
(2007) 09 AHC CK 0097

In the Allahabad High Court

Case No : Writ Petition Nos. 1049 and 1050 (S/B) of 2007

State of U.P. and others

APPELLANT

Vs

Maresh Narain and others

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Uttar Pradesh Forensic Science Laboratories Technical Officers Service Rules, 1987 — Rule 5

Uttar Pradesh General Clauses Act, 1904 — Section 23A

Citation : (2007) 09 AHC CK 0097

Hon'ble Judges : U.K.Dhaon, J and Devi Prasad Singh, J

Final Decision : Dismissed

Judgement

U.K. Dhaon and Devi Prasad Singh, JJ.—Heard the learned Standing Counsel and Sri Shrish Kumar, learned Counsel for the opposite party No. 1.

2. Since common questions of law and facts are involved in both the writ petitions, we dispose of the same by a common judgment and order.

3. The petitioners, being aggrieved by the judgment and order dated 10.4.2007 by which the claim petition preferred by opposite party No. 1 under section 4 of the U.P. Public Services (Tribunal) Act, 1976 was allowed, have approached this Court under Article 226 of the Constitution of India.

4. The brief facts of the case are that the opposite party No. 1 was initially appointed as Junior Chemical Assistant in the Forensic Science Laboratory in the year 1968. The nomenclature of the said post of Junior Chemical Assistant was subsequently changed as Scientific Assistant. The opposite party No. 1 was promoted to the post of Senior Chemical Assistant in the year 1973 and he was further promoted as Scientific Officer on 16.9.1985 and in compliance of the promotion order, the opposite party No. 1 joined on the post of Scientific Officer on 20.9.1985. The said promotion order was only for a period of one year or till the Service Rules were published. The State Government thereafter published the U.P. Forensic Science Laboratories Technical Officers' Service Rules, 1987

(hereinafter referred to as the "Rules"). Rule 5 of the said Rules provides that 75% posts to be filled through direct recruitment and 25% posts to be filled by promotion from amongst the Scientific Officers having experience of five years.

5. The proviso to the said Rule 5 provides that where permanent Scientific Officers are not available, such temporary and officiating personnel may also be considered for promotion to the said post as may be permanent on the next lower post. In the department, there were 15 posts of Assistant Directors sanctioned by the State Government and when the aforesaid U.P. Forensic Science Laboratories Technical Officers' Service Rules, 1987 came into force. The Rules of 1987 were subsequently amended in the year 1990 by U.P. Forensic Science Laboratories Technical Officers' Service (First Amendment) Rules, 1990 (hereinafter referred to as the "Rules of 1990"). The said Rule dated 15.9.1990 were published on 20.10.1990. In pursuant of the Rules of 1990, the State Government notified 11 vacancies by direct recruitment through a notification published in the employment news dated 5.1.1995. Since the promotion was not granted to the opposite party No. 1 after five years of service on the post of Assistant Director, against four vacancies, which were available for promotion before the amendment under promotees quota, the opposite party No. 1 filed claim petition before the U.P. Public Services (Tribunal) Act, 1976, which was contested by the petitioner by filing written statement. The Tribunal after hearing the Counsel for the parties and considering the entire material on record allowed the claim petition by the impugned judgment and order dated 10.5.2007.

6. Learned Counsel for the petitioner submits that the amended Rules of 1990 came into force on 15.9.1990 and on that date the opposite party No. 1 had not completed five years of service as Scientific Officer and as such he was not eligible for promotion to the post of Assistant Director. He further submits that the Tribunal has wrongly held that the amended Rules of 1990 came into force on 20.10.1990 when they were published in the Government Gazette. He further submits that in a most arbitrary and illegal manner the Tribunal has allowed the claim petition preferred by the opposite party No. 1.

7. The learned Standing Counsel has relied upon the decision of the Hon'ble Supreme Court in the case of Chandigarh Housing Board v. Devinder Singh and another, (2007) AIR SCW 2724. and on the basis of the aforesaid judgment he submits that the Court would not take recourse to any other principle of interpretation when it is not necessary and since the amended Rules of 1990 is dated 15.9.1990, it can not be said that the Rules has come into force with effect from 20.10.1990 when specifically it was provided that the Rules will come into force immediately. The learned Standing Counsel has relied upon Rule 3 (2) of U.P. General Clauses Act, 1904.

8. Learned Counsel for the opposite party No. 1 submits that there is no illegality in the impugned judgment and order passed by the Tribunal. He further submits that against 25% quota of promotees, under Rules of 1987, the opposite party No. 1 was entitled for promotion to the post of Assistant Director. He further

submits that the amended Rules of 1990 dated 15.9.1990 were published in the U.P. Government Gazette n 20.10.1990 and as such the Rules will be operative only from the date, when they were published in the Government Gazette and not from the date when they were framed by the State Government.

9. Learned Counsel for the opposite party No. 1 has relied upon the provisions of section 23A of the U.P. General Clauses Act, 1904.

10. We have considered the submissions made by the learned Counsel for the parties and gone through the record.

11. It is admitted case of the parties that the services of the opposite party No. 1 was governed by U.P. Forensic Science Laboratories Technical Officers" Services Rules, 1987. Rule 5 of the said Rules provides that 75% posts are to be filled through direct recruitment and 25% posts are to be filled by promotion from amongst the permanent Scientific Officers having experience of five years of service. The opposite party No. 1 was promoted on the post of Scientific Officer by the order dated 16.9.1985 and the opposite party No. 1 in compliance of the promotion order joined on the promotional post on 20.9.1985. Rules of 1987 were amended by U.P. Forensic Science Laboratories Technical Officers" Service (First Amendment) Rules, 1990 and it was published in the U.P. Government Gazette dated 20.10.1990. The Tribunal has recorded a finding that the opposite party No. 1 was promoted with effect from 20.9.1985. He had completed five years of service on 19.9.1990 and as such he was eligible for promotion after completion of five years of service. The Tribunal has also recorded a finding that Rules of 1990 came into force on 20.10.1990 when they were published in the official gazette. Section 23A of the U.P. General Clauses Act, 1904 is as follows :

"Date of coming into effect of rules and the control of legislature over them. (1) All rules made by the State Government under an Uttar Pradesh Act shall as soon as may be after they are made, be laid before each house of the State Legislature, while it is in session, for a total period of not less than thirty days, which may be comprised in one session or two or more successive session, and shall, unless some later date is appointed, take effect from the date of their publication in the gazette subject to such modifications or annulments as the two Houses of the Legislature may, during the said period, agree to make, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder."

12. The short question involved in these petitions is whether the rules will be operative from the date when they were amended by the State Government or from the date when they were published in the Government Gazette. The Tribunal has relied upon the decisions of the Hon'ble Supreme Court in the case of Nirmal Chandra Bhattcharjee and others v. Union of India and others, 1991 Supp (2) SCC page 363. B.L. Gupta and another v. M.C.D., (1998) 9 SCC page 223. Pitta Naveen Kumar and others v. Raja Narasaiah Zangiti and others, (2006) 10 SCC page 261. a Full Bench decision of Rajasthan State Electricity

Board (2000) 1 UPLBEC (Sum.) page 39. and State of Andhra Pradesh and others v. J. Sreenivasa Rao and others (1983) 3 SCC page 285. and has held that the rules were operative from the date they were published in the official gazette.

13. The contention of the learned Standing Counsel that section 3 (2) of the U.P. General Clauses Act, 1904 is applicable in the instant case cannot be accepted, since the Rules of 1990 dated 15.9.1990 were published in the U.P. Government Gazette on 20.10.1990, they will be deemed to be enforced from the date when they were duly published in the U.P. Government Gazette and not from the date when the Rules were prepared and passed by the Government.

14. From the case of Rajasthan High Court in Shanker Lal Verma and others v. The Rajasthan State Electricity Board (supra) relied upon by the State Public Service Tribunal, it is evident that a rule can be amended retrospectively but such retrospective effect cannot be allowed to take away vested rights of citizens.

15. There is no illegality or infirmity in the impugned judgment and order passed by the Tribunal. The writ petitions are devoid of merits. They are accordingly dismissed.