
(2016) 07 AHC CK 0011
In the Allahabad High Court
Case No : Writ Petition No. 7134 (SS) of 2006

Naresh Chandra Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service (Rescission of Rules) Rules, 2003 — Rule 2
Uttar Pradesh Absorption of Retrenched

Citation : (2016) 5 AILLJ 372 : (2017) 153 FLR 112 : (2016) 4 LLN 90

Hon'ble Judges : Dr. Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : Pankaj Kumar Pandey, Learned Counsel, for the Appellant; Prashant Jaiswal, Learned Additional Chief Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Devendra Kumar Arora, J.— Heard Mr. Pankaj Kumar Pandey, learned Counsel for petitioners and Mr. Prashant Jaiswal, learned Additional Chief Standing Counsel for the State.

2. Petitioners of Writ Petition No.7134 (SS) of 2006 have prayed for a writ of certiorari quashing the impugned order No.2790/33-3-2006-9 Writ/2006 dated 14.12.2006 passed by Secretary, Panchayati Raj Department Government of U.P., Civil Secretariat, Lucknow (opposite party no.2). Petitioners have inter alia prayed for a direction to opposite parties to absorb the petitioners either in the services of State Government or Public Sector Corporation/ Undertaking on a suitable post commensurate to the post from which they have been retrenched.

3. In sum and substance similar prayers have also been made by petitioners in connected Writ Petition No.3007 (SS) of 2000, Writ Petition No.2851 (SS) of 2004 and Writ Petition No.9373 (SS) of 2006.

4. Since in all the writ petitions common question of facts and law is involved, therefore, all the writ petitions have been clubbed together and are being disposed of by a common order.

5. According to petitioners, they were initially appointed on different posts, namely, Assistant, Senior Assistant, Machineman, Helper and Peon in the department of Uttar Pradesh Panchayat Raj, Finance and Development Corporation Limited (in short "Corporation") and were granted selection grade and time scale after completion of 10 and 14 years of satisfactory service on their respective posts.

6. It is said that on 28.10.1999, the State Government issued a Government Order for winding up the Corporation without formulating any policy for absorption.

7. While entertaining Writ Petition No.3007 (SS) of 2000, this Court vide order dated 25.05.2000 directed State of U.P. through Chief Secretary, Lucknow (opposite party no.1) and Secretary, Panchayat Raj, Lucknow (opposite party no.2) to consider the case of petitioners for absorption in any department of the Government or Public Corporation. Consequently, some of the petitioners, namely, Suresh Chandra, Trilok Singh and Keshar Singh were absorbed on the posts of Clerk, Peon and Driver respectively in different departments of State Government excluding other petitioners.

8. Petitioner no.5-Shiv Prakash Sharma of Writ Petition No.2851 (SS) of 2004 was also absorbed on the post of Clerk in Swatantrata Sangram Senani Sewa Sadan, Mathura on 02.09.2004. After absorption, Shiv Prakash Sharma moved C.M. Application No.30640 of 2004 with a prayer to dismiss the writ petition on his behalf and this Court vide order dated 01.10.2004 allowed the application and dismissed the writ petition as withdrawn in respect of petitioner no.5.

9. In the year 2004 and 2005, opposite party no.3-Managing Director of the Corporation issued Certificates of Retrenchment to all the petitioners of Writ Petition No.7134 (SS) of 2006. Thereafter, petitioners had preferred several representations for their absorption but till date no action has been taken. During the pendency of the writ petitions, vide order dated 25.09.2006, this Court directed the Secretary, Panchayati Raj Department, Lucknow (opposite party no.2) to consider the claim of petitioners and pass a reasoned speaking order. Thereafter opposite party no.2, in pursuance of order dated 25.09.2006, after due consideration rejected the claim of petitioners, vide order dated 14.12.2006, which has been challenged in the said writ petition through amendment.

10. Learned Counsel for petitioners has contended that while winding up the Corporation, the State Government did not framed any policy for absorption of the employees of the said Corporation whereas in other cases such steps were always taken. In order to substantiate his submissions, learned counsel for petitioners submitted that at the time of winding up Auto Tractors Limited, a Government Order dated 11.11.1993 was issued for absorption of the employees

of the Auto Tractor Limited under the provisions of Uttar Pradesh Public Corporation Retrenched Employees Absorption Rules, 1991. Subsequently, another Government Order dated 30.12.1999 was issued for absorption of retrenched employee of U.P. Rajya Mineral Development Corporation Limited.

11. It has further been contended by the learned Counsel for petitioners that as per Rule 2(c) of the Uttar Pradesh Absorption of Retrenched Employee of the Government or Public Corporation in Government Service Rules, 1991 (hereinafter referred to as "Absorption Rules, 1991"), petitioners are entitled for absorption as they were working on their respective post till winding up the Corporation.

12. Learned Counsel for petitioners has also contended that since the Corporation was winded up w.e.f. 31.12.1999 vide Government order dated 28.10.1999, they fall within the definition of retrenched employee as the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Sector Corporation in Government Service (Rescission) Rules, 2003 (in short "Rescission Rules, 2003") came into force on 08.04.2003 but opposite parties have not considered claim of petitioners despite the order passed by this Court on 25.05.2000 in Writ Petition No.3007 (SS) of 2000 for considering the cases of petitioners for absorption in any department of the Government or Public Corporation. Petitioners also prayed for quashing the order dated 14.12.2006 passed by opposite party no.2 in pursuance of the order of this Court dated 25.09.2006 passed in Writ Petition No.7134 (SS) of 2006.

13. Learned Counsel for petitioners in support of his submissions has placed reliance on the judgment passed in Civil Misc. Writ Petition No.36644 of 2003 (Shailendra Kumar Pandey and others v. State of U.P. and another), in which, it has been held that since, the Company was winded up on 08.12.1999, employees working on or before the date of order for winding up would come within the definition of a retrenched employee as defined under the Absorption Rules, 1991 and mere fact that the said rules has been rescinded in 2003 would not make a difference since the rights of the petitioners had already fructified prior to the recession of the Rules. Learned counsel for petitioners also placed reliance on the judgment passed in Writ Petition No.36007 of 2004 (Vinod Kumar Kushwaha and another v. State of U.P. and others), in which, the same view has been taken while directing the State Government to absorb petitioners in some department of the State Government in terms of the Absorption Rules of 1991.

14. Learned counsel for petitioners has contended that petitioners should be treated as retrenched employee because the decision for winding up the Corporation was taken on 28.10.1999, which is prior to the coming of Rescission Rules, 2003, therefore, denial of their absorption in services is wholly unjustified and unreasonable.

15. On the other hand, learned Standing Counsel, while opposing the writ petitions, has contended that after overall appraisal of the affairs and financial

status of the Corporation, the State Government, vide Government Order dated 28.10.1999, took a decision to wind up the Corporation in phased manner by 31.12.1999. Accordingly, the Chairman and the Managing Director of the Corporation were directed to take steps for the said purpose. He further contended that in pursuance to the direction of the State Government dated 28.10.1999, the Board of Director of the Corporation in its meeting dated 24.10.2001 adopted the decision of the State Government dated 28.10.1999 and subsequently, in the Special General Meeting of the shareholders of the Corporation dated 05.12.2001, the decision of the Board of Director regarding winding up the Corporation was approved with the decision to send a proposal for absorption of the employees of the Corporation. Thereafter proceedings for winding up of the Corporation were processed and vide Government Order dated 19.05.2003, the Corporation was winded up and direction for retrenchment of 36 employees working in the Corporation, as per law, was issued. In pursuance thereof, the services of all the employees of the Corporation were retrenched and dues admissible to them were paid on 31.03.2004.

16. Learned Standing Counsel has further contended that till final winding up the Corporation, petitioner Suresh Singh and petitioner Naresh Chandra Yadav were retained in the Corporation for the purposes of finalisation of accounts, disposal of records and assets but on account of non-finalization of the works, letter dated 30.09.2004 was sent for extension of their period for six months. In the meantime, both the petitioners Suresh Singh and Naresh Chandra Yadav moved representation for their absorption which was rejected vide order dated 20.06.2012. Learned Standing Counsel has further stated that so far as the absorption of Suresh Chandra, Triloki Singh, Brij Bhan Singh and Keshav Singh is concerned, they were absorbed in services of the different departments prior to coming into force of the Recession Rules, 2003. Thus, the claim of petitioners for seeking parity with the said persons is not tenable. As per Section 3(2)(a) of the Recession Rules, 2003, the retrenched employee, who are covered by the Absorption Rules, having not been absorbed till 08.04.2003 shall be entitled to get relaxation in upper age limit for direct recruitment under Group "C" and Group "D" posts, which are outside the preview of U.P. Public Services Commission to the extent that they have rendered continuous service in substantive capacity in the concerned Government Department or the Public Corporation. Therefore, the order dated 14.12.2006 is perfectly justified and the claim of petitioners has rightly been rejected.

17. I have examined the submissions of learned counsel for the parties and gone through the record including the impugned order dated 14.12.2006 issued in pursuance of the order dated 25.09.2006 passed in Writ Petition No.7134 (SS) of 2006.

18. Submissions of learned counsel for petitioners are that since, the decision was taken by the State Government to wind up the Corporation by 31.12.1999, all petitioners fall within the category of retrenched employee as at the relevant

time the Absorption Rules, 1991 were in existence, therefore, they have been discriminated in the matter of absorption.

19. In contrast, the stand of opposite parties is that the Corporation was finally wound up vide Government Order dated 19.05.2003 and directions for retrenchment of existing 36 employees working in the Corporation were issued and their services were retrenched accordingly, in accordance with law, and all of them have also been issued retrenchment certificate in the years 2004 and 2005. Further submission is that prior to the winding up the Corporation, the Recession Rules, 2003 were promulgated rescinding Absorption Rules, 1991.

20. Thus the main question which is to be examined by this Court is "as to whether the petitioners are entitled for absorption in pursuance to the Absorption Rules, 1991 or not?"

21. A perusal of the record reveals that the State Government on 28.10.1999 has taken a policy decision for winding up the Corporation after overall appraisal of the functioning and financial status of the Corporation in a phased manner by 31.12.1999 and the directions for the said purpose were issued to the Chairman and the Managing Director to proceed accordingly. In pursuance to the policy decision of the State Government, the Board of Directors in its meeting dated 24.10.2001 examined Agenda No.911, wherein, the Board of Directors considering the direction of the State Government dated 28.10.1999 and the letter dated 06.09.2001 of the Bureau of Public Enterprises took a decision that since the audit work of the Corporation from 1990-91 and 2000-01 have not been completed, therefore, the Corporation cannot be wound up. However, a decision was taken to stop the functions of the Corporation.

22. The decision of the Board of Directors dated 24.10.2001 was approved in the Special General Meeting of the shareholders on 05.12.2001 and a decision was also taken in the said meeting to send a proposal to the State Government for absorption of the existing employees of the Corporation.

23. The proceedings for winding up the Corporation were finally taken vide Government Order dated 19.05.2003 and the direction was issued for retrenchment of the employees working in the Corporation as per law and in pursuance of the same, the services of the employees of the Corporation were retrenched and the admissible dues were paid on 31.04.2004, whereas petitioners Suresh Singh and Naresh Chandra Yadav have not been retrenched for a period of six months i.e. 30.09.2004, till the final disposal of the records and assets of the Corporation.

24. It is relevant to point out that the State Authorities in compliance of order of this Court dated 25.09.2006 passed in Writ Petition No.7134 (SS) of 2006 examined the issues raised by petitioners in detail and while rejecting the claim of petitioners, vide order dated 14.12.2006 observed that there were 48 employees working in the Corporation before passing of the order for winding up the Corporation dated 19.05.2003, 12 employees left the Corporation and

remaining 36 employees were retrenched on 31.03.2004 after winding up the Corporation on 19.05.2003 in accordance with the provisions of the Industrial Disputes Act, 1947. It has also been indicated in the said order dated 14.12.2006 that before winding up the Corporation, five employees, namely, Ram Sanehi Prasad, Sudhir Mohan Tandon, B.P. Saxena, Virendra Pratap Singh and Shardadin Singh, took voluntary retirement from the services, two employees, namely, Jagdeo Bharti and Nirajan Singh were terminated on account of committing various irregularities and three employees, namely, Triloki Singh, Suresh Chandra and Hiralal Pal, who were engaged on deputation in the U.P. Election Commission, were absorbed later on. The other two employees, namely, Brij Bhawan Singh and Kesar Singh were retrenched on 30.05.2000 and took employment under Milk Commissioner in the month of July and August, 2000 and remaining 36 employees were retrenched on 31.03.2004 including the petitioners.

25. Admittedly, the Recession Rules, 2003 were notified on 08.04.2003 and 36 employees of the Corporation including petitioners were retrenched subsequently vide order dated 31.03.2004, therefore, on examining the issue on its entirety, this Court finds that 36 employees of the Corporation including petitioners were retrenched on 31.04.2004 after the promulgation of the Recession Rules, 2003 and, therefore, they are not entitled for absorption under the Absorption Rules, 1991. The judgment relied upon by petitioners does not apply to the facts of the present case because petitioners were retrenched in the year 2004 and before their retrenchment, the Absorption Rules, 1991 were already rescinded, vide Notification dated 08.04.2003.

26. In view of above, the assertion of petitioners that they have been discriminated in the matter of absorption and other similarly situated persons have been absorbed is wholly misconceived. The persons, who were absorbed in the State Election Commission and in the office of Milk Commissioner, were absorbed prior to enactment of the Recession Rules, 2003. It may be added that Suresh Chandra and Triloki Singh had gone on deputation on 18.01.2000 where they were absorbed on 26.06.2001 and 19.07.2001. As a matter of fact, services of these persons were merged in the State Election Commission and they were not absorbed as a retrenched employee. Similarly, Brij Bhawan Singh and Kesar Singh were retrenched on 30.05.2000 i.e. prior to 08.04.2003 when the Recession Rules, 2003 came into force. Therefore, I am of the view that petitioners have not been discriminated as alleged by them.

27. For the reasons aforesaid, the writ petitions lack merit and are accordingly dismissed. Costs easy.