

(2016) 01 AHC CK 0172

In the Allahabad High Court

Case No : C.M. (Delay Condonation) Application No. 434715 of 2015 in Special Appeal Defective No. 884 of 2015

State of U.P. and Others

APPELLANT

Vs

Mahaveer Singh and Others

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Police Act, 1861 — Section 2, Section 46 (2)

Citation : (2016) 2 ADJ 802 : (2016) 2 AllWC 1972 : (2016) 1 UPLBEC 476

Hon'ble Judges : Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Piyush Shukla, for the Appellant; Rohit Upadhyay, for the Respondent

Final Decision : Allowed

Judgement

Dr. D.Y. Chandrachud, C.J.

1. This special appeal has arisen from a judgment and order of the learned Single Judge dated 4 September 2015 in a batch of writ petitions.

2. On 3 February 1994, the State Government issued an office memorandum by which a provision was made for the appointment of Constables as Head Constables and Sub-Inspectors as Inspectors on ex-cadre posts in recognition of acts of exemplary bravery and courage.

3. The office memorandum reads as follows:

4. The office memorandum envisages that Constables and Sub-Inspectors who had shown exemplary courage and gallantry while on duty would be appointed to ex-cadre posts which were to be created by the State Government upon the recommendation of the Director General of Police. Such acts of courage and gallantry would be commended when they had taken place in encounters with notorious terrorists and dreaded criminals or where the members of the police force had demonstrated courage and had assumed risks in arresting such

persons.

5. Two writ petitions were initially filed before a learned Single Judge in which an out of turn promotion was claimed in terms of the office memorandum dated 3 February 1994. A learned Single Judge of this Court by a judgment dated 13 January 2014 dismissed both the writ petitions on the ground that the office memorandum dated 3 February 1994 would cease to remain in force and effect once the State Government had framed the U.P. Sub-Inspector and Inspector (Civil Police) Service Rules, 2008 and the U.P. (Civil Police) Constables and Head Constables Service Rules, 2008 on 2 December 2008. These rules were made in exercise of the powers conferred by Section 2 read with Section 46 (2) of the Police Act, 1861 and in supersession of all existing rules and orders made in that behalf. Hence, the learned Single Judge came to the conclusion that once the rules had specified the sources of promotion and the manner in which posts would be filled up, the earlier office memorandum dated 3 February 1994 (as well as subsequent orders dated 2 January 1998 and 29 December 1998) would cease to remain in force. The learned Single Judge also directed the Principal Secretary (Home) and the Director General of Police U.P., Lucknow to constitute a committee to determine whether any out of turn promotions had been granted impermissibly after the enforcement of the rules of 2008 and to take appropriate steps by recalling such orders after furnishing a due opportunity of hearing to persons who may be so affected.

6. This judgment of the learned Single Judge was carried in appeal before a Division Bench of this Court. The Division Bench by its Judgment dated 3 February 2014 expressly kept open the issue as to whether out of turn promotion could legitimately be granted in accordance with law after the enforcement of the rules so that the State Government may in the first instance take a considered decision. The Division Bench also observed that the direction issued by the learned Single Judge for recalling all such out of turn promotions, which may have been granted after the rules of 2008 had come into force, was not warranted and had traveled beyond the ambit of the writ petitions which related inter se between an officer of the Police Force and the State pertaining to his claim for the grant of an out of turn promotion. Accordingly, the special appeal was allowed on 3 February 2014 by setting aside the judgment of the learned Single Judge which was in consequence substituted by the directions issued to the State Government in terms noted above.

7. On 7 June 2014, the State Government issued an office memorandum by which it rescinded with immediate effect the provisions contained in the office memorandum dated 3 February 1994 for the grant of out of turn promotions. Instead and in place, a provision was made by which police personnel who demonstrate exemplary acts of courage while on duty would be entitled to monetary awards on the recommendation of the Director General of Police and in the case of acts of courage of a high order, a monthly allowance would be allowed.

8. A writ petition was filed before the learned Single Judge under Article 226 of the Constitution by the respondent for quashing the Government Order dated 7 June 2014 or alternatively for a declaration that it would have prospective operation and would not effect pending proceedings based upon instances and recommendations made prior thereto and for a direction to the State to consider the grant of out of turn promotion to the respondent which was pending on 7 June 2014 in accordance with the provisions of the office memorandum dated 3 February 1994, ignoring the Government Order dated 7 June 2014.

9. The learned Single Judge accepted the submission of the respondent and held that prior to the issuance of the Government Order dated 7 June 2014, the case of the respondent was recommended by a competent authority for the grant of out of turn promotion but had not culminated in a final order. Hence, a direction was issued that the process for the grant of out of turn promotion, which had been initiated in the case of the respondent, should be decided in accordance with the procedure which was laid down prior to the Government Order dated 7 June 2014. This direction has been called into question in the special appeal by the State.

10. On behalf of the appellants, it has been submitted that in pursuance of the direction which was issued by the Division Bench in its judgment dated 3 February 2014, the State Government revisited the issue pertaining to the grant of out of turn promotions to members of the police force and took a decision by a Government Order dated 7 June 2014 to rescind the office memorandum dated 3 February 1994. Prior thereto, it was urged that the submission of the State Government is that the office memorandum dated 3 February 1994 contemplated that ex-cadre posts would be created on the recommendation of the Director General of Police by the State Government against which out of turn appointment would be granted to Constables and Sub-Inspectors who had exhibited exemplary acts of courage and gallantry. Hence, it was urged that there is no vested right to promotion nor was there any existing vacancy. Moreover, it was urged that, as a matter of fact, in the present case, what the original petitioners relied upon was a recommendation dated 4 June 2012 of the Senior Superintendent of Police, Lucknow (Annexure - 4 to the writ proceedings). Neither was there any recommendation of the Director General of Police, nor were any ex-cadre posts created. Hence, it is urged placing reliance on a judgment of the Full Bench of this Court in *Anand Kumar Sharma v. State of U.P. and Ors.*, 2014 (2) ADJ 742 (FB) that the respondents had no vested or indefeasible right to the grant of out of turn appointments or promotions in terms of the office memorandum dated 3 February 1994. Once, the Government Order has been issued on 7 June 2014, subsequently rescinding the earlier office memorandum, the learned Single Judge was in error in issuing such direction.

11. On the other hand, it has been submitted on behalf of the respondents that the case of the respondents had been duly recommended and the rescission of the office memorandum of 3 February 1994 which took place by virtue of the

Government Order dated 7 June 2014 can only have prospective effect. On behalf of the respondents, reliance was placed on two decisions. The first is of the Supreme Court in *Canara Bank and Anr. v. M Mahesh Kumar*, (2015) 7 SCC 412 in the context of compassionate appointment in which it was held that the rescission of a scheme for compassionate appointment will not affect an application submitted when the scheme was in force and which was held to be governed by the scheme then prevailing on the date of the application. The second decision is a judgment of the Full Bench of this Court in *Santosh Kumar Singh v. State of U.P. and Ors.* 2015 (7) ADJ 179 (FB), where it has been held that where the process of appointment on an ad-hoc basis against a short term vacancy had arisen prior to the rescission of the Removal of Difficulties Orders under Section 33-E of the U P Secondary Education Services Selection Board Act, 1982 on 25 January 1999, the process of selection would not be abrogated as a result of the rescission.

12. The provision for out of turn appointments was based on an office memorandum of 3 February 1994. The office memorandum provides for out of turn appointments of Constables as Head Constables and of Sub-Inspectors as Inspectors for which purpose, ex-cadre posts were required to be created. Ex-cadre posts would be created by the State Government on the recommendation made by the Director General of Police. Appointments on the ex-cadre posts are similarly to be made on the recommendation of the Director General of Police by the State Government in consideration of exemplary acts of courage and gallantry on the part of the members of the police force. By the judgment of a Division Bench of this Court dated 3 February 2014, the State Government was required to take a considered decision whether the office memorandum should continue after the enforcement of the Rules of 2008, which govern promotion to the posts of Inspectors and Head Constables in the police. The State Government took a conscious decision by issuing a Government Order on 7 June 2014 to rescind the office memorandum providing for out of turn appointments and substituted it instead by a scheme envisaging monetary awards.

13. The important aspect in the present case which needs to be emphasized is that there were no vacancies as such which existed and which were required to be filled up by initiating a process of promotion under a prevailing set of rules. As we have noted earlier, the office memorandum dated 3 February 1994 contemplated the creation of ex-cadre posts on the recommendation of the Director General of Police by the State Government and against which out of turn appointments were to be made again by the State Government on the recommendation of the Director General of Police. In this background, it would be far fetched to postulate that a mere recommendation which was made - in the present case by the Senior Superintendent of Police - conferred upon a member of the police force an indefeasible or vested right to promotion. Once the Government Order dated 7 June 2014 has taken effect, which has the effect of rescinding the office memorandum dated 3 February 1994, any promotion which is required to be made would necessarily have to be governed by the statutory

rules which hold the field.

14. Now, it is in this background that it is necessary to advert to the decisions upon which reliance has been placed by the respondents in support of their case.

15. The decision of the Supreme Court in *Canara Bank* (supra) dealt with a situation where there was a dying-in-harness scheme under a circular of the Canara Bank dated 8 May 1993. An employee of the Bank died while on duty on 10 October 1998 and an application was made on 30 November 1998 by his heirs for seeking compassionate appointment on the basis of the scheme. The Bank rejected the application on 30 June 1999. Upon a learned Single Judge of the Kerala High Court being moved in writ proceedings, the petition was allowed on 30 May 2003 by directing the Bank to reconsider the claim in accordance with law. The judgment of the learned Single Judge was upheld by a Division Bench of the Kerala High Court on 24 August 2006. By the time the Division Bench had decided the writ appeal, the scheme for compassionate appointment was scrapped and the Indian Bank Association formulated a scheme based on guidelines of the Union Government stipulating ex gratia payment in lieu of compassionate appointment. A circular was issued on 14 February 2005 and it was asserted on behalf of the Bank that as on the date of consideration of the application for compassionate appointment, there was no policy to provide such an appointment under the 1993 Scheme. The Supreme Court, in these facts, held that the father of the respondent had died in October 1998 when the dying-in-harness scheme of 8 May 1993 was in force and in fact, the Bank had rejected the claim on 30 June 1999 under the scheme, holding that there were no indigent circumstances. Hence, the cause of action to be considered for compassionate appointment had arisen when the circular of 8 May 1993 was in force and the circular of 2005 being an administrative order was held not to have retrospective effect. Moreover, the Supreme Court also observed that the 2005 scheme which provided only for ex gratia payment in lieu of appointment had in fact been substituted (during the pendency of the proceedings before the Supreme Court) in 2014 and a new scheme had been arrived at for providing compassionate appointment. Hence, as on the date of the judgment of the Supreme Court, the scheme in force provided for the grant of compassionate appointment. It was in these facts, which are clearly distinguishable, that the Supreme Court held that the Bank was not justified in contending that the application for compassionate appointment could not be considered in view of the passage of time.

16. The judgment of the Full Bench upon which reliance has been placed by the respondents in *Santosh Kumar Singh* (supra) dealt with the provisions of Section 33-E of the U P Secondary Education Services Selection Board Act, 1982 which were brought into force on 25 January 1999. As a result of the provisions of Section 33-E, the Removal of Difficulties Orders which inter alia provided for ad-hoc appointments against short term vacancies by the Committee of Management were rescinded. The Full Bench of this Court relied upon the

judgment of the Supreme Court in *A A Calton v. Director of Education*, (1983) 3 SCC 33.

17. Calton was a case where as a result of an amendment which was made on 18 August 1975, the power of the Director to make appointments under Section 16-F (4) of the Intermediate Education Act, 1921, was taken away in the case of minority institutions. In that case, however, the selection had already commenced prior to the amendment. It was in this background that the Supreme Court held that where a process of selection under Section 16-F commenced from the stage of calling for applications for a post, selection was an integrated process. Since the selection proceedings had commenced in the year 1973, it was held that the amendment of 1975 would not abrogate those proceedings. This judgment was followed in the decision of the Full Bench in *Santosh Kumar Singh* (supra) where it was held that though the power of the Committee of Management to make appointments against short term vacancies stood abrogated with effect from 25 January 1999 on the enforcement of the provisions of Section 16-F, it would not apply to a situation where a process of selection has been initiated prior to that date. *Santosh Kumar Singh* (supra), therefore, dealt with a situation where the process of selection against short term vacancies by making ad-hoc appointments had commenced prior to the date on which the statutory provision authorizing such appointments was abrogated.

18. In our view, the aforesaid judgments will not assist the case of the respondents. In fact, as held by the Full Bench of this Court in *Anand Kumar Sharma* (supra), the mere making of an application would not in a situation such as the present confer an indefeasible or vested right to out of turn appointments or promotions, nor for that matter, would a recommendation made upon the application confer such an indefeasible right. The office memorandum contemplated the creation of ex-cadre posts by the State Government on the recommendation of the Director General of Police. It is only upon the creation of ex-cadre posts and the recommendation of the Director General of Police for an out of turn appointment that the State Government would make an out of turn appointment. A conscious policy decision has been taken by the State Government based on the exigencies of the service to the effect that in terms of the Government Order dated 7 June 2014, the office memorandum would stand rescinded and that the scheme of out of turn appointments would stand substituted by monetary compensation. Emphasis was sought to be laid on behalf of the respondents on the fact that the judgment of the Public Service Tribunal in the case of a Sub-Inspector by the name of Jitendra Singh Kalra Claim Petition No. 334 of 2014 accepted the case for the grant of out of turn promotion which has been accepted by the State Government. Even assuming that this is so, we find no reason or basis to extend the benefit in general terms in other cases once the Government Order dated 7 June 2014 has come into force.

19. The learned Single Judge has observed that in the judgment of the Division Bench of this Court 3 February 2014, no illegality was found in the Government

Order dated 3 February 1994 on which basis it has been held that the State Government was fully competent to grant such out of turn promotions.

20. We are unable to subscribe to this line of reasoning of the learned Single Judge. The issue before the Court, it must be noticed, is not concerned with the legality of the order dated 3 February 1994 but whether after the rescission of that order, the respondents would be entitled to assert an indefeasible right to be considered for out of turn appointments on the basis of the provisions of the order as they stood prior to the rescission.

21. For all these reasons, we are of the view that the judgment of the learned Single Judge holding that the process of out of turn promotions would have to be completed in terms of the procedure which was laid down by the office memorandum dated 3 February 1994 is unsustainable and would have to be accordingly set aside.

22. We, accordingly, allow the special appeal and set aside the impugned judgment and order of the learned Single Judge dated 4 September 2015. In consequence, the writ petitions filed by the respondents shall stand dismissed. However, there shall be no order as to costs.

23. The delay of eighty days in filing the special appeal is condoned since sufficient cause has been shown in the affidavit filed in support of the delay condonation application.

24. The application is, accordingly, disposed of.