
(2001) 12 AHC CK 0063

In the Allahabad High Court

Case No : C.M.W.P. No. 49798 of 1999 with 13 other Writ Petitions

Ram Anurag Verma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Uttar Pradesh Backward Classes Welfare Department (Gazetted Officers) Service Rules, 1998 — Rule 26

Citation : (2002) 1 AWC 397 : (2002) 1 UPLBEC 720

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : R.N. Singh, Ashok Khare, A. Kumar and Tarun Verma, for the Appellant; C.S.C. and Kripa Shankar Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Singh, J.—Petitioners in this bunch of 14 writ petitions have, inter alia, prayed for issuance of writ of certiorari quashing the U. P. Backward Classes Welfare Department (Gazetted Officers) Service Rules, 1998 (in short the Rules) in so far as it excludes from the Rules the clause pertaining to absorption/continuation of those officers who have been working from the very inception of the Department on ad hoc basis ; a writ, order or direction in the nature of certiorari quashing the order dated 31.8.1999 whereby the petitioners' representation for absorption has been rejected ; a writ, order or direction in the nature of mandamus commanding the respondents not to fill up the posts of Zila Pichhara Varg Kalyan Adhikari on the basis of recommendation of the U. P. Public Service Commission ; a writ, order or direction not to fill up the posts held by the petitioners as "Zila Pichhara Varg Kalyan Adhikari" and not to interfere, in any manner, with their functioning as "Zila Pichhara Varg Kalyan Adhikari" in the Backward Classes Welfare Department ; and a writ, order or direction in the nature of mandamus commanding the U. P. Public Service Commission not to proceed with the final selection in respect of the posts of District Backward Class

Welfare Officer held by the petitioners herein on ad hoc basis.

2. Facts necessary to highlight the controversy stated briefly are these. Petitioners herein were working in their respective Departments as confirmed employees. It would appear that on the creation of a new Department known as Backward Class Welfare Department w.e.f. 12.8.1995, an advertisement was issued in the newspaper to the effect that appointments for the functioning of the new Directorate in the new Department will have to be made, at the divisional/district levels on the gazetted and non-gazetted temporary posts indicated in the notification, for the period commencing from the date of notification or the date of appointment, whichever happens to be later, and ending on 29.2.1996 unless terminated earlier. A letter dated 20.9.1995 was issued from the office of the Chief Secretary, U. P. Government, Lucknow visualizing there that the appointments on the post of gazetted and non-gazetted posts in the new Department would be made on temporary basis on transfer/deputation from other departments. According to the said communication, 53 posts of District Backward Class Welfare Officer were vacant in various districts. Another letter dated 18.12.1995 was issued by the Chief Secretary to various Secretaries and other departmental heads informing them that appointments on the gazetted posts of District Backward Classes Welfare Officer would have to be made on the recommendation by the U. P. Public Service Commission but since it would take time, appointments might be made by way of transfer/deputation from other departments such as Vikas Vibhag, Chikitsa Vibhag, Shiksha Vibhag and officers who have had sufficient experience and were willing to go to the present posts might be selected for appointment on service transfer/deputation basis. The petitioners, it is alleged, applied and were selected for appointment to the posts of District Backward Classes Welfare Officer which they accepted in the hope that they would later on be absorbed in the department. It is further alleged that though the petitioners are appointed on deputation but no deputation allowance was ever paid to them. Selection, it is further alleged, was made after due recommendation by the departmental selection committee.

3. Respondents, however issued an advertisement dated 11.1.1999 in the newspaper Rashtriya Sahara inviting applications for regular appointments to the 52 posts of District Backward Classes Welfare Officer through Public Service Commission on the basis of a preliminary/ final examination. Pursuant to the said advertisement, U. P. Public Service Commission completed the selection the final result of which, it is alleged, was expected to come in the first week of May, 2000. Some of the petitioners, it is alleged, preferred representations to the Director, Backward Class Welfare Department to the effect that a provision was made for absorption in the draft Niyamawalt known as U. P. Adhinastha Seva Chayan Ayog Valyaktik Sahayak Niyamawall, 1995 but the Public Service Commission in exercise of powers under Article 320 of the Constitution of India declined to approve of the clause providing for absorption of deputationist in the U. P. Backward Classes Gazetted Officers Service Rules. 1998. The representation having been rejected by the State Government vide impugned order dated

31.8.1999 (Annexure No. 13) to the Writ Petition No. 49798 of 1999 and the petitioners have approached this Court for "the aforesaid reliefs.

4. We have had heard Sri R. N. Singh, senior advocate for the petitioners and Sri Ashok Khare. senior advocate representing the candidates who claimed to have been selected by the Public Service Commission for the appointment to the posts aforesaid. We have also heard Sri Kripa Shankar Singh representing the State.

5. Legal position well-settled is that a Government servant on deputation can be reverted to his parent department at any time in that he does not get any right to be absorbed on the deputation post." In the absence of statutory Rules providing for absorption of a deputationist in the borrowing department, absorption, if made, would be contrary to law and violative of Articles 14 and 16 of the Constitution of India. The post of District Backward Classes Welfare Officer concededly falls within the purview of Public Service Commission and it being not disputed that the petitioners herein were appointed on the posts on the basis of service transfer/deputation with specific stipulation that it would continue till availability of candidates selected by the Commission or further order whichever event might happen earlier, acquired no right, in the absence of statutory provisions, to be absorbed. The right to absorption claimed by them is impermissible. A deputationist can claim right to be considered for absorption only if the Rules provide for absorption and not otherwise.

6. It has, however, been submitted by Sri R. N. Singh that upon regard being had to the services rendered by the petitioners, the Government ought to have directed their absorption in the department in which they have been serving on deputation with a view to avoiding "undue hardship" by invoking the provision of relaxation as visualized by Rule 26 of the Service Rules. Shri Ashok Khare submits that Rule 26 has no application to conditions of recruitment. Rule 26 of the Uttar Pradesh Backward Classes Welfare Department (Gazetted Officers) Service Rules, 1998 may be quoted hereunder :

"26. Relaxation from the conditions of Service.--Where the State Government is satisfied that the operation of any Rule regulating the conditions of service of persons appointed to the service causes undue hardship in any particular case, it may, notwithstanding anything contained in the Rules applicable to the case, by order, dispense with or relax the requirements of that Rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that where a Rule has been framed in consultation with the Commission, that body shall be consulted before the requirements of that Rule are dispensed with or relaxed."

7. It cannot be gainsaid that if the Rules provide for absorption of employees on deputation, then such employees do have a right to be considered for absorption in accordance with Rules 2 but the Rules in the instant case do not provide for any absorption in that the provisions contained in Rule 26 providing for

relaxation pertain to "conditions of service" which is distinct from "conditions of recruitment". We find substance in the submissions made by Sri Ashok Khare that the power of relaxation under Rule 26 is confined to "conditions of service" and it does not authorize relaxation of any Rule regulating "conditions of recruitment". In *Syed Khalid Rizvi and Ors. v. Union of India and Ors.*, it has been held that "conditions of service may be classified as salary, confirmation, promotion, seniority, tenure or termination of service etc....." Rule 3 of the Residuary Rules therein conferred the power to relax Rules and regulations in certain cases where the Central Government was satisfied that the operation of any Rule made or deemed to have been made under the Act, or any regulation made under any such Rule regulating the conditions of service" of persons appointed to an all India service, causes "undue hardship" in any particular case. Construing the said Rule, the Apex Court held as under :

"Rule 3 empowers the Central Government to relieve undue hardship caused due to unforeseen or unmerited circumstances. The Central Government must be satisfied that the operation of the Rule or regulation brought about undue hardship to an officer. The condition precedent, therefore, is that there should be an appointment to the service in accordance with Rules and by operation of the Rule, undue hardship has been caused, that too in an individual case. The Central Government on its satisfaction of those conditions, have been empowered to relieve such undue hardship by exercising the power to relax the condition. It is already held that the conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed."

8. It may be pertinently observed that one Mahendra Singh who was similarly appointed to the service on deputation filed a writ petition, being Writ Petition No. 55 (S/B) of 2001, in the Lucknow Bench of the Court seeking issuance of a writ in the nature of mandamus commanding the opposite parties thereto to absorb him to the post of District PJChhra Varg Kalyan Adhikari and for that purpose, to amend the service Rules. A Division Bench of this Court held, that in view of the fact that the petitioner was appointed purely on ad hoc basis till availability of a candidate selected by the Commission and since regularly selected candidates had become available, the State Government had no option but to repatriate the petitioner to his parent department and accordingly dismissed the writ petition and vacated the interim order passed therein. In the appointment letters issued to the petitioners. It was specifically provided that they would be repatriated to their parent departments on candidates selected by the Public Service Commission becoming available. In the circumstances, there cannot be any estoppel against State. The view taken by the Government that in the absence of any Rules, absorption of the petitioners in the cadre is impermissible, cannot be termed arbitrary or whimsical and, therefore, cannot be faulted. It is not disputed that the petitioners have not lost their lien in their parent departments. The decision in *Nitasha Paul v. Mahrishi Dayanand University, Rohtak and Ors.*, relied on by Sri R. N. Singh has no application to the

facts of the present case. In the circumstances, therefore, the petitioners are not entitled to the reliefs claimed herein and the writ petitions are liable to be dismissed without prejudice to the benefits which the petitioners might have earned had they remained in their parent department during all this period.

9. It is, however, added by way of clarification that it is always open to the respondents to provide for absorption of the deputationists if it is considered expedient so to do by the State Government. Absorption of deputationists cannot be gainsaid involves and requires taking of a policy decision at the end of the State Government and once decision is taken to regularise the services of deputationists, appropriate Rules may be made in that regard. That is the purport of the letter dated 9.3.1998 of the Joint Secretary, Public Service Commission, Uttar Pradesh to Secretary, Uttar Pradesh Government Pichhara Varg Kalyan Annubhag-1, Lucknow. The said letter, in our opinion, would not operate as a bar to making of appropriate Regularisation Rules either by amending the existing Rules or otherwise.

10. In the result, therefore, the petitions fail and are dismissed with costs on parties subject, of course, to above observations.