
(2009) 01 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Application .No. 2846 of 2009, Writ petition No. 62 (S/B) of 2009

Prabhu Narain Srivastava and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Citation : (2009) 01 AHC CK 0095

Hon'ble Judges : A.N.Varma, J and Ved Pal, J

Final Decision : Disposed Of

Judgement

Vedpal, J.

Notice on behalf of opposite party no. 1 has been accepted by the learned Chief Standing Counsel, while notice on behalf of opposite party no. 2 has been accepted by Shri Sandeep Dixit.

Issue notices to opposite parties no. 3 to 6.

In addition to regular mode of service, the petitioners may also serve the opposite parties no. 3 to 6 personally, outside Court for which the office is directed to issue Dasti summons to them.

On the date fixed, the petitioners shall file an affidavit indicating therein that opposite parties no. 3 to 6 have been duly served.

Let counter affidavit be filed within a period of three weeks. Rejoinder affidavit, if any, may be filed within a week.

List thereafter on 20.2.2009.

When the case is next listed, name of Shri Sandeep Dixit shall be shown as counsel for the opposite parties.

We have heard Shri S.K.Kalia, learned Senior Advocate, assisted by Shri Rajan Roy, learned counsel for the petitioners in Writ Petition no. 62 (S/B) of 2009 and

Shri Prashant Chandra, Senior Advocate, assisted by Shri Sudeep Seth, learned counsel for the petitioners in Writ Petition no. 63 (S/B) of 2009 and Shri R.N.Trivedi, learned Senior Advocate, on behalf of the State.

The petitioners, by means of this petition have assailed the action of the State Government, whereby the U.P. Power Corporation Ltd. an Autonomous Government Corporation has been asked to modify the seniority list of its employee in accordance with the U.P. Government Servants Seniority Rules 1991 as amended by U.P. Government Servants Seniority (Third Amendment) Rules 2007, as also the Government Order dated 17.10.2007. The resolution dated 25.3.2008 passed by U.P.P.C.L. to adopt the notification of the state government dated 14.9.2007, by which Rule 8A has been incorporated in the U.P. Government Servants Seniority Rules, 1991 retrospectively with effect from 17.6.1995 is also subject matter of challenge in the petition. In addition thereto, the seniority list dated 16.12.2008 issued by opposite party no. 2 at the behest of opposite party no. 1 to implement Rule 8A of the Seniority Regulations, 2008 has also been impugned.

According to learned counsel for the petitioners, the U.P.P.C.L. has not formulated any service regulations of its own but has adopted the same, framed by the erstwhile Board vide office memorandum dated 3.2.2000, as such, terms and conditions of the service of the petitioners are governed by the Regulations known as the U.P. State Electricity Board Services of Engineers Regulation, 1970. As per the said Regulations, the seniority of the officers is to be determined in the feeding cadre. U.P. Power Corporation which is an autonomous body has been directed to enact rules in accordance with the Government Order dated 17.10.2007. Learned counsel argued that the State Government has no authority to direct the U.P.P.C.L. to incorporate rule 8A in its Regulations as it is an autonomous body and the matter pertaining to terms and conditions of service do not fall within the ambit of policy matter. It was further argued that while deciding to introduce Rule 8A in the seniority Regulations, backwardness of class, adequacy of representation of that class and efficiency of service, as such, has first to be gone into which exercise has not been completed and mechanically the rule has been directed to be inserted.

According to learned counsel, no quantifiable data has been indicated and unless the same exists, the rule can not be enforced. According to him, extending consequential seniority under Rule 8A to the SC/ST candidates based on reservation is manifestly illegal and erroneous. It was further asserted that grant of retrospective promotion to Scheduled Castes and Scheduled Tribes candidates against general category post and also revision of pay and pension on the basis of revised seniority based on Rule 8A is absolutely illegal and arbitrary and unconstitutional. It was further argued that Scheduled Castes and Scheduled Tribes quota on all the posts in U.P.P.C.L. are more than full and SC/ST candidates in excess of prescribed quota are working on various posts. In this connection, he drew the attention of this court towards Chart prepared by

opposite party no. 2 as referred to in Annexure no. 27.

The learned counsel placed reliance upon decision rendered by Hon"ble the Apex Court in M.Nagaraj case reported in (2006) 8 Supreme Court Cases 212, M. Nagaraj and others Vs. Union of India and others. On the strength of the said judgment, it was asserted that before introducing Rule 8A, the State has to form its opinion on the basis of quantifiable data regarding adequacy of representation. If backwardness and inadequacy of representation do not exist, then the enabling provision can not come into force. The State can make provision for reservation only if the aforesaid two circumstances exist. Thus, all the factors laid down by the Apex Court in the said decision has to be kept in mind by the appropriate government while providing reservation in promotion to Scheduled Castes and Scheduled Tribes. As per the learned counsel, since the SC/ST quota in the department is full on all the post, therefore, unless the quantifiable data is determined and element of backwardness and inadequacy of representation in the department is shown, Rule 8A can not be inserted.

Shri Prashant Chandra, in Writ Petition no. 63(S/B) of 2009 submitted that the notification by which Rule 8A has been introduced is without jurisdiction. According to him, U.P.P.C.L. being an autonomous body, the State Government can not direct it to enforce Rule 8A by incorporating the same in seniority regulations 1998. According to him, a statute can not be enforced prior to the framing of enforcement of parent statute. He also submitted that even otherwise, Rule 8A can not be enforced unless backwardness of class and inadequacy of representation as also overall administrative efficiency are demonstrated by the State. Learned counsel also invited attention of this court towards annexure no. 37, an order passed by the Hon"ble Apex Court in A.K.Ganguly and others Vs. Union of India and others, wherein a stay order operates.

Shri R.N.Trivedi, in opposition submitted that interim order passed in A.K.Ganguly's case has merged with the final order passed in M.Nagaraj case, as such, the petitioners can not derive any benefit from the interim order passed in the said Case. He further asserted that Rule 8A was incorporated after about a year from the date of decision rendered in M.Nagaraj case, as such, no case for interim relief is made out. According to him, U.P. Power Corporation had statutory authority to frame Regulations under Section 185 of The Electricity Act, 2003 which repealed the Indian Electricity Act, 1910. therefore, existing terms and conditions apply and, as such, the opposite parties had statutory power. According to him, at the time of bifurcation and formation of corporation large number of persons opted for service in corporation, therefore, the quota marginally increased which in no eventuality can be termed as quota being full. He further argued that validity of Rule 8A can not be challenged, as such, there is no case for an interim order.

The proposition laid down in M.Nagaraj is that in every case where the State decides to provide for reservation, there must exist two circumstances namely "backwardness" and "inadequacy of representation". If the State has

quantifiable data to show backwardness and inadequacy, then only can it make reservation in promotion keeping in mind maintenance of efficiency which is held to be a constitutional limitation on the discretion of the State in making reservation as indicated in Article 335 of the Constitution of India. However, if the State fails to identify and implement the controlling factors, then excessiveness comes in. Before implementation of Rule 8A, the concerned State will have to demonstrate in each case the existence of compelling reasons, namely backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. Unless the conditions laid down in M. Nagaraj case are satisfied, enabling provision can not be enforced. The State has not been able to demonstrate any of the requirements as laid down by the Apex Court in the aforesaid decision relied upon by the petitioners. Upon considering the rival contentions raised by the parties as also the proposition laid down in M.Nagaraj Case, we thus are, prima facie, satisfied that a case for interim relief is made out.

We, therefore, provide that till the next date of listing, the opposite parties shall not finalize the list (Annexure no. 6) and till then no promotion shall be made on the basis of seniority list dated 16.12.2008.