
(2008) 11 AHC CK 0123
In the Allahabad High Court
Case No : Writ Petition No.2069 (S/S) of 2008

Siddharth Rana

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 24-11-2008

Acts Referred:

Uttar Pradesh Junior Revenue clerk (Registrar Kanoongo) Service Rules, 1958 — Rule 7

Citation : (2008) 11 AHC CK 0123

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Counter affidavit has been filed by learned Standing Counsel. Learned counsel for the petitioner does not propose to file any rejoinder affidavit and stated that since the issue involved in this writ petition is legal, therefore, the writ petition itself may be heard and decided finally at this stage to which learned Standing Counsel did not object. Hence the writ petition has been heard finally at the admission stage under the Rules of the Court.

2. The only grievance raised by learned counsel for the petitioner is that by order dated 30.11.2007 the Board of Revenue has directed the District Magistrate, Pilibhit to fill in the post of Registrar Kanoongo by considering Lekhpal and Bhulekh Lipik as per their seniority in view of the fact that by Government order dated 22.2.1995 the posts of Assistant Registrar Kanoongo and Registrar Kanoongo have been merged. He submitted that presumption of the respondents that the Government's Order dated 22.2.1995 has overriding effect over the statutory rules applicable to the petitioner, is clearly perverse and illegal. Till date there is no amendment in the statutory rules namely, U.P. Junior Revenue Clerk (Registrar Kanoongo) Service Rules, 1958 (hereinafter referred to as the '1958 Rules') which provides two different cadres namely, Assistant Registrar Kanoongo and Registrar Kanoongo for which the feeder cadre is also prescribed separately under Rule 7 of 1958 Rules. He submitted that though by Government order dated 22.2.1995 the pay scales of the two cadres have been made at par

and decision of merger of the two cadres has been communicated but there is no merger of the cadre till date and both cadres are continuing separately since no amendment is made in the aforesaid rules. He lastly submitted that in any case the government order dated 22.2.1995 would not affect and can not be treated as amending Rules issued under proviso to Article 309 of the Constitution of India, though para B of the Government Order dated 22.2.1995 says that 1958 Rules shall stand amended to the extent it provides otherwise; and the said Government Order is clearly ineffective. He contended that this part of the order being illegal, cannot be followed.

3. Learned Standing Counsel placing reliance on the said Government order as well as the counter affidavit submitted that since the pay scale of Assistant Registrar Kanoongo and Registrar Kanoongo were made at par and the two cadres were merged by the Government Order dated 22.2.1995 which also provided that 1958 Rules shall stand amended, therefore, the order issued by the Board of Revenue is correct.

4. Having heard learned counsel for the parties in my view this writ petition deserves to be allowed.

5. It is not disputed that 1958 Rules have not been amended so far. Learned Standing Counsel also could not dispute that the two cadres namely, assistant Registrar Kanoongo and Registrar Kanoongo are distinct under 1958 Rules. The Government order dated 22.2.1995 only shows that the pay scale of two cadres were made at par and the Governor has also approved merger of the posts of Assistant Registrar Kanoongo and Registrar Kanoongo by amending the Government Order dated 28.10.1989. However, the said Government Order does not help the respondents in my view for the reason that Rule 5 of 1958 Rules provides for Registrar Kanoongo and Assistant Registrar Kanoongo as separate cadres having particular cadre strength. Rule 7 thereof provides for ?source of recruitment? to the two cadres and for the post of Registrar Kanoongo, permanent Assistant Registrar Kanoongo having three years of service and Bhulekh Lipik who have worked for three years are eligible while for the post of Assistant Registrar Kanoongo, the Lekhpal having six years of service are eligible. The procedure for recruitment to the two cadres is prescribed in Rule 8 and for the post of Registrar Kanoongo, criteria for promotion is seniority from the Assistant Registrar Kanoongo and Bhulekh Lipik promoted from the post of Lekhpal while for Assistant Registrar Kanoongo the criteria for promotion is seniority from the post of Lekhpal. It is not the case of respondents that the aforesaid rules have been amended so far. It is well settled that the statutory rules cannot be modified or amended by executive orders. In *Indra Sawhney and others v. Union of India and others*, 1992 (Suppl) 3 SCC 217 the Apex Court held that though the executive orders can be issued to fill up the gaps in the rules if the rules are silent on the subject but the executive orders cannot be issued which are inconsistent with the statutory rules already framed. In *Laxman Dundappa Dhamanekar and another v. Management of Vishwa Bharata Seva*

Smithi and another, JT 2001 (8) SC 171 also the same view was taken. In K. Kuppusamy and another v. State of T.N. and others, (1998) 8 SCC 469 the Court said that statutory rules cannot be overridden by executive orders or executive practice and merely because the Government has taken a decision to amend the rules does not mean that the rule stood obligated. So long as the rules are not amended in accordance with the procedure prescribed under law the same would continue to apply and would have to be observed in words and spirit. In Chandra Prakash Madhavrao Dadwa and others v. Union of India and others, (1998) 8 SCC 154 also the Apex Court expressed the same view holding that the executive orders cannot be conflicted with the statutory rules of 1977.

6. Since it is not disputed that 1958 Rules have not been amended so far, no Government Order can be permitted to operate over the rules and, therefore, to the extent the Government Order dated 22.2.1995 is inconsistent to 1958 Rules the same cannot be applied. The respondents are bound to comply 1958 Rules and any act which is not in accordance with 1958 Rules is wrong.

7. In the circumstances, the writ petition is allowed to the extent that the order dated 30.11.2007 issued by Board of Revenue in so far as it directs the District Magistrate, Pilibhit to fill in the post of Registrar Kanoongo by considering Lekhpal also being contrary to 1958 Rules is illegal. The respondents are restrained from making promotion to the post of Registrar Kanoongo in accordance with the Government order dated 22.2.1995 ignoring the 1958 Rules. However, it is made clear that it is always open to the respondents to proceed to make recruitment to the post of Registrar Kanoongo in accordance with 1958 Rules. No costs.

(Petition allowed)