
(2006) 10 AHC CK 0008
In the Allahabad High Court

Sayed Mohammad Mahfooj

APPELLANT

Vs

State of U.P., Director of Education (Higher Education),
Principal, Government Post Graduate College and Rama Kant
Yadav

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 617
Constitution of India, 1950 — Article 309, 348

Citation : (2007) 1 AWC 1050

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—This intra Court appeal under Chapter VIII Rule 5 of the Rules of the Court has been preferred against the judgment of the Hon'ble Single Judge dated 1.8.2002 dismissing petitioner-appellant's Civil Misc. Writ Petition No. 12701 of 1999.

2. We have heard Mr. Ashok Khare, Senior Advocate assisted by Sri P.N. Ojha, Advocate appearing for the appellant and Mr. C.B. Yadav, Chief Standing Counsel assisted by Mr. Abhinav Upadhyaya, Standing Counsel appearing for the State-respondents.

3. The undisputed facts, giving rise to this appeal are that the petitioner-appellant was engaged as Assistant Accountant on contract basis for a period of one year from the date of taking over charge in Hamirpur Dugdh Utpadak Sahkari Sangh Limited vide order dated 26.11.1994. The terms and conditions of appointment clearly stipulated that the appointment would automatically come to end on expiry of one year, and, even otherwise is wholly temporary liable to be terminated at any time by giving a month's notice. It appears that the petitioner-appellant joined the post on 1.12.1994 and worked at Hamirpur Dugdh Utpadak Sahkari Sangh Limited, Sumerpur till 31.3.1998. Subsequently, recruitment to

Class-III post was made by the respondents vide advertisement dated 5.8.1998 as per the procedure prescribed under the U.P. Procedure of Direct Recruitment for Group-C Posts (Outside the Purview of U.P. Public Service Commission) Rules, 1998 (hereinafter referred to as "1998 Rules"). The petitioner-appellant applied pursuant to the aforesaid advertisement claiming himself to be a "retrenched employee". Written examination was held on 13th December, 1998, wherein he was found successful. Thereafter interview was held and ultimately vide appointment letter dated 25.2.1999, the petitioner-appellant was appointed to the post of Assistant Accountant under General Category giving him benefit of "Retrenched Employee". Subsequently, it was noticed that the appellant was not a "Retrenched Employee" in accordance with the definition of the "Retrenched Employee" contained in the Rules and consequently vide order dated 24.3.1999, his appointment was cancelled. Aggrieved, appellant preferred the aforesaid writ petition which has been dismissed by the Hon'ble Single Judge vide judgment under appeal.

4. Sri Ashok Khare, learned senior counsel for the appellant vehemently contended that the authorities have erred in law by cancelling his appointment applying the definition of "Retrenched Employee" contained in the U.P. Subordinate Officers Ministerial Staff (Direct Recruitment) Rules, 1985 (for short, "1985 Rules") inasmuch as, he was recruited under 1998 Rules and, therefore, the definition of "Retrenched Employee" as contained in 1985 Rule has no application and the authorities, thus, have erred in law by cancelling his appointment. It is further contended that under 1998 Rules there is no definition of "Retrenched Employee" and, therefore, the meaning of "Retrenched Employee," as it is generally understood, has to be applied. He further contended that the appellant neither committed any fraud nor misrepresentation but submitted all the documents showing nature of his appointment, and after being satisfied, he was selected and appointed as "Retrenched Employee", the authorities, therefore, cannot terminate his services subsequently on the ground that he was not a "Retrenched Employee".

5. On the contrary Sri C.B. Yadav, learned Chief Standing Counsel contended that though the procedure for recruitment has been provided under 1998 Rules but it do not contain any definition of "Retrenched Employee". He further contended that in the absence of such definition in 1998 Rules, the definitions as contained in 1985 Rules shall continue to operate. Since the petitioner-appellant did not qualify to be a "Retrenched Employee" as per definition provided in 1985 Rules, he was rightly terminated and the authorities have not erred in law. He lastly supported the judgment of the Hon'ble Single Judge and contended that the appellant was working in a Cooperative Society and, therefore, for the purpose of service under the State could not have been treated as "Retrenched Employee" in any circumstance and this issue has been considered in great detail by the Hon'ble Single Judge, which does not warrant any interference in the appeal.

6. The short question needs consideration in this appeal, whether the appellant

was rightly selected treating him as a "Retrenched Employee".

7. In order to appreciate the controversy it would be appropriate to have a retrospect of various rules relevant for adjudication of the dispute.

8. It is not disputed that the recruitment in question was made to a civil post in respect where to the statutory rules governing terms and conditions could have been framed by the Governor under the proviso to Article 309 of the Constitution of India. The U.P. Retrenched Employees Rules, 1967 (for short the 1967 Rules) was promulgated, which defines "Retrenched Employee" under Rule-2(b) as under:

(b) "retrenched employee" with the grammatical variation and cognate expressions, means a person who was employed in any service or on any post under the rule-making control of the Governor, whether in a substantive, officiating or temporary capacity, and had served continuously for a period of not less than one year, and whose services are, whether before or after the commencement of these rules, terminated, or are certified as liable to termination but does not include a person who was appointed on an ad hoc basis.

9. The definition of "retrenched employee" contained in 1967 Rules clearly refers to a person, who was employed in any service on the post under the rule-making control of the Governor and whose services were terminated, or are certified, as liable to termination after working for a period of not less than one year in substantive, officiating or temporary capacity except on ad hoc basis. The rule making authority also explained ad hoc appointment and explanation 1 to Rule 2(b) of 1967 Rules provides that a person not appointed in accordance with the procedure prescribed in the recruitment rules or orders applicable to the service or post concerned shall be deemed to have been appointed on ad hoc basis. Rule-3 of 1967 Rules, however, provides that the said rules shall remain in force for a period of three years and thereafter for such period as notified by the Governor in consultation with the Commission. The said rules were applicable to all services and posts under the rule making control of the Governor, which were to be filled in wholly, or partly by direct recruitment. The aforesaid rules continued to remain in force upto October, 1971. In 1975, for recruitment in Ministerial Cadre in the Subordinate Offices, statutory rules under proviso to Article 309 of the Constitution of India were framed, namely, "The Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1975" (hereinafter referred to as "1975 Rules") published in the Gazette dated 29.7.1975. The rule-making authority declares that the said rules are being enacted in supersession of all existing rules and orders on the subject and for recruitment of ministerial staff in the subordinate Government offices in the State. The preface of 1975 Rules reads as under:

In exercise of powers conferred by the proviso to Article 309 of the Constitution, and in supersession of all existing rules and orders on the subject, the Governor is pleased to make the following rules for recruitment of ministerial staff in the

subordinate Government offices in the State.

10. Rule 3 of 1975 Rules, which give it overriding effect, reads as under:

3. Effect of inconsistency with other rules.- In the event of any inconsistency between these rules and any specific service rules:

(1) the provisions contained in these rules prevail to the extent of the inconsistency in case the specific rules were made prior to the commencement of these rules; and

(2) the provisions contained in the specific rules shall prevail in case they are made after the commencement of these rules.

11. Rule 4(gg) of 1975 Rules provides the definition of "Retrenched Employee" and reads as under:

(gg) "Retrenched Employee? means a person who was employed on a post under this rule making power of the Governor-

(i) in permanent, temporary or officiating capacity;

(ii) for a total minimum period of one year, out of which at least 3 months service must have been continuous service.

(iii) whose services were or may be dispensed with due to reduction in or winding up of the establishment; and

(iv) in respect of whom a certificate of being a retrenched employee has been issued by the Appointing Authority but does not include a person employed on ad hoc basis only.

12. 1975 Rules initially, as enacted, did not specifically contain any provision giving any relaxation to "Retrenched Employee" but Rule 13-A was inserted by Notification dated 6.7.1977 for a period of three years from the date of its commencement and it reads as under:

13 A. Relaxation for retrenched employees.-(1) A retrenched employee shall be given exemption from the upper age-limit to the extent of the period of service rendered by him to the State Government together with the period spent without a Government job as a result of the retrenchment.

(2) A retrenched employee, who on the date of his first appointment in the service of the State Government possessed the academic qualifications prescribed on such date for the post now being applied for, shall be deemed to satisfy the requirement of academic qualifications for such post.

(3) For the purposes of this rule, the expression "retrenched employee" means a person who was employed in any service or on any post under the rule-making control of the Governor whether in a substantive, officiating or temporary capacity, and had served continuously for a period of not less than one year, and

whose services are, whether before or after the commencement of these rules, terminated or liable to termination, on account of reduction of establishment, and in respect of whom a certificate of being a retrenched employee has been issued by the appointing authority concerned, but does not include a person who was appointed on an ad hoc basis.

Explanation- A person appointed in accordance with the procedure prescribed in the recruitment rules or orders applicable to the service or post concerned shall be deemed to have been appointed on an ad hoc basis.

13. Consistent with 1975 Rules a Government Order No. 27/2/1974- Karmik-2 dated 6.7.1977 was published containing definition of "retrenched employee" and on the same date, another Government Order No. 41/2/1967- Karmik-2 dated 6.7.1977 was published for giving effect to the provisions of 1975 Rules and for guidance and clarification of the concerned officials. The aforesaid Government Order relevant for the present purpose is reproduced as under:

^ ^ "kk? la?&41@2@67&dkfeZd&2] fnukad tqykbZ 6] 1977

fo"k;% jkT;k/khu Isokvksa esa oxZ&3 o 4 ds NaVuh"qknk deZpkfj;ksa dks [kikus dh O;oLFkkA

jkT;k/khu dk;kZy;ksa ds NaVuh"qknk deZpkfj;ksa dks Hkkoh fjfDr;ksa esa [kikus ds fy, o"kZ 1967 esa ,d fu;ekoyh cukbZ xbZ Fkh] tks vDVqcj] 1971 rd izHkkoh jghA mlds i"pkr ferO;f;rk ds vk/kkj ij vf/k"Bkuksa esa deh fd;s tkus vFkok vU; iz"kkIfud dkj.kksa ls jkT; ds fofHkUu dk;kZy;ksa esa oxZ 3 rFkk 4 ds deZpkfj;ksa dh NaVuh djuk vfuok;Z gks x;k rFkk Nvuh"qknk deZpkfj;ksa dks [kikus dk iz"u "kklu ds le{k iqu% mifLFkr gks x;kA

2- bl IEcU/k esa eq>s ;g dhus dk funsZ"k gqvk gS fd bl leL;k ij IE;d~ fopkj djus ds mijkuur NaVuh"qknk deZpkfj;ksa dks jkT;k/khu dk;kZy;ksa ?vizkfof/kd rFkk yksd Isok vk;ksx dh ifjf/k ds ckgj ds inksa? esa gksus okyh fjfDr;ksa es [kikus ds fy, "kklu us vc fuEufyf[kr fu.kZ; fy;s gSa%

?d? vk;q lhek ds NwV&

,sls deZpkfj;ksa us ftrus o"kZ dh Isok viuh Nvuh ds iwoZ dh gks rFkk ftruh vof/k ds fy, og Nvuh ds dkj.k Isok ls ckgj jgs gksa mrus o"kZ dh vk;q lhek ls mUgsa NwV iznku dj nh tk;A

?[k? ?Sf{k d ;ksX;rk ds NwV&

;fn ,sls deZpkjh viuh iwoZ fu;qfDr ds le;] ftl in ds fy, og vc vH;FkhZ gSa ml le; ml in dh fu/kkZfjr ?Sf{k d vgzrk iwjh djrs gSaA

?x? lqfo/kkvksa dh vof/k&

mi;qZDr lqfo/kk;sa bl ?klukns?k ds tkjh gksus ds fnukad ls 3 o"kZ ds fy, gh ekU; jgsaxhA

??k? NVuh?qnk deZpkfj;ksa dh ifjHkk"kk&

?Vuh?qnk deZpkjh dh ifjHkk"kk ogh gksxh tks dkfeZd vuqHkkx&2 dh vf/klwpuk la[k; k 27@2@1974 &dkfeZd ?2? fnukad 6 tqykbZ] 1977 esa nh gqbZ gS vkSj tks lqyHk lnHkZ gsrq uhps m)`r dh tkrh gSA

^^NVuh fd;k x;k deZpkjh** dk rkRi;Z ml O;fDr ls gS tks jkT;iky ds fu;e cukus ds fu;U=.k esa fdLh Isok esa ;k fdLh in ij ekSfyd lhukiUu] ;k vLFkk;h :I ls fu;ksftr Fkk vkSj ftlus de ls de ,d o"kZ dh vof/k rd yxkrkj Isok dh gks vkSj ftldh Isok;sa bl fu;ekoyh ds izkjEHk gksus ds iwoZ ;k i"pkr vf/k"Bku esa deh fd;s tkus ds dkj.k lekIr dh tk lds vkSj ftuds lEcU/k esa lEc) fu;qfDr izkf/kdkjh }kjk NVuh fd;k x;k deZpkjh gksus dk izek.k&i= tkjh fd;k x;k gks] fdUrq blesa ,slk O;fDr lfEefyr ugha gS ftls rnFkZ vk/kkj ij fu;qDr fd;k x;k gksA

Li"Vhdj.k& lEc) Isok ;k ij iz;ksx HkrhZ fu;ekoyh ;k vkns"kkksa esa fofgr izfdz;k ds vuqlkj fu;qDr O;fDr dks rnFkZ vk/kkj ij fu;qDr fd;k x;k ugha le>k tk;sxA

3- ,sls NVuh"qknk deZpkjh tks oxZ 3 ?Vice csancellor lewg x? ds fyfid oxhZ; inksa] ftudk U;wure osrueku 200&320 :i;s gSa rFkk prqFkZ oxZ ?vc lewg ?k? ds os in ftudk osrueku 165&215 :i;s gSa vkSj ftl ij HkrhZ ftyk Lrjh; p;u lfefr;ksa ds ek;/e ls dh tkrh gS] esa HkrhZ ds bPNqd gksa mudks mi;qZDr lqfo/kk ds vUrxZr dsoy fu;fer p;uksa esa vgZrk nsus ds fy, NwV nh tk;sxh ijUrq mUgSa p;u esa dksbZ izkFkfedrk iznku ugha gksxhA "kklukns? la[k; k 8@dkfeZd&1975 fnukad 22 uoEcj] 1975 esa tkjh fd;s x;s vkj{k.k lEcU/kh vkns"kkksa ij dksbZ izHkko ugha iM+sxk vkSj iwoZ dh Hkkafr gh mudks dk;kZfUor fd;k tk;sxA rn~uqlkj ^^v/khuLFk dk;kZy; fyfid oxZ ?lh/kh HkrhZ? fu;ekoyh] 1975** rFkk ^^prqFkZ oxZ deZpkjh Isok fu;ekoyh] 1975** esa vko";d la"kks/ku dj fn;s x;s gSaA

14. Rule 13-A expired after three years and so the Government Order dated 6.7.1977. In order to continue with the relaxation in age, educational qualification and other the GO No. 41/2/67-Karmik-2 dated 23.5.1981 was issued for a period of three years wherein the definition of "retrenched employee" as notified on 6.7.1977 and modified on 18.10.1979 was reiterated. For ready reference the aforesaid is being re-produced as under:

"kk-la- 41@2@67&dkfeZd&2] fnukad 23 ebZ] 1981

fo"k;% jkT;k/khu Isokvksa esa oxZ 3 o 4 ds NaVuh"qknk deZpkfj;ksa dks [kikus dh O;oLFkkA

mi;qZDr fo"k;d lela[;d "kklukns"k fnukad 6 tqykbZ] 1977 esa iznRr lqfo/kkvksa dh ekU; vof/k 5 tqykbZ] 1980 dks lekIr gks xbZ gSA "kklu dh tkudkj esa ;g ckr vkbZ gS fd NVuh "qknk deZpkfj;ksa dh leL;k dk funku iw.kZ :i ls ugha gks ldk gS vr% bl fo"k; ij iqu% fopkj fd;k x;kA

2- eq>s ;g dgus dk funsZ"k gqv k gS fd bl leL;k ij leqfpr fopkjsijkUr NaVuh"qknk deZpkfj;ksa dks jkT;k/khu dk;kZy;ksa esa gksus okyh Hkkoh fjfDrksa ?vizkfof/kd rFkk yksd Isok vk;ksx dh ifjf/k ls ckgj ds inksa? esa [kikus ds fy;s "kklu us fuEu fyf[kr fu.kZ; fy;s gS%

?d? vf/kdre vk;q lhek ls NwV%

,sls deZpkfj;ksa us ftrus o"kZ viuh NaVuh ls iwoZ dh gks rFkk ftruh vof/k ds fy;s og NaVuh ds dkj.k Isok ls ckgj jgs gksa mrus o"kZ dh vf/kdre vk;q lhek ls mUgsa NwV iznku dj nh tk; ijUrQ izfrcU/k ;g gS fd ;g vof/k fdlh Hkh n"kk esa 10 o"kZ ls vf/kd ugha gksxhA

?[k? "kSf{kd ;ksX;rk ls NwV%

;fn ,sls deZpkjh viuh iwoZ fu;qfDr ds le;] ftl in ds fy;s og vc vH;FkhZ gSa] ml in dh fu/kkZfjr "kSf{kd vgZrk j[krs Fks] rks ;g le>k tk;sxk fd os orZeku in ds fy;s fu/kkZfjr "kSf{kd vgZrk iwjh djrs gSaA

?x? lqfo/kkvksa dh vof/k%

mi;qZDr lqfo/kk;s bl "kklukns"k ds tkjh gksus dh frfFk ls rhu o"kZ ds fy;s ekU; jgsxhA

??k? ifjHkk"kk%

NVuh"qknk deZpkjh dh ogh ifjHkk"kk gksxh tks "kklukns"k la[;k41@2@67&dkfeZd&2 fnukad 6 tqykbZ] 1977 esa nh gqbZ gS vkSj lela[;d "kklukns"k fnukad 18 vDVwcj] 1979 }kjk ;Fkk la"kkf/kr gS vkSj tks lqyHk lUnHkZ gsrq uhps m)`r dh tkrh gS%

^^NaVuh fd;k x;k deZpkjh** dk rkRi;Z ml O;fDr ls gS tks jkT;iky ds fu;e cukus ds fu;a=.k esa fdlh Isok esa ;k in ij ekSfyd] LfkkuUu vFkok vLFkk;h :I ls fu;ksftr Fkk vkSj ftlus de ls de 3 ekl dh fujUrj Isok dh gks ijUrQ dqy feykj ;g QqVdj [kf.Mr Isok Hkh ,d o"kZ dh iwjh gks xbZ gks vkSj ftldh Isok;sa v/khuLFk dk;kZy; fyfid oxZ ?lh/kh HkrhZ? ?prqFkZ la"kkf/ku? fu;ekoyh] 1979 rFkk prqFkZ oxZ deZpkjh Isok ?r`rh; la"kkf/ku? fu;ekoyh 1979 ds izHkkoh gksus ds iwoZ ;k i"pkr vf/k"Bku esa deh ds dkj.k lekIr dj nh xbZ gks ;k lekIr dj nh tk;s vkSj ftlds lECu/k esa lEC) fu;qfDr izkf/kdkjh }kjk NVuh fd;k x;k deZpkjh gksus dk izek.k&i= tkjh fd;k x;k gks fdUrQ mlesa ,slk O;fDr lfEefyr ugha gksxk ftls rnFkZ vk/kkj ij fu;qDr fd;k x;k gksA

Li"Vhdj.k & lEC) Isok ;k in ij iz;ksT; HkrhZ fu;ekoyh ;k vkns"kkf/ku esa fofgr izfdz;k ds vuqlkj fu;qDr O;fDr dks rnFkZ vk/kkj ij fu;qDr fd;k x;k ugha le>k tk;sxkA

3- ,sls NVuh "qknk deZpkfj;ksa dks mi;qZDr lqfo/kk ds vUrxZr dsoy fu;fer p;uksa esa vgZrk nsus ds fy;s NwV nh tk;sxh ijUrQ mUgsa p;u esa dksbZ izkFkfdrk iznku ugha gksxhA

15. The aforesaid government order was extended for a further period of three years vide Government Order No. 41/2/1967-Karmik-2 dated 12.4.1983, which reads as under:

"kk? la[;k42@2@1967&dkfeZd&2] fnukad 12 vizSy] 1983

fo"k;%& tux.kuk foHkkx ds NVuh fd;s tkus okys deZpkfj;ksa dks jkT;k/khu Isokvksa @inksa esa fu;qfDr gsrq fj;k;rA

mi;qZDr fo"k;d lela[;d "kklukns"k fnukad 12 Qjoh] 1982 ds dze esa eq>s ;g

Li"V djus dk funs"k gqvk gS fd mijksDr "kklukns"k esa nh xbZ lqfo/kk;s jkT; ljdkj ds v/khu dsoy mu lsokvksa@inksa ij fu;qfDr gsrq vuqeU; gksaxh ftu ij lh/kh HkrhZ yksd lsok ds ek;/e ls ugha gksrh gSA

mi lfpoA

16. Vide Notification dated 16.3.1985 the Governor promulgated a new set of Rules, namely, The U.P. Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 (in short "1985 Rules"), in supersession of existing rules and orders on the subject as is apparent from the following:

In pursuance of the provisions of Clause (3) of Article 348 of the Constitution, the U.P. Governor is pleased to order the publication of the following English translation of Notification No. 20/3-82-Personnel-2-85, dated March 16, 1985.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution, and in supersession of all existing rules and orders on the subject, the Governor is pleased to make the following rules regulating recruitment of ministerial staff in the Subordinate Government Offices in the State.

17. Rule-3 of 1985 Rules also gives it overriding effect over any inconsistent existing rule and Rule-4(i) defines "retrenched employee" which reads as under:

Retrenched employee" means a person-

(i) who was employed on a post under the rule making power of the Governor, in permanent, temporary or officiating capacity for a total minimum period of one year, out of which at least three months" service must have been continuous service;

(ii) whose services were or may be dispensed with due to reduction in or winding up of the establishment; and

(iii) in respect of whom a certificate of being retrenched employee has been issued by the appointing authority;

but does not include a person employed on ad hoc basis only.

18. In 1991, "The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service Rules, 1991" (for short the "1991 Rules") were framed and published in the Gazette dated 19th August, 1991. The aforesaid rule provides for absorption of "Retrenched Employee" of Government or Public Corporation. Rule-2-(b) defines Public Corporation, Rule 2-(c) defines "Retrenched Employee" and Rule-3 is a charging provision, which are reproduced as under:

2(b) "Public Corporation" means a body corporate established or constituted by or under any Uttar Pradesh Act except a University of Local Authority constituted for the purpose of Local Self Government and includes a Government CompOnay within the meaning of Section 617 of the Companies Act, 1956 in which the State Government has prepondering interest;

(c) "retrenched employee" means a person who was appointed on a post under the Government or a public corporation on or before October 1, 1986 in accordance with the procedure laid down for recruitment to the post and was continuously working in any post under the Government or such corporation upto the date of his retrenchment due to reduction in, or winding up of, any establishment of the Government or the public corporation, as the case may be and in respect of whom a certificate of being a retrenched employee has been issued by his appointing authority.

(3) Notwithstanding anything to the contrary contained in any other service rules for the time being in force, the State Government may be notified order require the absorption of the retrenched employee in any post or service under the government and may prescribed the procedure for such absorption including relaxation in various terms and conditions of recruitment in respect of such retrenched employees.

19. Thereafter 1998 Rules were promulgated on 9.6.1998. It would be appropriate to refer the declaration made under the aforesaid rules which was not in the same terms as it was in 1975 Rules and 1985 Rules that the same are being enacted in supersession of all the existing provisions and on the contrary, 1998 Rules only makes a declaration of making of the rules by the Hon"ble Governor and reads as under:

In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules:

20. Rule-2 of 1998 Rules gives these rules overriding effect over inconsistent existing rules. Rule 5(3)(c) provides weightage which is admissible to a "retrenched employee" for recruitment in 1998 Rules. Admittedly, 1998 Rules did not contain any definition of "retrenched employee". For the purposes of the case in hand, since recruitment has been made in 1998 Rules, the subsequent enactment came into force on 20.8.2001 may not be necessary but since the argument has been advanced referring to the provisions of the subsequent enactment also, we may notice the same. The Hon"ble Governor further promulgated another set of rules in 2001, namely, The Uttar Pradesh Procedure for Direct Recruitment for Group "C" posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 2001 (in short the "2001 Rules"). The aforesaid rules have been framed in supersession of all the existing rules and orders on the subject as is apparent from the following declaration made under the Rules:

In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in suppression existing rules and other on the subject, the Governor is pleased to make the following rules.

21. 2001 Rules, admittedly does not contain any definition of "retrenched employee" but provides certain concessions in recruitment to a "retrenched employee" vide Rule 6(6)(b) etc.

22. Sri Ashok Khare, learned senior counsel appearing for the appellant, placing the entire history as aforesaid, contended that 1998 Rules did not contain any definition of "Retrenched Employee". Therefore, the definition of "Retrenched Employee" as known in common parlance and deducible from dictionary should apply. He further contended that the authorities erred in law by applying definition of "Retrenched Employee" contained in 1985 Rules and termination of his service is, therefore, illegal. Lastly, he contended that 1991 Rules provides for absorption of "Retrenched Employee" and the same are applicable not only to the persons who were "Retrenched Employee" from the Government but also applicable to the Public Corporation and, therefore, the petitioner-appellant was entitled for absorption in Group-C Post pursuant to 1991 Rules. He further contended that the definition of "Retrenched Employee" as provided 1991 Rules is fully applicable to the case of the petitioner-appellant and, therefore, the same ought to have been applied by the respondents in order to find out whether he was a "Retrenched Employee" or not and since he fulfils all the requisite conditions under 1991 Rules, his selection could not have been said to be illegal.

23. Having given very careful thoughts to the long drawn submissions of the learned senior counsel appearing for the appellant, however, we find ourselves unable to agree with him. We propose to deal at the outset his last submission advanced on the basis of 1991 Rules. Along with paper book of the appeal, the English version of 1991 Rules has been annexed as Annexure 14, on page 116 but the said copy of the rules contains lots of mistakes. The definition of "Retrenched Employee" under Rule. 2(c) as contained in Annexure-14 to the paper book of the appeal does not mention any cut off date and in fact reads as under:

2 (c) - "Retrenched Employee" means a person who was appointed on a post under the Government or public corporation laid down for recruitment to the post and was continuously working in any post under the government or such corporation up to the date of his retrenchment due to reduction in, or winding up of, any establishment of the Government or the public corporation, as the case may be and in respect of whom a certificate of being a retrenched employees has been issued by his appointing authority.

24. Learned Chief Standing Counsel has produced before us a copy of the Gazette Notification of 1991 Rules, which contains the definition of "retrenched employees" under Rule 2(c) of 1991 Rules, as we have already quoted above, but further provides that only those persons, who were employed on or before 1st October, 1986 in accordance with the prescribed procedure laid down for recruitment to the post and was continuously working in any post under the Government or Public Sector and was retrenched due to reduction in or winding up of any establishment of the Government or the Public Corporation and in whose respect the certificate of being a "retrenched employee" has been issued by the appointing authority as a "retrenched employee".

25. Sri Ashok Khare, learned Senior Counsel advanced his argument on the basis

of the definition as contained in Annexure-14 which does not mention cut off date and the said annexure is not a correct copy of the original rules as actually enacted. In the light of the correct Rule 2(c) of 1991 Rules, it is apparent that the same has no application to the petitioner-appellant for the reason that admittedly he was appointed at the Cooperative Society on 26.11.1994 which is almost 8 years subsequent to the cut off date provided in Rule 2(c) of 1991 Rules. Further the definition of Public Corporation as contained under Rule 2(b) makes it clear that the Cooperative Society where the petitioner-appellant was employed in 1994 cannot be included in the said definition. There are other reasons also which shows that 1991 Rules have no application to the case of the petitioner-appellant but in view of two reasons already discussed hereinabove, we need not to dilate on this issue any more and are clearly of the opinion that 1991 Rules have no application to the case of the petitioner-appellant and reliance placed thereon is totally mis-conceived.

26. Now coming to the cardinal question as to whether the definition of "retrenched employee" as contained in 1985 Rules has rightly been relied upon by the respondents though the recruitment was made under 1998 Rules, we find that contrary to the language of 1975 and 1985 Rules, which were promulgated in supersession of all existing rules and orders on the subject, 1998 Rules did not make such a declaration. Admittedly, Rule-2 of 1998 Rules gives overriding effect to the said rules over the inconsistent provisions under the existing rules but so long as the provision is not inconsistent, Rule 2 of 1998 Rules has no application. The declaration of 1998 Rules, thus, makes it clear that 1985 Rules were not superceded in their entirety but to the extent the rules were framed in 1998 containing different subjects, to that extent only 1985 Rules would stand superceded by 1998 Rules but in all other respect the same would continue to operate. To elaborate it may be pointed out that there are 37 Rules in 1985 but 1998 Rules contain only nine Rules. Rules 1 and 2 of 1985 Rules provide short title, commencement and application while all the three subjects have been dealt with in Rule 1 of 1991 Rules. Rule-3 of 1985 Rules and Rule 2 of 1998 Rules gives them overriding effect and, therefore, operates in the same filed. Rule-4 of 1985 Rules and Rule-3 of 1998 Rules contain definitions. In both the Rules the definitions of "appointing authority", "Constitution", "Governor", and "Government" are common and same. However, 1985 Rules have other definitions like "Head Office", "High Court", "Ministerial Staff, "Subordinate offices", "Retrenched employee" and "Year of recruitment" which do not find place in 1998 Rules. The 1991 Rules have one definition of "Other Backward Classes". Rule-4 of 1998 Rules provides the manner of determination of vacancies though no similar provisions exist in 1985 Rules. Rule 5 of 1985 Rules provides for strength of service. Rule 6 provides source of recruitment. Rule 7 provides for reservation and Rule-8 provides nationality, Rule 9 provides for academic qualification, Rule 10 provides for preferential qualification, Rule 11 provides for age, Rule 12 provides for relaxation for ex-servicemen and certain other categories, Rule-13 provides for character, Rule-14 provides for marital

status and salary status and Rule 15 provides for physical fitness but the corresponding provision thereof are not existing in 1998 Rules. Procedure for recruitment is provided in part-4 of 1985 Rules, which has Rules 17, 18, 21, 22, 23 and 24 but the procedure for recruitment has been prescribed in Rules 5, 6, 7 and 8 of 1998 Rules. Therefore, in our view, the procedure prescribed for recruitment in Part-4 of the 1985 Rules stands superceded by 1998 Rules. Rule 9 of 1998 Rules gives an opportunity to the candidates for inspection of the record relating to selection though no such provision existed in 1985 Rules. Rule 26 to 36 of 1985 Rules contains provisions regarding appointment, probation, confirmation, seniority and scale of pay, criterion for crossing E.B., Canvassing, Regulation of other matters and relaxation from the conditions of service, which do not exist in 1998 Rules. Therefore, all the provisions of 1985 Rules, which are not inconsistent with 1998 Rules will continue to operate and this also include the definition of "retrenched employee". We have been informed that regarding confirmation, seniority etc. separate set of rules have been framed in 1991 by the Hon"ble Governor in exercise of power under Article 309 of the Constitution of India, which also have overriding effects, and to that extent, the provision of 1985 Rules also stood superceded by those rules, but it will not change the position. To the extent, provisions have not been made in 1998 Rules, there, the rules of 1985 will continue to operate and govern the field.

27. In this view of the matter, since the definition of "retrenched employee" contained in 1985 Rules would continue for recruitment under 1998 Rules, we are of the view that the authorities were right in applying the definition of "retrenched employee" as contained in 1985 Rules and since the petitioner-appellant did not qualify to be a "retrenched employee" under the said definition, he was not entitled for any relaxation under the category of "retrenched employee" and, therefore, his selection and appointment treating him as "retrenched employee" was ex-facie illegal and thus, was rightly cancelled by the competent authority. Though the learned Counsel for the appellant has placed before us the definition of "retrenched employee" in various Dictionaries and as understood in Labour enactments, but we need not to discuss the matter anymore by referring to same, in view of our answer to the question as discussed above. Moreover, perusal of the judgment of the Hon"ble Single Judge shows that those dictionary meanings etc and their effect has-been discussed by the Hon"ble Single Judge in detail and we find ourselves in respectful agreement therewith.

28. In the result, we are of the view that the petitioner-appellant was not entitled for any relief and, the Hon"ble Single Judge has rightly dismissed the writ petition. The special appeal, thus, lacks merit and is accordingly, dismissed without there being any order as to costs.