(2010) 03 AHC CK 0029

In the Allahabad High Court

Case No : Misc. Bench No''s. 9863 of 2008 and 6755, 7773, 8518 and 10232 of 2009

Raman Kumar and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Government Servants Seniority (Third Amendment) Rules, 2007 — Rule 8A

Citation : (2010) 3 AWC 2412

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Advocate : Deepti Tripathi, Randheer Singh Malik, Alok Saxena, Pushpa Saxena and Ashish Saxena, for the Appellant; R.S. Malik and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. The present writ petitions under Article 226 of the Constitution of India have been preferred challenging the validity of Article v. of the Fourth Schedule of the U.P. Motor Vehicles Taxation (Amendment) Act, 2007. Admittedly, an identical writ petition filed at Allahabad has been dismissed by this Court, where the validity of the provisions in question was impugned. The case has been reported in Abdul Khaliq and Others Vs. State of U.P. and Others, .

2. A perusal of the judgment of this Court in the case of Abdul Khaliq (supra), shows that the Division Bench of this Court has proceeded to dismiss the writ petition on merit as withdrawn. The relevant paragraphs of the judgment in the case of Abdul Khaliq (supra),are reproduced as under:

9. So far as the interim order is concerned, we are of the view that when validity of law is being examined, as there is always presumption of validity, interim order should be passed in exceptional circumstances. The Hon''ble Supreme Court in the case of Bhavesh D. Parish and Ors. v. Union of India and another,

AIR 2000 SC 2047, has specifically laid down that there is a presumption of the legality of the statutory provisions and therefore merely because a challenge is made and some arguable point is raised by the Petitioner, he will not become entitled for any interim order.

10. In U.P. Avas Evam Vikas Parishad and Anr. v. Rajendra Kumar Agarwal and others, AIR 2008 SCW 1918: 2008 (2) AWC 1298 (SC), the Hon''ble Supreme Court considered the propriety of passing the interim order restraining the department from disturbing the seniority while challenging the validity of Rule 8A of U.P. Government Servants Seniority (Third Amendment) Rules, 2007 and held that even if in identical cases interim order had been passed by the Co-ordinate Bench, there was no justification to pass interim order by another Bench. Thus, it is not always necessary to keep parity in such matters.

12. At this stage, Sri G.K. Malviya, learned Counsel for the Petitioners prayed and is permitted to withdraw the writ petition. The writ petition is dismissed as withdrawn with liberty to file afresh, if the cause of action arises in respect of any of the Petitioners.

3. It has been brought to the notice of the Court that the provisions in question have been substituted by U.P. Motor Vehicles Taxation (Amendment) Act, 2009, published in the Official Gazette dated 20th August, 2009. Since the impugned provisions have been substituted by new provisions, the above writ petitions lose their efficacy. Accordingly, writ petitions are dismissed having become infructuous.

