

(2003) 08 AHC CK 0104

In the Allahabad High Court

Case No : Writ Petition No.1077 (S/S) of 1985 (with W.P. Nos. 1050 (S/S)/1985 and 1162 (S/S)/1985)

Mohd.Idrish Khan

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2003) 08 AHC CK 0104

Hon'ble Judges : Y.R.Tripathi, J

Final Decision : Disposed Of

Judgement

Y.R. Tripathi, J.—The Writ Petitions No.1077 (S/S) of 1985, 1050 (S/S) of 1985, 1162 (S/S) of 1985 and Writ Petition No.968 (S/S) of 1985, involving common questions of law and facts, are taken up and decided together by this common judgment.

2. It appears that in the year 1984 a new division of Rural Engineering Department was established in district Lakhimpur Kheri and the Executive Engineer, Rural Engineering Department, Lakhimpur Kheri opposite party No.3 made certain selections in accordance with the provisions of the Class IV Employees Service Rules, 1975 and out of the select list appointed the petitioners to different Class "D" posts in the Division. It is said that District Magistrate, Lakhimpur Kheri and Employment Officer were interested in the appointment of some other persons and they brought pressure on the appointing authority to appoint persons of their choice as a result of which the opposite party No.3 through the impugned order dated 30.1.1985 (Annexure2 to the writ petitions) terminated the services of the petitioners.

3. The opposite parties in their counter affidavit have defended the impugned order. Their case is that Class IV Employees Service Rules, 1975 had been amended by the Government Notification No.27/2/79 Karmik2 dated 11.10.1979, but State Government through another Notification No.20.3.1982 Karmik2

October 31, 1984 had stopped the operation of the said amendment and constituted a selection committee at district level for selection of candidates for appointments to class D post. The opposite parties thus have challenged the validity of the selection and appointment of the petitioners and have justified their termination orders.

4. Having heard the learned counsel for the parties and gone through the material on the record, I find that the sole question, that crops up in these writ petitions, is that whether or not the selection and appointment of the petitioners was made in accordance with the provisions of Class IV Employees Service Rules, 1975 and whether the State Government had the jurisdiction to amend, supersede or override the statutory provisions through Government Orders.

5. It has not been disputed that the said Rules of 1975 have been framed under Article 309 of the Constitution. Prior to 1979, the said rules had been amended twice and for the third time, those rules were amended in the year 1979. The State Government through another Notification No.20/3/1982Karmik2 dated 31.10.1984 stayed the operation of the third amendment of Class IV Employees Service Rules 1975 and constituted a selection committee at district level for selection to Class IV posts. It has been argued that since the selection of the petitioners was not made by a selection committee constituted in the Government Order No.20/3/1982 Karmik2 dated 31.10.1984, the petitioners could not have been allowed to continue on their respective posts and as such their selection and appointment being not valid and proper, their services were terminated.

6. The main question that crops up in these writ petitions is that whether statutory rules made in exercise of powers conferred under Article 309 of the Constitution could be amended or superseded through Government Orders. This question has been answered by the Hon'ble Supreme Court in the case of P.D.Aggarwal and others v. State of U.P. and Others, reported in AIR 1987 Supreme Court 1676, wherein it has been held that an office memorandum cannot override, amend or supersede statutory rules. The State Government, therefore, had no power to amend Class IV Employees Service Rules, 1975 through a Government Order as was done in the instant case. No other infirmity or illegality has been pointed out in the selection and appointment of the petitioners except that their selection was not made by a committee which was constituted in State Government Notification No.20/3/1982Karmik2 dated 31.10.1984. As observed above, the Class IV Employees Service Rules, 1975 could not have been amended by Government Order, the selection and appointment of the petitioners in this case appears to have been made validly and properly, in accordance with the provisions of Class IV Employees Service Rules, 1975 as amended by the State Government in the year 1979. It is not disputed that the posts held by the petitioners still exist. In this view of the matter, there being no illegality in the selection and appointment of the petitioners, the petitioners' services could not have been terminated through the

impugned order.

7. These writ petitions thus succeed and are allowed. The impugned order of termination of the services of the petitioners dated 30.1.1985 is hereby quashed.

(Petitions allowed)