon"ble Supreme Court, he submitted that definitely the clarification being explanatory/clarificatory will have the retrospective effect. He has urged that in this case the nature of amendment in question is not an explanatory or clarificatory, but by way of legislation the married grand daughter has been included in the definition of "dependents" it is completely a substantive amendment in the Act, 1993.

13. He cited a case of S. Sundaram Pillai and others versus V.R. Pattabiraman and others, reported in , (1985) 1 SCC 591. The Bench consisting of three Hon"ble Judges had considered the impact of explanation and had held that it is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term. The Hon"ble Supreme Court considering the various aspects of the explanation and observed as under:--

" (a) The object of an Explanation is to understand the Act in the light of the explanation.

(b) It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute."

14. The Hon"ble Supreme Court summed up its consideration in the following manner:--

"53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

15. He further cited a decision of the Hon'ble Supreme Court rendered in the case of *M/s. Utkal Contractors and Joinery (P) Ltd. and others versus State of Orissa*, reported in , 1987 (Supp) SCC 751, in which the Hon'ble Supreme Court has discussed the scope of statement of objects and reasons of the Act. The Supreme Court held that the authority of a statutory notification cannot be judged merely on the basis of statement of objects and reasons accompanying the bill. The Supreme Court further referred its another decision rendered in the case of *State of West Bengal v. Union of India*, reported in , AIR 1963 SC 1241, in which it had held that:--

"It is however well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments' rights as owner of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute."

16. Regard being had to the aforesaid submissions, we proceed to decide the core issue involved in the matter, whether the amended Act 2009 including the married grand-daughter in the definition of "dependent" shall have a retrospective effect?

17. The statement of objects and reasons accompanying with the amendment Act 2009 speaks that the said amendment has been brought into the Act to remove the discrimination between the daughter and grand-daughter. The purpose of amendment is obvious as earlier the married daughter was included in the definition of "dependents" of freedom fighter. Whereas in case of grand daughter only unmarried grand daughter was included in the definition of "dependents" of freedom fighter. It appears that legislatures thought it

discriminatory between the two and by amending the Act 1993, they had included the married grand-daughter also in the definition of "dependents" of freedom fighters. It is purely new legislation without having any explanatory effect of any provision available under the Act.

18. The scope of explanation has been discussed by the Hon"ble Supreme Court in paragraph 53 of its judgment rendered in the case of S. Sundaram Pillai and others (Supra), in which the Hon"ble Supreme Court has held that the explanation cannot in any way interfere with or change the enactment, rather it assists the Court in interpreting the true purport and intendment of the enactment.

19. The purpose of statement of objects and reasons as has been discussed by the Hon"ble Supreme Court in the case of Utkal Contractions and Joinery (P) Ltd. (Supra) is very limited to understand the background and the antecedent state of affairs leading up to the legislation. It shows the intention of the legislation to amend the Act. The object is very clear as the statement of objects and reasons states that the impugned amendment was made to remove the discrimination between daughter and grand daughter. It is purely a substantive amendment, which cannot be said to be a retrospective unless the Act provide so, whereas in this case no such provision is provided under the Act that the amendment in question shall have retrospective force.

20. In view of the aforesaid submissions, we are of the view that the impugned amendment of 2009 is prospective in nature and it does not apply from the date of substantive enactment of the Act 1993. In the result the writ petition stands dismissed.