
(2008) 05 AHC CK 0229
In the Allahabad High Court

State of U.P. and Others

APPELLANT

Vs

Kapoor Chand and Others

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2009) 120 FLR 248

Hon'ble Judges : Pradeep Kant, J; Narayan Shukla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Kant and Narayan Shukla, JJ.—This special appeal has been filed by the State challenging the order passed by the learned Single Judge dated 21.3.2005, by means of which the writ petition preferred by the private respondents praying for quashing the Office Order No. 460 dated 12.6.1998 and also for issuing a direction to pay the revised Pay Scale of Rs. 1200-1800 from 31.7.1996 as was given to others holding the post of Machine Assistant Offset including arrears, has been allowed. A further prayer was made that the opposite parties be directed not to reduce the rank of the respondents (petitioners in the writ petition) and treat them as Machine Assistant Offset as they were up to the date of passing of the order dated 12.6.1998.

2. The learned Single Judge has allowed the writ petition after holding that the rules cannot be substituted by means of an executive order and further the change of designation in case of the petitioners (present respondents) amounts to reversion and admittedly no opportunity was afforded to the respondents (present petitioners) prior to passing of the order dated 12.6.1998.

3. The learned Single Judge has quashed both the orders, namely, the orders dated 12.6.1998 and 31.7.1996 insofar it relates to the present respondents with a further direction that the petitioners, who were appointed as Machine Assistant Offset, shall continue as such and are entitled to the pay scale of Rs. 1200-1800.

4. In short the facts, which have given rise to the present controversy are that the respondents were appointed as Machine Assistant Offset in the pay scale of Rs. 950-1400 in pursuance of their names being forwarded in the Employment Exchange, in pursuance of the advertisement issued by the State. The requisite qualification for the said post was High School and the certificate in the trade of Machineman Offset under Apprentice Act, 1961 or two years experience on the offset printing machine from any reputed firm/institution.

5. It is not in dispute that all the petitioners (the private respondents) were duly selected and were given appointment on the post of Machine Assistant Offset and since their appointment, they were working as such. Rules have been framed later on under Article 309 of the Constitution of India superseding all existing Rules and Orders regulating the condition of service of the persons, known as U.P. Printing and Stationery (Technical Service) Rules, 1995. The respondents were appointed prior to the enforcement of the aforesaid Rules.

6. It appears that in the year 1989, the State Government took a policy decision that the State Government employees be given the parity of pay scale with their counterparts working in Central Government. As a sequel to the aforesaid policy decision, the cases of the respondents and other persons working in the State Printing Press were considered by the Pay Equivalence Committee. The Committee, however, found that the posts which were in existence in the State Printing Press were not available in the Central Government Press. The post of Machine Offset Pressman and Machine Assistant are the posts in the State of U.P. but no such posts existed in the Central Government. Feeling this difficulty, the matter was referred to the Anomaly Committee and the Anomaly Committee suggested the department to re-structure the said Government Printing Press, namely, the cadre of service be re-structured.

7. In pursuance of the decision so taken, the State Government re-structured the cadre of service in the State. By means of the Government Order dated 31.7.1996, the State Government merged the post of Machine Offset Pressman into the post of Machine Assistant Offset and thus the cadre of Machine Assistant Offset as well as Machine Offset Pressman merged into one cadre and this was done purposely because there was no post of Machine Offset Pressman in the Central Government, where the post of only Machine Offset Assistant and that Machine Offset Attendant were there.

8. On the merger of the aforesaid two posts into one cadre of Machine Assistant, the Government further divided the said merged cadre into two cadres, by providing that 50% posts of Machine Assistant Offset shall be filled in by promotion from amongst the post of Offset Machine Parichar and the remaining 50% by means of direct recruitment, and also in pursuance of the aforesaid Government Order, the Deputy Director placed the petitioners on the post of Offset Machine Parichar in the Pay Scale of Rs. 950-1400 on the basis of their seniority.

9. The effect of such division or to say re-structuring was that the persons who were working in the same cadre of service with the same qualifications, performing the same nature of work having been appointed with the same condition of service fixed through the same Selection Committee were divided into two cadres and one of them was placed in the lower cadre, whereas some of them were retained in the same cadre.

10. Learned Counsel for the State Smt. Sangeeta Chandra has contended that such a creation of cadre in pursuance of the policy decision taken by the Government regarding re-structuring of the entire service was a valid bifurcation. She has placed reliance upon the case of State of West Bengal and others Vs. Deb Kumar Mukherjee and others, and also upon the case of S.P. Shivprasad Pipal Vs. Union of India and Others, and certain other cases have also been cited in support of the aforesaid submission.

11. The case of Deb Kumar Mukherjee (supra) does not deal with the situation, where similarly situated and similarly appointed persons working in the same cadre of service have been put to any disadvantage, which may amount to demotion/reversion to a lower post. In fact this bifurcation of the cadre resulted into the up-gradation of 20% of the posts in the cadre, to be filled up from amongst the senior and meritorious members of the cadre. The grievance against such up-gradation or bifurcation of cadre was not found to be a valid grievance by the apex court. The Supreme Court observed as under:

6. The Government Order dated 4.6.1965, reproduced above, makes it clear that the higher grade in the cadre of Inspectors was created with a view to provide a channel of promotion and to remove stagnation in the said cadre. 20% of the posts in the cadre were upgraded and given higher pay scale. The higher grade posts were to be filled by way of promotion from amongst the Inspectors holding the lower grade. We see no infirmity in upgrading 20% of the posts in the cadre to be filled up from amongst the senior and meritorious members of the cadre. The duties performed by the Inspectors in the two grades may be the same, but no fault can be found with the classification. It is settled by a string of authorities of this Court that classification in the cadre on the ground of selection based on merit is permissible. It is well-known in service jurisprudence that selection grade and super time-scale based on seniority or seniority-cum-merit are permissible. The High Court fell into patent error in setting aside the classification on the ground of discrimination.

12. In the case of S.P. Shivprasad Pipal v. Union of India (supra), the scope of judicial review in the matter of policy decision of merger of cadres has been enunciated but again the ratio decidendi of this case is of no assistance in the present case.

13. Learned Counsel for the State has not been able to show any decision where the persons working in the same cadre, with same qualification and condition of appointment having been appointed with the same procedure and drawing same

pay scale and performing same duties, can be put into two different classes merely on the basis of seniority affecting not only the emoluments but also the status nor she could show any case law that even though such bifurcation/merger would result to demotion from an existing post to the lower post, even then such a decision shall stand protected.

14. A government servant who enters into service is governed by the statutory rules framed and as are applicable and in the absence of statutory rules, the service conditions are governed by executive instructions and Government Orders issued from time to time. The present service came to be governed by the Rules known as U.P. Printing and Stationery Technical Service Rules, 1995 though made after the appointment of the respondents. This Rule provides the source of recruitment on the post of Machine Assistant Offset, wherein 50% of the posts of Machine Assistant Offset have to be filled by means of promotion from amongst the posts of Offset Machine Parichar and the remaining 50% is to be filled in by direct recruitment. This leaves no doubt that the post of Offset Machine Parichar is the lower post than the Machine Assistant Offset and also is the feeding cadre for promotion to the said post to the extent of 50%. That being so, it cannot be said that by means of this policy decision of merger in the name of re-structuring of the service, the respondents could have been put to a loss by placing them in the lower category of post, to which they were never appointed. It would thus be a clear case of demotion to a lower post for no valid reason.

15. The re-structuring in the cadre of service would not allow the State Government to frame any policy to the disadvantage of the government servant. Of course the chance of promotion if are disturbed to some extent by merger of cadre, it would not be a ground for holding the merger bad or the policy decision is illegal, but the substantive right of a government servant to work on the post, to which he was appointed, cannot be taken away by placing him to a lower category of post and not to allow the benefit of his appointment on the post, on which he was appointed and working. The situation becomes more discriminatory as even in such cadre of service, few are retained in the same cadre which has now become a higher cadre than the cadre where the respondents have been directed to fit in and they required to work on the lower post. Such a situation would be in gross violation of principles of equality as enshrined in Article 14 and 16 of the Constitution.

16. We do not find any illegality in the order passed by the learned Single Judge, while protects the interest of the respondents and like persons and direct that they will be treated to continue to work as Machine Assistant Offset and shall be paid salary accordingly. So far the re-structuring of service otherwise is concerned, we find that the learned Single Judge has not given his opinion, so also we refrain ourselves from entering into such questions with respect to other posts. This order would work only for Machine Assistant Offset and the Machine Offset Attendant. Smt. Sangeeta Chandra, learned Additional Chief Standing Counsel has lastly prayed that for compliance of the aforesaid order and for

making the necessary payments, the State may be granted four weeks time, during which they shall comply with the orders.

17. Sri L.K. Pathak has objected to the said time being granted to the State, as contempt proceedings are already in progress, but we, considering the prayer made by the learned Additional Chief Standing Counsel, give one opportunity to comply with the orders and for that matter, we direct that the order shall be complied with within a period of four weeks from the date of receipt of a certified copy of this order.

18. The special appeal is dismissed.