
(2017) 01 AHC CK 0162
In the Allahabad High Court
Case No : Service Single No. 13319 Of 2016

Ravendra Singh	Vs	APPELLANT
State of Uttar Pradesh		RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 ADJ 70 : (2017) 2 AllWC 1943

Hon'ble Judges : Devendra Kumar Upadhyaya, J.

Bench : Single Bench

Advocate : Amit Bose and Abhishek Bose, Advocates, for the Petitioner; C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Devendra Kumar Upadhyaya, J.—; Heard Sri Amit Bose, learned counsel for the petitioner and learned Standing Counsel representing the State-respondents.

2. This writ petition filed under Article 226 of the Constitution of India impeaches an order dated 17.03.2016, passed by the Director General of Police, U.P. whereby the representation of the petitioner for grant of out of turn promotion for exhibiting exemplary courage and bravery has been rejected.

3. The impugned order has been passed in purported compliance of the judgment and order dated 12.01.2016, passed by the U.P. Public Service Tribunal in Claim Petition No. 440 of 2013 filed by the petitioner, whereby the orders impugned therein, namely, order dated 09.12.2004 and 05.03.2013 were set aside and the decision of the Committee in recommending the case of the petitioner for grant of out of turn promotion was also set aside. The Tribunal by means of order dated 12.01.2016 had further directed for consideration of the case of the petitioner for grant of out of turn promotion in view of the recommendations made by the Superintendent of Police, Farukhabad and in light of the provisions contained in the Government Order dated 03.02.1994.

4. Without mentioning the facts of the case which are not in dispute between the parties, the court proceeds to examine the reasons given by the Director General of Police, U.P. rejecting the claim of the petitioner for grant of out of turn promotion. The only reason indicated in the impugned order whereby the petitioner has not been found to be eligible for grant of out of turn promotion is that since the earlier policy for grant of out of turn promotion to the police personnels showing exemplary courage and bravery in discharge of their duties has been superseded by a new government policy contained in the Government Order dated 07.06.2014, which substitutes the provision for grant of out of turn promotion with some cash award and grant of gallantry medals by the State of U.P., as such petitioner would not be entitled to be given the benefit of out of turn promotion.

5. The State Government by means of Government Order dated 03.02.1994 had provided that those police personnels who exhibit exemplary courage and bravery shall be given out of turn promotion on an ex-cadre higher post. The said Government Order dated 03.02.1994 provides that out of turn promotion in such a situation shall be made by the appointing authority after prior approval of the Director General of Police, U.P. The State Government, however, has revised the said policy by issuing a Government Order dated 07.06.2014 which provides for grant of certain monetary awards along with commendation letter by Hon''ble Chief Minister. In addition, the Government Order dated 07.06.2014 further provides that the police personnels exhibiting higher category of exemplary courage and bravery shall be given Chief Minister''s gallantry medal coupled with monthly allowance of Rs. 1000/- apart from the monthly pay. The impugned order apart from stating that since the earlier Government Policy enunciated by the Government Order dated 03.02.1994 has now been superseded by subsequent government policy embodied in the Government Order dated 07.06.2014 whereby instead of providing out of turn promotion, provisions have been made for grant of medals and certain other benefits has also relied upon a Division Bench judgment of this Court rendered in Special Appeal Defective No. 884 of 2015.

6. Looking to the overall facts and circumstances of this case as also to the pleadings of the respective parties, which are available on record, the question which falls for consideration in this case is as to whether the case of the petitioner for grant of certain benefits for showing exemplary courage and valour while discharging his official duties is to be governed by the old policy available in the Government Order dated 03.02.1994 or it will be governed by the subsequent Government Order dated 07.06.2014, whereby the earlier policy for grant of out of turn promotion has been dispensed with.

7. For arriving at the correct conclusion in respect of the aforesaid issue, it would be appropriate to discuss the Division Bench judgment rendered by this Court on 12.01.2016 in the case of State of U.P. and others v. Mahaveer Singh and others (Special Appeal Defective No. 884 of 2015). The aforesaid special appeal had

arisen out of the judgment rendered by Hon''ble Single Judge on 04.09.2015 in a bunch of writ petitions, leading Writ Petition being Writ-A No. 50782 of 2014, Mahaveer Singh and others v. State of U.P. and others. In the aforesaid bunch of writ petitions, under challenge was the Government Order dated 07.06.2014 whereby the new Government Policy was promulgated. It was further prayed in the said bunch of writ petitions by the individuals who had filed the writ petitions that their cases for grant of out of turn promotion should be considered in the light of the earlier Government Order dated 03.02.1994 as the Government Order dated 07.06.2014 will operate prospectively and will not effect the pending proceedings based on the incident and recommendations made prior to the issuance of new government policy on 07.06.2014. The Hon''ble Single Judge while disposing of the writ petitions did not examine the correctness of the Government Order dated 07.06.2014 but at the same time observed that the matters where the recommendations were made prior to the issuance of Government Order dated 07.06.2014 need to be considered in accordance with earlier Government Policy and to that extent the Government Order dated 07.06.2014 shall have no applicability as the same would operate prospectively. The learned Single Judge while disposing of the said matter (Mahaveer Singh and others v. State of U.P. and others) observed that the petitioners therein were recommended for out of turn promotion much earlier to issuance of the Government Order dated 07.06.2014 and the process based on such recommendations had not culminated in the final decision/order and, therefore, their cases be considered in accordance with the provisions contained in the Government Order dated 03.02.1994.

8. The aforesaid judgment dated 04.09.2015 rendered by Hon''ble Single Judge in the case of Mahaveer Singh and others (supra) was challenged by the State of U.P. by filing Special Appeal Defective No. 884 of 2015 and the Division Bench of this Court by means of its Judgment and order dated 12.01.2016 while setting aside the judgment and order dated 04.09.2015, passed by the Hon''ble Single Judge has observed that mere recommendation made in the said case by the Superintendent of Police for giving out of turn promotion, did not confer any indefeasible or vested right of promotion. The Division Bench further observed that once the Government Order dated 07.06.2014 had taken effect, which has the effect of rescinding the office memorandum dated 03.02.1994, any promotion which is required to be made would necessarily have to be governed by the statutory rules which hold the field. The Division Bench, thus, held that a conscious policy decision has been taken by the State Government based on the exigencies of the service and in terms of the Government Order dated 07.06.2014, the office memorandum dated 03.02.1994 would stand rescinded and that the scheme of out of turn appointments would stand substituted by monetary compensation. It is, thus, in the background of the aforesaid facts that the Special appeal was allowed and the judgment rendered by Hon''ble Single Judge in the case of Mahaveer Singh and others (supra) was set aside.

9. So far as the law laid down by the Division Bench in the aforesaid Special

Appeal is concerned, there cannot be any quarrel. However, what is noticeable here is that the facts of the present case and the facts of the cases which were subject matter of the decision by the Division Bench in the Special Appeal Defective No. 884 of 2015 are distinguishable.

10. The distinction between the facts of the present case and the facts which were under consideration before the Division Bench in the Special Appeal lie in relation to the date on which right of consideration for grant of out of turn promotion crystallized in favour of the petitioner in this writ petition and the persons who were seeking out of turn promotion in the case of Mahaveer Singh and others (supra).

11. There is no dispute that all the matters which were decided by Hon''ble Single Judge by means of judgment and order dated 04.09.2015, though recommendations had been made for grant of out of turn promotion prior to issuance of the Government Order dated 07.06.2014 and the incidents on the basis of which such recommendations were made, had occurred prior to the said date i.e. prior to issuance of Government Order dated 07.06.2014, however, in none of the said cases the matter was finally decided by the authorities in terms of the Government Order dated 03.02.1994. To the contrary in the instant case, the decision was also taken for not granting out of turn promotion to the petitioner on 05.03.2013 which became subject matter of challenge before the U.P. Public Service Tribunal in the claim petition No. 440 of 2013 filed by the petitioner. Thus, this Court while examining the matter is called upon to see the legality or otherwise of the decision taken by the respondents for not granting out of turn promotion to the petitioner and such decision in this case was taken prior to issuance of the Government Order dated 07.06.2014. Mere recommendation may not confer any indefeasible right or vested right to seek out of turn promotion, however, the fact remains that the case of the petitioner was already rejected on 05.03.2013 prior to promulgation of the new policy by the State Government by notifying Government Order on 07.06.2014. The Tribunal while examining the validity of the rejection order dated 05.03.2013 has come to the conclusion that the case of the petitioner for grant of out of turn promotion was rejected unlawfully and it is in this background that the Tribunal had directed the authorities concerned to reconsider the case of the petitioner for grant of out of turn promotion. Consideration of the case of the petitioner had ultimately resulted in its rejection on 05.03.2013. The decision dated 05.03.2013 was required to be taken in the light of the Government Order dated 03.02.1994 and as such legality or otherwise of the said decision dated 05.03.2013 has to be necessarily viewed, examined and scrutinized in terms of the provisions contained in the said Government Order dated 03.02.1994 which was the Government Order in vogue on the date when the case of the petitioner was rejected i.e. on 05.03.2013.

12. It is to be noticed further that on the date when the case of the petitioner was rejected i.e. on 05.03.2013, the Government Policy embodied in the

Government Order dated 07.06.2014 was nowhere in existence. In this view, as to whether right which had crystallized either in favour of or against the petitioner for grant of out of turn promotion on the date on which his case was rejected, is a relevant factor which clearly distinguishes the facts of the present case with those of the bunch of the cases decided by Hon"ble Single Judge by means of judgment and order dated 04.09.2015 which was subject matter of consideration by the Division Bench of this Court in the Special Appeal Defective No. 884 of 2015.

13. The judgment of the Division Bench in the aforesaid Special Appeal Defective No. 884 of 2015, if seen within the facts of this case, would have no application to the facts of the present case as the right which had crystallized prior to issuance of Government Order dated 07.06.2014, cannot be determined or granted or denied for the reason of change of the government policy which occurred on issuance of Government Order dated 07.06.2014. The reasoning given by the Division Bench for setting aside the judgment of Hon"ble Single Judge in the case of Mahaveer Singh and others (supra) has been discussed above. At the cost of reiteration, this Court further observes that the reason given by the Division Bench for not finding the respondents therein entitled for the benefit of out of turn promotion was that in their cases only recommendations were made prior to issuance of Government Order dated 07.06.2014 which did not create any indefeasible or vested right.

14. In the instant case, as already discussed above, the case of the petitioner was considered and rejected on 05.03.2013 i.e. prior to issuance of Government Order dated 07.06.2014 and hence there is no room of doubt in my mind that judgment rendered by the Division Bench of this Court in the Special Appeal Defective No. 884 of 2015 will have no application so far as the facts of the present case of the petitioner is concerned.

15. The writ petition, thus, deserves to be allowed for the aforesaid reason alone.

16. Yet there is another ground on which this writ petition would succeed and the same also needs to be discussed.

17. It is settled law that any judgment by any Court or Tribunal even if it is erroneous, is binding between the parties till it is varied, rescinded, set aside or stayed by any other higher Court or Tribunal. The only exception of binding of nature of judgment of a Court or a Tribunal is that it may not be binding in case the judgment or order passed by the Court or Tribunal is completely without jurisdiction i.e. the Tribunal or Court rendering such judgment, inherently lacks jurisdiction to pronounce the same. It is not the case of respondents here that the judgment and order passed by the U.P. Public Service Tribunal on the claim petition filed by the petitioner dated 12.01.2016 is without jurisdiction, as such it binds the respondents-State authorities as well for the reason that it has not been challenged by the State of U.P. in any higher forum or Court of law.

18. The judgment dated 12.01.2016, passed by the U.P. Public Service Tribunal

being binding in nature was to be complied with by the respondents.

19. The Tribunal while allowing the claim petition, filed by the petitioner, by the judgment and order dated 12.01.2016 had not only set aside the two orders dated 05.03.2013 and 09.12.2004 whereby the claim of the petitioner for grant of out of turn promotion was rejected but also set aside the recommendation of the Committee not to grant out of turn promotion to the petitioner. It has also further directed specifically that case of the petitioner be considered in the light of the recommendation made by the Superintendent of Police, Farukhabad that too, in terms of the provisions contained in the earlier Government Order dated 03.02.1994. Thus, merely because the State Government had now changed or altered or substituted its earlier policy, it cannot be said, neither can it be permitted that the State Government would not consider the case of the petitioner in the light of the earlier Government Policy embodied in the Government Order dated 03.02.1994.

20. Without burdening this judgment with various pronouncements of the Hon"ble Supreme Court and this Court to state the legal proposition that the judgment between the parties rendered by a Court or the Tribunal is binding, I may only refer to the judgment of Hon"ble Supreme Court in the case of Authorised Officer (Land Reforms) v. M.M. Krishnamurthy Chetty, reported in (1998) 9 Supreme Court Cases 138, wherein it has clearly been held that it is well settled that even orders which may not be strictly legal become final and are binding between the parties, if they are not challenged before the Superior Courts.

21. Hon"ble Supreme Court in its latest pronouncement in the case of State of Tamil Nadu v. State of Kerala and another, reported in (2014) 12 Supreme Court Cases, 696 has observed in para 149 that a final judgment, once rendered, operates and remains in force until altered by the Court in appropriate proceedings.

22. For the aforesaid reason as well, the ground taken by the Director General of Police, U.P. while passing the impugned order rejecting the claim of the petitioner for grant of out of turn promotion, cannot be permitted to be sustained.

23. It is also relevant to record here that the Tribunal while deciding the claim petition preferred by the petitioner by means of its judgment and order dated 12.01.2016 has given clear and unambiguous finding which has been recited in the said judgment on the basis of the record available before the Tribunal that in the encounter which took place with the miscreants, it was the petitioner who had faced them first and the Superintendent of Police reached the spot after an hour of receiving the information of the incident. The Tribunal has further recorded that on the basis of same encounter, the Superintendent of Police and Reserve Inspector were given the President's Medals. However, the petitioner who reached the spot immediately on receiving information of the presence of the miscreants in the village and faced them and sustained serious bodily injuries

in the course of encounter and also his body received bullets, which was established in the ministerial enquiry, First Information Report and on examination of the statement made by the witnesses during course of the enquiry, the petitioner's case has been rejected. The Tribunal has further observed that in terms of Clause - 3 of the Government Order dated 03.02.1994, those police personnels will be termed to have exhibited exemplary courage and bravery who have shown valour during encounter with dreaded criminals or in their arrest. The Tribunal has categorically recorded a finding that since the petitioner had shown exemplary courage and bravery, as such, the submission made before the Tribunal on behalf of the respondents that the petitioner had done his duty, was not acceptable.

24. The judgment rendered by the Tribunal whereby the earlier orders rejecting the claim of the petitioner were set aside and a direction was given to consider the case of the petitioner for grant of out of turn promotion in the light of the recommendation made by the Superintendent of Police, Farukhabad on 30.10.2000 and also in accordance with the provisions contained in Government Order dated 03.02.1994, has not been challenged by the State of U.P.. The claim of the petitioner has, thus, been wrongly rejected by the Director General of Police, U.P. while passing the impugned order dated 17.03.2016.

25. For the discussions made and the reasons given above, the writ petition is hereby allowed. The impugned order dated 17.03.2016, passed by the Director General of Police, U.P., as is contained in Annexure No. 6 to the writ petition is hereby quashed. The respondents are directed to consider the case of the petitioner for grant of out of turn promotion afresh in the light of the findings recorded by the U.P. Public Service Tribunal in its judgment and order dated 12.01.2016 rendered in Claim Petition No. 440 of 2013. The said consideration by the respondents shall be done and appropriate orders shall be passed expeditiously, say, within a period of ten weeks from the date of production of certified copy of this judgment.

26. There will be no order as to costs.