

(2010) 11 AHC CK 0246
In the Allahabad High Court
Case No : Service Bench No. 1658 of 2010

Raj Kamal Gupta and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-11-2010

Acts Referred:

Administrative Service (Appointment by Promotion) Regulations, 1955 — Regulation 5(3)

Constitution of India, 1950 — Article 141, 309, 312

Citation : (2010) 11 AHC CK 0246

Hon'ble Judges : Vedpal, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Sri I.B. Singh, assisted by Shri Abdul Moin for the petitioners and Shri Upendra Nath Misra, Shri Asit Kumar Chaturvedi and Shri I.H. Farooqi, learned Assistant Solicitor General of India on behalf of the respondents and perused the record.

2. Learned Counsel for the parties agree that there is no factual dispute , therefore, the petition may be disposed of finally at the admission stage. Accordingly we proceed to decide the writ petition at the admission stage.

3. Selection for the posts of I.A.S. cadre is likely to be held in this month preferably on 8.11.2010. Regulation 5 (3) of the Indian Administrative Services (Appointment by Promotion) Regulation, 1955 (hereinafter referred to as the "Regulations") provides the maximum age limit of 54 years for the members of the State Civil Services for their promotion to the I.A.S. cadre. The provision contained in Regulation 5(3) of the Regulations has been impugned. Before the Tribunal, an application for interim relief was filed which was rejected by the impugned order hence petitioners have preferred the present writ petition.

4. Admittedly, the impugned Regulation has been held to be ultra vires and

quashed by the Central Administrative Tribunal, Bangalore Bench by judgment and order dated 30.11.2009, passed in Original Application Nos. 262 of 2007, 416 of 2007, 447 of 2007 and 88 of 2008. However, the judgment and order dated 30.11.2009 has been stayed by the Karnataka High Court in Smt. Savitri MV v. Union of India and Ors.: Writ Petition No. 391137 of 2009 Karnataka High Court had stayed the Tribunal's judgment(supra) by interim order dated 11.2.2010. Feeling aggrieved, some of the petitioners before the Tribunal along with others had filed SLP before the Hon''ble Supreme Court wherein Hon''ble Supreme Court had passed the following interim order:

Interim direction to Union Public Service Commission that while considering the list of eligible candidates forwarded by the State Government, the names of petitioners shall also be considered. But in so far as the petitioners are concerned, the sealed cover procedure shall be adopted. It is made clear adoption of sealed cover procedure in the case of petitioners shall not come in the way of any person from the list sent by the State Government being selected or appointed.

As the High Court in its impugned order has stated that the writ petition will be listed in the second week of March, we request the High Court to expedite the hearing.

5. Petitioners have claimed parity with the interim order passed by the Hon''ble Supreme Court in pending SLP while pressing their application for interim relief before the Tribunal.

6. The Tribunal rejected the application for interim on the ground that Regulation 5(3) of the Regulations has statutory force and unless it is declared ultra vires and quashed, no interim order can be passed, contrary to the statutory provision. Tribunal further observed that these Regulations have been framed under Article 309 of the Constitution of India and unless the matter is decided by the Karnataka High Court finally, there is no justification to pass an interim order against the statutory provision. With regard to the interim order passed by Hon''ble Supreme Court, the Tribunal observed that it is not a final order, hence lacks binding effect.

7. While assailing the impugned order, it has been submitted by the learned Counsel for the petitioners that the petitioners are entitled for parity with interim order passed by Hon''ble Supreme Court which was passed after interim order passed by Karnataka High Court.

8. Submission is that the interim order passed by Hon''ble Supreme Court should have been followed by Tribunal while deciding the application for interim relief. On the other hand, Shri Upendra Nath Mishra as well as Asit Kumar Chaturvedi defended the impugned order, passed by the Tribunal on the ground that Regulation has got statutory force as such no interim order could have been passed by the Tribunal, hence application has been rightly rejected.

9. However, Shri I.H. Farooqui, learned Assistant Solicitor General of India opined that the order of the Hon''ble Supreme Court should be given effect to extending parity .

10. We have considered the arguments advanced by the learned Counsel for the parties.

11. The question cropped up before this Court is whether parity should be given to petitioners with regard to the interim order passed by the Hon''ble Supreme Court.

12. It is undisputed fact on record that their Lordships of Hon''ble Supreme Court have passed the interim order (supra) in the pending SLP whereby the interim order passed by the Karnataka High Court has been impugned, meaning thereby the interim order passed by the Karnataka High Court stands modified by the order of the Hon''ble Supreme Court. The interim order of the Karnataka High Court has lost its independent existence and shall be deemed to be modified to the extent the order passed by the Hon''ble Supreme Court. Every order passed by their Lordships of Hon''ble Supreme Court whether it is interim order or final order is binding upon the Tribunal under Article 141 of the Constitution of India. The Tribunal failed to exercise its jurisdiction vested in it to the extent of interpretation of Article 141 of the Constitution of India. There are number of cases where their Lordships have held that the order passed by the Hon''ble Supreme is binding on all authorities including the Tribunal. On appropriate case obiter dicta shall also be binding. Regulation framed under Article 312 (not 309) of the Constitution does not come in the way to secure petitioners'' interest in view of the interim order, passed by Hon''ble Supreme Court.

13. We are of the view that the petitioners are entitled to get the benefit of the interim order of the Hon''ble Supreme Court. Order passed by the Karnataka High Court staying the judgment of Bangalore Bench of Central Administrative Tribunal stands modified modified and parity should be extended to the petitioners in terms of the order passed by the Apex Court.

14. There is one more other reason , the petitioners have crossed the age of 54 years. All the three conditions i.e. prima facie, balance of convenience and irreparable loss and injury favour the petitioners on the ground that at least once the Tribunal had struck down the impugned provision and Hon''ble Supreme Court has modified the interim order passed by the Karnataka High Court, the ingredient with regard to passing of the interim order is very well available, calling for interference by the Court/ Tribunal.

15. At this stage Shri Jaideep Narain Mathur, learned Additional Advocate General appeared and submitted that for how long the result shall be kept under the sealed cover?

16. We have been informed by Shri Asit Chaturvedi that the Karnataka High Court has reserved its judgment and it is likely to be pronounced at an early

date. Apart from the above fact, the SLP is pending before the Hon''ble Supreme Court. Accordingly, in case in terms of order of the Hon''ble Supreme Court, the sealed cover procedure is applied, it shall be subject to final outcome of the SLP in the Hon''ble Supreme Court or final adjudication of the controversy by the Central Administrative Tribunal at Lucknow Bench, whichever is earlier.

17. Subject to the aforesaid observations, we allow the writ petition to the extent of providing parity with the interim order, passed by the Hon''ble Supreme Court and direct the opposite parties that till final adjudication of the controversy in the manner given hereinabove, the benefit of order of Hon''ble Supreme Court, reproduced in the body of the present order, shall be extended to the petitioners of Original Application but it shall be subject to further order passed by the Hon''ble Supreme Court or final adjudication of controversy by the Central Administrative Tribunal, whichever is earlier.

18. We further direct the Central Administrative Tribunal, Lucknow to decide the Original Application expeditiously, preferably within a period of three months from the date of production of the certified copy of this order.

19. The impugned order, passed by the Central Administrative Tribunal, is quashed, subject to above direction.

20. No costs.

21. Let certified copy of this order be provided to the counsel for the parties within three days on payment of usual charges.