

(2007) 01 AHC CK 0099

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 55114 of 2004

Rajendra Pratap Singh Yadav and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Uttar Pradesh Government Servants (Determination of Seniority) Rules, 1991 — Rule 3

Citation : (2007) 01 AHC CK 0099

Hon'ble Judges : Sushil Harkauli, J and Pankaj Mithal, J

Final Decision : Dismissed

Judgement

Sushil Harkauli, J.—On completion of the contracted period of service, the respondent No. 4 was demobilized from the Indian Army in the year 1986. He thereafter passed the Provincial Police Service Examination, 1990. He was appointed to the U.P. Police Service in the year 1994. By the impugned order dated 29112004 (Annexure 7 to the writ petition), he has been placed in the seniority list between 1982 and 1983 Batches on account of his being a demobilized officer from the Indian Army before joining the U.P. Police Service.

2. The petitioners joined the U.P. Police Service between 1984 and 1990. They are challenging the said back seniority given to the respondent No. 4. The benefit of back seniority has been given to respondent No. 4 under the U.P. Nontechnical (Class II/Group B) Services (Appointment of Demobilized Officers Rules, 1980, as amended in 1990. The said Rules of 1980 are hereinafter referred to, for short, as the 1980 Demobilization Rules. A copy of the 1980 Demobilization Rules has been enclosed as Annexure "1" to the writ petition and a copy of the 1990 "first amendment" to those Rules has been enclosed as Annexure "2" to the writ petition.

3. The first argument from the petitioners side is that respondent No. 4 should not be treated to be a "demobilized officer" within the meaning of 1980 Demobilization Rules. For appreciating this argument it would be necessary to consider the definition of "demobilized officer" given in Rule 3 (b) of the

Demobilization Rules, 1980. It is quoted below :

3. Definitions. In these Rules unless the context otherwise requires,

(a)

(b) "Demobilized Officer" means Disabled Defence Service Officer, Emergency Commissioned Officer and the Short Service Commissioned Officer of the Armed Forces of the Union who was commissioned on or after November 1, 1962 but before January 10, 1968 or on or after December 3, 1971 and released at any time thereafter.

(c)

4. The petitioners contend that respondent No. 4 joined the Indian Army in 1981 and was discharged from the Army in 1986 apparently as a Short Service Commissioned Officer. The petitioners rely upon a decision of the Supreme Court in the case of Ram Janam Singh v. State of U.P., (1994) 2 SCC 620, in support of the proposition that these Demobilization Rules were intended to benefit only those Army Officers who had joined the army during the period of war or external aggression for serving the country during the difficult times. The petitioners suggest that in the light of the above purpose, the definition of "demobilized officer" in Rule 3 (b) should be read down to curtail the period after December 3, 1971, to mean after 31.12.1971 but before a particular date when the 1971 emergency due to external aggression, was lifted.

5. We have examined the decision of Ram Janam Singh (supra). In that decision the Supreme Court was examining the exclusion of the period from 10.1.1968 to 3.12.1971 in Rule 3 (b) and in that context the Supreme Court justified the exclusion by saying that between January 10, 1968 and December 3, 1971 emergency had been lifted and there were normal times and, therefore, the officers, who had joined the Army during these normal times, could not be treated at par with those who had joined the Army during emergency and a special privilege of seniority granted to officers, who had joined the Army for serving the country during the difficult times, amounted to reasonable classification. Thus, the Supreme Court upheld the exclusion of the aforesaid period from 1968 to 1971.

6. However, we have not been shown any decision whereby the benefit of Demobilization Rules, 1980 have been denied to any person who, after being demobilized from Army, had joined the Civilian Government services after post December 3, 1971 emergency was lifted. Thus the petitioners' contention does not appear to be supported by precedent. So we now examine whether the contention is supported by logic.

7. It is quite possible that the Rule making Authority may have taken into account the vital importance and continuous demand for the defence of the country and consequent requirement of good Army Officer on a regular and continuous basis. And, therefore, to attract such talent, the Rule making

Authority may have extended the benefit of seniority to all those Army Officers who have joined the Army or who may join the Army in future at any time after December 3, 1971 without any limitation of time. It is also common knowledge that demobilization from the Army of Short Service Commissioned Officers, or even otherwise, takes place at a comparatively much earlier age than the normal Civil Services. With the handicap of such an early age of demobilization, if the Rule making Authority has felt that in order to attract and secure good officers for the defence of the country it is necessary to confer some extra benefit upon them after their demobilization, the classification cannot be said to be arbitrary or discriminatory.

8. In the circumstances, we do not consider it appropriate for this Court to legislate, by reading a cutoff date in Rule 3 (b) to curtail the period after 1971 up to any specified date, when the Rule making Authority under the proviso to Article 309 of the Constitution of India has not chosen, in its wisdom, to fix any such cutoff date. Moreover, the decision in the case of Ram Janam Singh (supra) is a decision of a Bench of two Hon"ble Judges of the Supreme Court and subsequent to that there is another decision by a Bench of the same strength in which one of the Hon"ble Judges (Hon"ble Mr. Justice K. Ramaswamy) was also a Member of the Bench which decided the case of Ram Janam Singh. This subsequent decision is in the case of Dilbag Singh v. State of U.P., (1995) 4 SCC 495. In this case of Dilbag Singh the appellant Dilbag Singh was commissioned in the Army on 2291974 and released in 1979 and the Supreme Court upheld the service benefits granted to the said appellant under the U.P. Nontechnical (Class II) Services (Reservation of Vacancies for Demobilized Officers) Rules, 1973, which were later replaced by the aforesaid Demobilized Rules, 1980. Again a Bench of three Hon"ble Judges of the Supreme Court, by judgment dated 2581998 passed in S.L.P. (Civil) Nos. 1231412315 of 1997, Shri Mahesh Chandra v. State of U.P., held that the judgment in Dilbag Singh was not per incuriam and did not require reconsideration.

9. In the light of the aforesaid two decisions of the Supreme Court in the case of Dilbag Singh (supra) and Mahesh Chandra (supra) also, we find it difficult to accept the proposition of the petitioners of restricting the post 1971 (December) period of Rule 3 (b) of the 1980 Demobilization Rules to the suggest period of one year, i.e., up to December, 1972 and to deny the benefit of 1980 Demobilization Rules to the person commissioned in the Army a December, 1972. Indeed such a proposition would run contrary to the decision of the three Judges Bench Supreme Court in the case of Dilbag Singh were such benefit has expressly been granted to Dilbag Singh, who was commissioned in the Army in 1974.

10. The second contention raised by the petitioners is that in the year 1991 the Governor of U.P. made the Rules known as the U.P. Government Servants Seniority Rules, 1991 under the proviso to Article 309 of the Constitution of India. Rule 3 of these Rules states as follows:

?(3) These Rules shall have effect notwithstanding anything to the contrary contained in any other Service Rules made hereto before.?

11. According to the petitioners, these 1991 Seniority Rules do not provide for any such backdated seniority benefit to Demobilized Army Officers. It is, therefore, submitted that because of the overriding effect given by Rule 3, quoted above, the 1980 Demobilization Rules, as amended by the U.P. Nontechnical (Class II/Group B) Services (Appointment of Demobilized Officers) (Amendment) Rules, 1990 will stand superseded, overridden and nullified by the 1991 Seniority Rules and consequently no benefit could have been given to respondent No. 4, who joined police service in 1994, i.e., after 1991 Seniority Rules came into force.

In reply to this, the respondents have submitted that the 1991 Rules are General Rules which apply to all members of all Government services under the U.P. Government, whereas the 1980 Demobilization Rules are Special Rules dealing with the limited class of the U.P. Government servants who have joined the U.P. Government service after demobilization from the Indian Army and, therefore, the General Seniority Rules, 1991 will not have the effect of nullifying the special 1980 Demobilization Rules.

12. By itself, this argument may not have been accepted, but it has been pointed out that in the year 2000 there was an amendment made in the 1980 Demobilization Rules in exercise of the power conferred by the proviso to Article 309 of the Constitution of India. This amendment is known as the "second amendment" and has been published in the U.P. Gazette Extraordinary dated 29122000, Part4, Khand (Ka), page 1. Further, there was a "third amendment" also to the 1980 Demobilization Rules in the year 2001, published in the U.P. Gazette Extraordinary dated 322001, Part4, Khand (Ka), page 1. It has been submitted that bottle these amendments, made by the same legislative authority, i.e., the Governor of U.P. in exercise of the same power, i.e., the proviso to Article 309 of the Constitution of India, would indicate that the legislative intent was clear that the 1980 Demobilization Rules continued even after and despite the 1991 Seniority Rules.

13. Learned Counsel for the petitioners was specifically required, during the rejoinder arguments, to address the Court on this aspect regarding effect of the two amendments carried out in the 1980 Demobilization Rules even after the 1991 Seniority Rules. From the petitioners" side two arguments have been addressed on this aspect, which are dealt with below.

14. The first argument is that these amendments are a result of pure legislative ignorance and oversight on part of the Governor of U.P. who was not aware that after the 1991 Seniority Rules, the 1980 Demobilization Rules had ceased to exist and that amendments of 2000 and 2001 are redundant having been made to nonexistent Rules. Such arguments can more easily be made than accepted. Much more than such a blanket submission is required to sustain the contention

that the legislative authority was unaware of the correct factual or legal position. We are, therefore, not inclined to accept the aforesaid submission of the petitioners.

15. The second submission from the petitioners side is that even assuming that these amendments of 2000 and 2001 are valid, they would, at best, stand merged into 1980 Demobilization Rules. With these two amendments also the 1980 Rules must be held to have been made in 1980. The 1980 Demobilization Rules contain the same provision of overriding effect in Rule 2 thereof which is similar to the Rule 3 of the 1991 Seniority Rules. It has been submitted from the petitioners side, relying upon the decision of the Supreme Court in the case of *Solidaire India Ltd. v. Fairgoth Financial Services*, 2001(2) LBESR 58 (SC) : (2001) 3 SCC 71, that where both a previous and a subsequent statute are special statutes and both contain nonobstante clauses, it is the later statute which will prevail. Reliance has also been placed from the petitioners" side upon the decision of the Supreme Court in the case of *Iridum India Telecom v. Motorola*, (2005) 2 SCC 145, Paragraph 32 onwards, for the effect of a nonobstante clause. The decision of the Supreme Court deal with the following three situations in different manner:

(1) Where the same statute contains two different Sections, each containing the nonobstante clause in such situations if both Sections operate in the same field, a harmonious construction must be adopted.

(2) Where there are two different statutes, both operating in the same field and one is not general and the other not a special statute, e.g. where both are special statutes and both have a nonobstante clause there the later statute will prevail.

(3) Where the two statutes operate in slightly different fields or where one is statute of a general nature and the other is a special statute i.e. dealing with the limited class of cases or situations out of the wider class dealt with by the general statute and both statute contain a nonobstante clause then the general statute will apply only to situations not covered by the special statute.

16. In the light of the above principles and primarily because of the two amendments of 2000 and 2001 made by the same legislative authority in exercise of the same Constitutional power, we agree with the respondents that the 1980 Demobilization Rules are dealing with special cases of demobilized officers as against the general cases of all the officers covered by the 1991 Seniority Rules and, therefore, the 1980 Rules do not stand repealed or overridden even impliedly by the 1981 Seniority Rules. Further, even if, for the sake of argument, it could possibly be said that the 1991 Seniority Rules had obliterated the 1980 Demobilization Rules, the latter stand revived by the 2000 and 2001 amendments, which are subsequent to the 1991 Seniority Rules and which, to say at the cost of repetition, have been made by the same legislative authority in exercise of the same Constitutional power.

17. Further, the respondent has relied upon a decision of the Supreme Court in the case of Chandra Prakash Tiwari v. Shakuntala Sharma, (2002) 6 SCC 127, which has been followed by a Full Bench decision of this Court in the case of Vijay Singh v. State of U.P., 2005(1) LBESR 312 (All) (FB) : 2004 (4) ESC 2209, holding that where a Government Order referable to the Police Act had prescribed a condition of service, the field covered by that Government Order would stand exclusion from the power of the Governor to prescribe service conditions under the proviso to Article 309 of the Constitution of India. Relying upon these two decisions, it has been submitted that the General Seniority Rules of 1991 will not apply to the police services. It is not necessary to examine this aspect because of what we have held above already.

18. Thus, both the contentions of the petitioners for challenging the impugned order dated 29112004 by which back seniority benefit has been given to respondent No. 4 in terms of 1980 Demobilization Rules as amended by the 1990 amendment, fail. Therefore, the writ petition is liable to be dismissed. The writ petition is, accordingly dismissed but without any order as to costs.