

(2000) 08 AHC CK 0114
In the Allahabad High Court
Case No : C.M.W.P. No. 31211 of 2000

Rajendra Prasad Tiwari and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Uttar Pradesh Fundamental Rules — Rule 56, 56A

Citation : (2000) 4 AWC 2833 : (2000) 87 FLR 276 : (2000) 3 UPLBEC 2683

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : P.N. Tripathi, for the Appellant; K.S. Kushwaha, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Heard Sri P. N. Tripathi for the petitioner and Sri K. S. Kushwaha, standing counsel representing the respondents.

2. The petitioners who are tube-well operators are sought to be retired at the age of 58 years. It has been submitted by the learned counsel that since the petitioners were appointed prior to November 5, 1985, they were/are entitled to continue upto the age of 60 years in view of the proviso to Fundamental Rule 56A Inasmuch as they were clearly classified to be Group "D" employees on the basis of office memorandum No. 15/140/81-Karmik-1 dated February 27. 1982 according to which non-gazetted employees the minimum of whose pay scale was less than Rs. 354 per month were classified to be Group "D" employees. In fact according to the G.O. dated 27.2.1982, such gazetted posts in the scale of which the maximum of pay was above Rs. 1.720 were classified as Group "A" ; gazetted posts in the scale the maximum of which did not exceed Rs. 1,720 were classified as Group "B" posts ; the non-gazetted posts in a scale of pay the minimum of which was Rs. 354 or more came in Group "C" and the rest In Group "D". It was on the basis of the G.O. dated 27.2.1982 as indicated in the Government order dated December 3. 1993 (Annexure-6 to the petition) that the

tube-well operators whose pay scale as on 27.2.1982 was Rs. 350-495 were classified as Group "D" employees.

3. Subsequently, however, upon regard being had to the revision of the scales of pay with effect from January. 1986, the "Samta Samiti" recommended for re-classification on the pattern of the classification made by the Central Government according to which the posts the maximum of whose scale of pay was Rs. 4,000 or more came in Group "A" ; the posts the maximum of whose scale of pay was Rs. 2,900 or more but less than Rs. 4,000 came in Group "B" ; the post of which the maximum of the scale was Rs. 1,150 or more but did not exceed Rs. 2,900 were placed in Group "C" and the rest in Group "D", i.e., the posts carrying the scale of pay the maximum of which did not exceed Rs. 1,150 were recommended to be classified as Group "D" posts. The Government accepted the recommendation vide G.O. No. Ve. Aa.-I-1739/10-89-41 (M) /89 Vitta (Vetan Ayog) Anubhag-1, Lucknow, dated 19th May, 1989. subject to the postulates referred to therein produced for the perusal of the Court by Sri K. S. Kushwaha. learned counsel, whose assistance to the Court is indeed commendable. In paragraph 4 of the supplementary affidavit dated February 22, 1990. It has been stated that the petitioners were getting their salary in the pay scale of Rs. 950-1,500. The maximum of the pay in the scale of tube-well operators thus, admittedly was Rs. 1,500. i.e., above Rs. 1,150 and consequently, the post of the tube-well operator falls in Group "C" and it has ceased to be Group "D" post. It was certainly to be reckoned with as Group "D" post upto January, 1986, but in view of the Explanation dovetailed to the proviso to Fundamental Rule 56 (a), the petitioners cannot draw mileage out of the proviso to the said rule in view of the subsequent change of classification.

4. The learned counsel for the petitioner placed reliance on a decision of this Court in *Ram Tej Pathak v. State of U. P.* (1994) 1 UPLBEC 593, and the judgment dated 26.7.1999 in Writ Petition No. 7353 of 1999 (LB), *Raj Koran Yadav v. State of U. P. and others*. These two decisions, in my opinion, are per incuriam in view of the fact that the Samta Samiti report and Government order reclassifying the posts have not been taken into reckoning. The Government order dated August 31. 1989. read with the Explanation to Fundamental Rule 56 (a), leaves no manner of doubt that the tube-well operators now come in the category of Group "C" posts and, therefore, the petitioners are rightly sought to be retired at the age of 58 years.

5. The learned counsel for the petitioner then switched gear to the submission that the petitioners have not been retired on the basis of the Government order dated August 31. 1989 but on the basis of Judgment of the Services Tribunal in Claim Petition No. 1053 of 1985. Be that as it may, the legal position as explained above is that the age of retirement of tube-well operators is 58 years inasmuch as the post of tube-well operators now comes to fall in Group "C" and is no longer a Group "D" post with effect from January. 1986, by virtue of the report of the Samta Samiti which has been accepted by the Government re-

classifying the posts with retrospective effect.

6. In the result, the petition fails and is dismissed. Interim order operating in the case shall stand discharged.