
(2017) 04 AHC CK 0068

In the Allahabad High Court

Case No : Special Appeal Defective No. 369 of 2016

Paras Nath Bharti

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 04-04-2017

Acts Referred:

Citation : (2017) 5 ADJ 452

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : Yogendra Mishra and Pankaj Kumar Pandey, Advocates, for the Appellants; C.S.C, for the Respondents

Final Decision : Allowed

Judgement

1. Heard Sri Yogendra Mishra, learned counsel for the appellants and Sri Rajawat, learned counsel for the respondents State.

2. This appeal questions the correctness of the judgment of the learned Single Judge dated 04.07.2016 whereby writ petitions filed by the appellants have been dismissed denying the benefit of absorption to the appellants on the ground that no such benefit can be claimed by the appellant on account of the promulgation of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service Rules, 1991 having been rescinded in the year 2003 namely, the Recession Rules, 2003. Learned standing counsel also informs that the said rules were later on followed by an Act namely the 2009 Recession Act.

Learned counsel for the appellants has adopted a two fold line of argument, firstly, that the promulgation of 2003 Rules, does not in any way take away the rights of the appellants that had already accrued to them prior to the coming into force of any such Rules rescinding the benefits of absorptions and secondly, the respondent State had extended the benefit of appointment on absorption to one Shiv Prakash Sharma who was similarly situated but had denied the benefit to

the appellants thereby violating Article 14 of the Constitution.

3. This Court had entertained the appeal and the following order was passed on 07.09.2016 calling upon the respondents State to file an appropriate affidavit particularly with regard to the determination of issue raised on behalf of the appellants vis-a-vis that of absorption of Shiv Prakash Sharma:-

"Heard learned counsel for the appellants.

Learned Single Judge has dismissed the writ petition and has denied the claim of absorption to the petitioner as a retrenched employee. The petitioner had claimed parity with one Shiv Prakash Sharma about whom reference has been made by the learned Single Judge in paragraph 8 of the judgment. This aspect was clearly stated in paragraph-7 of the writ petition filed before the learned Single Judge.

A supplementary affidavit has been filed today bringing on record a copy of the counter affidavit filed on behalf of the State and the same does not give any reply denying the status of Shiv Prakash Sharma. The question is as to whether the petitioner is entitled to the same benefits as Shiv Prakash Sharma or not apart from the other issues raised.

We have also perused the order dated 14th December, 2006 where the case of Shiv Prakash Sharma was considered by the government and while dealing with the same in paragraph 12(V), it has been stated that since the case of Shiv Prakash Sharma was considered on account of his personal effort, therefore, no parity can be claimed by the appellant, as Sri Sharma was given the benefit of absorption on a different footing.

Learned Standing Counsel submits that the same cannot be a reasoning for granting equality in terms of Article 14 of the Constitution of India.

Prima facie, we do not find any denial of the stand taken by the petitioner in paragraph 7 of the writ petition and in the absence of any denial the respondents are under an obligation to file an affidavit explaining as to why the petitioner should not be extended the same benefit as Shiv Prakash Sharma.

Let the respondents file an affidavit to that effect specifically answering the same within three weeks. List thereafter."

4. The State has filed an affidavit through Sri Mahendra Kumar, Special Secretary, Department of Panchayati Raj, Government of U.P. In paragraph-5 the deponent of the counter affidavit taking a stand on behalf of the State has indicated that Sri Shiv Prakash Sharma was appointed in the Swatantrata Sangram Senani Kalyan Parishad which is an autonomous body under the administrative control of the Department of Home and an employment therein will not amount to employing a public servant. It has also been stated that Shiv Prakash Sharma was not appointed by the State Government or by its Department and was engaged by the Swatantrata Sangram Senani Kalyan

Parishad. Hence it cannot be said that he had been absorbed by a Government Department as a public servant. For this reliance has been placed on the letter of absorption of Shiv Prakash Sharma dated 02.09.2004 and the Office Memorandum dated 12.02.1973 constituting the Senani Kalyan Parishad. Learned counsel for the appellant submits that in so far as the said issue is concerned, the same stands suitably explained that the absorption was a benefit extended to Shiv Prakash Sharma on his having been retrenched on account of the winding up of the Uttar Pradesh Panchayati Raj Finance and Development Corporation Limited.

5. Learned counsel for the appellants has invited the attention of the Court to the judgment of a learned Single Judge in the case of Vinod Kumar Kushwaha and another. v. State of U.P. and others (Writ Petition No.36007 of 2004) which in turn relies in the judgment in the case of Shailendra Kumar and others. v. State of U.P. and others, decided on 06.01.2004 to contend that after the coming into force of the Recession Rules 2003 prior to the retrenchment of the appellants would not make a difference since the right of the appellants had already accrued and fructified prior to the Recession Rules. It is urged that the said judgment was subjected to an appeal before the Apex Court and Special Leave Petition was dismissed which fact has been stated in para-9 of the affidavit in support of the application for interim relief in the appeal. He submits that in view what has been stated above, the judgment of the learned Single Judge cannot be sustained as it completely overlooks to appreciate the aforesaid two aspects which clearly entitle the appellants to the benefits of absorption.

Replying to the aforesaid submissions, Sri Rajawat, learned standing counsel for the State submits that the appellants are not entitled to any benefit of absorption as they were retrenched on 31.04.2004 after coming into force of the 2003 Recession Rules and therefore any such benefit claimed by the appellants would not be admissible. He further submits that so far as the decision in the case of Vinod Kumar Kushwaha as well as other judgments (supra) are concerned the benefit would not be available to the appellants who have raised their dispute and were retrenched after the coming into force of the Recession Rules.

6. Replying to the aforesaid submissions in rejoinder Sri Mishra has invited attention of the Court to the fact that while entertaining Writ Petition No.3007 (S/S) of 2000 which was also disposed of simultaneously, this Court vide order dated 25.05.2000 had directed the State of U.P. through the Chief Secretary and Secretary Panchayati Raj to consider the case of the appellants for absorption in any department and as a consequence whereof some of them had actually been absorbed against Class-III and Class-IV posts in different departments of the State Government. Thus, discrimination was practised at that stage whereby some of them have been absorbed whereas the appellants have been left out. This violates Articles 14 and 16 of the Constitution of India.

7. We have considered the submissions raised and what we find is that this litigation is an outcome of the Government order dated 28.10.1999 under which

the Corporation where the appellants were working came to be wound up without formulating any policy for absorption. It is at that stage that one of the connected writ petitions namely, Writ Petition No.3007 (S/S) of 2000 was filed and an order was passed on 25.05.2000 directing the State Government to consider the case of the appellants for absorption. Thus the process of absorption had already been initiated much before coming into force of the 2003 Recession Rules for consideration of the claim of absorption of such employees of the Corporation who were facing retrenchment on the winding up of the Corporation in the year 1999.

8. Other writ petitions followed thereafter and all the said writ petitions were connected together in which affidavits were filed and an additional ground was raised by the appellants about the absorption of Shiv Prakash Sharma who was also one of the petitioners in the other connected writ petition namely, Writ Petition No.2851 (S/S) of 2004. Shiv Prakash Sharma withdrew his writ petition and after withdrawal it appears that his claim of absorption was considered and he was issued an order of absorption absorbing him in the Senani Kanyan Parishad vide order dated 02.09.2004 which fact is now admitted in the counter affidavit.

9. However this fact is sought to be distinguished by the respondents on the ground that it was an appointment in an autonomous body and therefore it will not amount to any regular recruitment as understood under the absorption Rules. We are unable to accept this stand in the counter affidavit inasmuch as, the very letter of appointment of Shiv Prakash Sharma itself refers to Senani Kalyan Parishad to be governed by the Government order dated 23.12.2001 and absorption has been acknowledged on account of Shiv Prakash Sharma being a retrenched employee. Thus, there is no doubt that the absorption of Shiv Prakash Sharma was clearly on account of his retrenchment after he had withdrawn his writ petition. So far as the status of the Senani Kalyan Parishad is concerned a reference to the Office Memorandum dated 12.02.1073 issued by the Government of Uttar Pradesh would clarify the position. In clause 4 of the said Memorandum it has been categorically stated that the Senani Kalyan Parishad shall be a Government institution. In our considered opinion the said organization therefore being a Government institution as described in the Office Memorandum itself negates the arguments advanced on behalf of the respondents that it was governed as a separate entity and autonomous body and not a Government department. The absorption of Shiv Prakash Sharma was in a Government institution as such no distinction can be drawn on that count in so far as the case of the appellants on parity for absorption is concerned.

10. Coming to the question of applicability of the 2003 Recession Rules, suffice it to mention that the issue of absorption had already been raised immediately upon the Corporation being wound up in the year 1999. Thus the status of retrenchment was already being faced by the appellants and they had already raised their claims much prior to the enforcement of the Recession Rules, 2003.

The said fact is also fortified by the fact that the interim order was issued on 25.05.2000 directing the State Government to consider the same. Consequently, the entire exercise had already commenced and the State Government having failed to take a decision, the rights of the appellants had already crystallized the adjudication whereof has now been made under the impugned judgment. In such a situation, the conclusion drawn by the learned Single Judge that since the employees have been retrenched after the Recession Rules, 2003, nowhere affects the rights of the appellants whereas in fact the appellants were already facing retrenchment and they were entitled for consideration of their rights accrued earlier as already pointed out in the judgment of Vinod Kumar Kushwaha and other judgments in the connected writ petitions (supra).

11. Learned standing counsel for the State also informs the Court that the aforesaid status of retrenchment and its effect has been discussed in a later decision of this Court of a Division Bench after considering the impact of the earlier judgment in this regard and in this view of the matter also the appellants would not be entitled to any such benefits. We are unable to agree with the aforesaid sub mission inasmuch as in the instant case as noted above, the status of the appellants as retrenched employees existed at the time of winding up of the Corporation in the year 1999, and they had already approached this Court filing the writ petition including the writ petition filed in the year 2000 in which an interim direction was issued for consideration of their case by framing a policy for such absorption.

12. It has also been pointed out by the learned counsel that the representation in relation to absorption had been considered by the State Government and an order was passed on 14.12.2006 by the Secretary Panchayati Raj rejecting the claim of absorption. In view of what has been concluded herein above we find that the said order also cannot be sustained.

13. The appeal is therefore allowed. The order of the State Government dated 14.12.2006 is quashed and the judgment of the learned Single Judge dated 04.07.2016 is set aside. The respondents are directed to consider the claim of the appellants for absorption in accordance with law and pass appropriate orders in that regard within a period of three months from the date of receipt of a certified copy of this judgment.