
(1993) 03 AHC CK 0023
In the Allahabad High Court
Case No : C.M.W.P. No. 26243 of 1991

Sabhapati Singh

APPELLANT

Vs

U.P. State Road Transport Corpn. and Another

RESPONDENT

Date of Decision : 26-03-1993

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 13B
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 83

Citation : (1993) AWC 1281 : (1994) 1 LLJ 211

Hon'ble Judges : S.C. Mathur, Acting C.J.; R.A. Sharma, J

Bench : Division Bench

Advocate : V.K. Barman, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Petitioners are employees of U.P. State Road Transport Corporation (hereinafter referred to as the Corporation), working in its Central Workshop at Kanpur. They have challenged the order passed by the Corporation retiring them from service at the age of 58 years. The grievance of the petitioners is that their age of retirement is 60 years and, as such, they cannot be retired on completion of 58 years.

2. The controversy raised in these writ petitions is covered by a decision of a Division Bench of this court dated December 14, 1992 in Special Appeal No. 91 of 1991, Lalta Prasad v. U.P.S.R.TC and Ors. For the reasons given in the above Special Appeal, these writ petitions are liable to be dismissed.

3. Learned counsel for the petitioners, in these cases, has, however, raised a new point, which was not raised in the Special Appeal mentioned above. Relying on Regulation 63 of the Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981, submission of the learned counsel is that the employees of the Corporation, who were earlier working in U.P. Government Roadways Department can be retired at the age of 60 years

only. Regulation 83, being relevant, is reproduced below:

"83. Notwithstanding anything to the contrary contained in these Regulations, the service conditions, including the conditions relating to seniority, promotion, pay fixation, leave and retirement benefits, of the persons who were employees of the State Government in the U.P. Government Roadways Department shall not be inferior to the conditions before their absorption in the service of the Corporation and the provisions of G.O. No. 3414/30-2-170-N-77, dated July 5, 1972 shall apply."

4. It is admitted that all the petitioners were the employees of the State Government in the U.P. Government Roadways Department and after the establishment of the Corporation with effect from June 1, 1972 they were working in the Corporation on deputation. In connection with the service conditions of such employees, who were working on deputation, Government of U.P. issued an order dated July 5, 1972 to the effect that their conditions of service shall not be inferior to the conditions before their absorption in the Corporation and an undertaking to that effect shall be incorporated in the Service Regulations whenever they are framed by it. The Corporation framed Service Regulations known as the Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 (hereinafter referred to as the Regulations). In view of Regulation 2, which is reproduced below, these Regulations were applied to all the employees other than officers except three classes of employees, namely, those who were working on deputation or contract or as part-time:

"2. These Regulations shall apply to all the employees (Other than Officers) except those who are working:

- i) on deputation,
- ii) on contract,
- iii) as part-time.

Provided that Regulation 4 shall apply to persons who were in the service of the State Government in the U.P. Government Roadways Department and were placed on deputation with the Corporation on terms of G.O. No. 3414/302-170-N--72 dated July 5, 1992.

Note:

Persons working on deputation shall be governed by the rules, regulations etc. of their parent department and those on contract shall be governed by terms and conditions of the contract".

By the note appended to the above Regulation, it has been provided that those employees, who were working on deputation, shall be governed by rules, regulations etc. of their parent department. By Regulation 4 procedure for absorption of the Government employees working on deputation was provided.

5. By the first amendment of the Regulation made in 1982 Regulation 4 was substituted under which the Government employees like the petitioners, who were working on deputation in the Corporation were absorbed in the service of the Corporation with effect from August 28, 1982. Regulation 4, as substituted in 1982 is reproduced below:

"4. (1) An employee of the erstwhile U.P. Government Roadways Department who was placed on deputation with the Corporation and who has or is deemed to have offered for absorption in the Service of the Corporation in accordance with Rule 4 of the Uttar Pradesh State Roadways Organisation (Abolition of Posts and Absorptions of Employees) Rules, 1982 (hereinafter referred to as the said rules) shall with effect from August 28, 1982 stand so absorbed, and shall accordingly cease to be an employee of the State Government with effect from the said date :

Provided that the terms and conditions of service of the employees so absorbed in the service of the Corporation shall, subject to the provisions of G.O. No.3414/XXX-2-170-N-72 dated July 5, 1972 and the said rules be governed by these regulations".

By the proviso appended to new Regulation 4, it has again been reiterated that the terms and conditions of service of the employees absorbed in the service of the Corporation shall, subject to the provisions of the G.O. dated July 5, 1972, be governed by the Regulations. The effect is that the conditions of the service of the Government employees, who were working on deputation with the Corporation will not be inferior to the conditions before their absorption in its service.

6. The object of Regulation 83 and proviso to new Regulation 4 as well as the G.O. dated July 5, 1972 is the same, namely, that the conditions of service of the Government servants, who were working in U.P. Government Roadways will not be inferior to the conditions before their absorption in the service of the Corporation. Regulation 83 has restated what was contained in the Government Order dated July 5, 1972 and the same thing was reiterated again in the proviso to the new Regulation 4. As is clear from the note appended to Regulation 2, the Government servants working on deputation will be governed by Rules and Regulations of their parent department. Service conditions of these deputationists, before their absorption in the service of the Corporation, will as such be governed by the service rules which are applicable to the Government servants, according to which, as held by Division Bench of this Court in the Special Appeal of Lalta Prasad (supra), the age of retirement was 58 years on June 1, 1972 as well as on the date of their absorption in 1982. The effect of these provisions is that the Government employees, who were working on deputation in the service of the Corporation, could have been retired up to the date of their absorption, at the age of 58 years. After their absorption, it is not open to the Corporation to frame any rule or regulation to retire them at the age lower than 58 years. With effect from the date of absorption in 1982 all the Government servants, who were working on deputation, became the employees

of the Corporation and the standing orders of the Central Workshop, which were amended in 1978 fixing the age of retirement at 60 years, became applicable to them like any other employees of the Corporation. After the date of absorption, as such, like other employees of the Corporation they could be retired at the age of 60 years only. However, on April 12, 1991 the regulations, which provide for retirement at the age of 58 years, were notified u/s 13B of the Industrial Employment (Standing Orders) Act, 1946. In view of the above position, with effect from April 12, 1991 the employees of the Corporation working in the Central Workshop can be retired at the age of 58 years. This submission of the learned counsel, as such, is devoid of merit and cannot be accepted.

7. In Writ Petition No. 20264 of 1992 prayer for payment of pension has also been made. A Division Bench of this Court in Special Appeal No. 34 of 1992, Harbans Pathak v. State of U.P. has, on September 22, 1992, decided this question against the petitioner.

8. The writ petitions lack merit and are dismissed. In view of the facts and circumstances of the cases, there shall be no order as to costs.