
(2015) 09 SC CK 0138

In the Supreme Court Of India

Case No : Civil Appeal Nos. 9165-9172, 9142-9144, 10177-10179, 10567 of 2010, 991, 2293, 3212, 7117, 7119, 7838, 7109, 8335, 8345, 8672, 8687, 9731, 10450, 10546, 10549, 10550, 10688 of 2011, 201, 208, 209, 2151, 2152, 2460, 6152, 6153, 6154, 6155, 6156, 6157, 6175

Sunil Kumar Verma and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Constitution of India, 1950 — Article 12

Limitation Act, 1963 — Section 5

Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service (Rescission of Rules) Rules, 1991 — Rule 2, Rule 3, Rule 3(1)

Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service (Rescission of Rules) Rules, 2003 — Rule 3(1)

Citation : (2015) 10 AD (SC) 421 : (2015) 147 FLR 864 : (2015) 9 SCALE 795 : (2016) 1 SCC 397 : (2016) 1 SCC(L&S) 150 : (2015) 4 SCT 469

Hon'ble Judges : Dipak Misra, J; Prafulla C. Pant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dipak Misra, J—Leave granted in S.L.P. (C) No. 1833 of 2013 and S.L.P. (C) No. 19001 of 2013.

2. The U.P. State Cement Corporation Limited (for short, "the Corporation") was wound up on 8th December, 1999. There is no dispute about the fact that the said Corporation is an instrumentality of the State Under Article 12 of the Constitution of India. It is the admitted position that in the State of U.P. existed a set of rules, namely, the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 (for short, "the 1991 Rules"). After the Corporation was wound up, Shailendra Kumar Pandey and some others, who were the employees of the Corporation, filed Civil Miscellaneous Writ Petition No. 36644 of 2003, seeking absorption under the

aforesaid Rules.

3. The learned Single Judge hearing the writ petition referred to Rule 3(i) of the Rules that deals with the rights of the retrenched employees. He referred to the dictionary clause engrafted in Rule 2(c), which reads as follows:

2(c) Retrenched employees means a person who was appointed on the post under the Government or a public corporation on or before Oct., 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 up to the date of his retrenchment. Due to reduction in, or winding up of, any establishment of the Government or the Corporation, as the case may be and in respect of whom a certificate of being a retrenched employee has been issued by this appointing authority.

After reproducing the said provision, the Writ Court referred to the order passed in Civil Miscellaneous Writ Petition No. 17195 of 1998, and reproduced the relevant paragraphs from the decision rendered therein and, thereafter, took note of the fact that the said order had been affirmed in Special Appeal No. 540 of 1999, and further stood confirmed by this Court, for the appeal preferred before this Court did not meet with success. The learned Single Judge also referred to the order passed in Civil Miscellaneous Writ Petition No. 38534 of 2001 on 20th September, 2003, wherein a direction was issued to the Respondent No. 2 to take appropriate decision. After the said direction was issued, the Principal Secretary (Personnel), Government of U.P., rejected the claims of the Petitioners therein on the foundation that the Personnel Department did not have the authority to declare the employees as retrenched employees and to take a decision for their absorption. The learned Single Judge dealt with various contentions raised by the learned Counsel for the parties and also cogitated upon the U.P. Absorption of Retrenched Employees of the State Government/Public Sector Corporation in Government Service (Recession) Rules, 2003 (hereinafter referred to as "the 2003 Rules") and, eventually came to hold passed that the Absorption Rules, 1991 were rescinded on 8th April, 2003 and much prior to that the employees had represented and the Respondents were required to consider their rights for absorption within two months and regard being had to the rule position, it could safely be held that the rights of the employees had crystallized much before the Rules were rescinded. After so holding, the learned Single Judge proceeded to state thus:

The Respondents cannot take the benefit of the delay caused by them in considering Petitioners application. The two months period granted by this Court on 20.09.2002 expired on 20.11.2002. The delay made by the Secretary (Karmik) Anubhag-2, Government of U.P. in deciding the matter, cannot be a ground to refuse the due consideration, required to be made by this Court before the rescission of the Rules. The Rescission of Rules will, therefore, not come in the way of Petitioners in claiming the absorption.

The writ petition, as such, allowed. The impugned order dated 30.04.2003 passed by the Special Secretary (Karmik) Anubhag-3, Govt. of U.P., Lucknow (Annexure-10 to the writ petition) is quashed. The Respondents are directed to absorb the Petitioners in any vacancy on Group-C post outside the purview of Public Service Commission within a period of two months from the date of production of a certified copy of this order.

4. The aforesaid order came to be assailed before a Special Bench in Special Appeal No. 618 of 2004. The Division Bench referred to its order dated 14th October, 2004, passed in State of U.P. through its Secretary and Anr. v. Mukund Lal Singh S.P.A. No. 869 of 2004 decided on 14.10.2004 which had faced dismissal and accordingly passed the following order:

In view of the averments made in Ground Nos. 12 and 13 of the Special Appeal, the appeal is bound to be dismissed as the decision of this Court, in Writ Petition No. 17195 of 1998 was challenged not only before the Division Bench in Special Appeal but was also before the Apex Court and the judgment remained intact.

In view of the above, considering the averments made in the affidavit filed in support of the application Under Section 5 of the Limitation Act condonation of delay, we condone the delay in filing the appeal but dismiss the Special Appeal on merit.

Mst. Kirtika Singh appears for the Respondent.

However, the judgment and the order of the learned Single Judge shall be given effect to strictly in accordance with Rule 3(1) of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission) Rules, 2003.

5. The said order came to be assailed in Civil Appeal No. 782 of 2006. This Court vide order dated 31st January, 2008, passed the following order:

Heard learned Counsel for the parties.

In the facts and circumstances of the case, we are not inclined to interfere with the impugned orders.

The civil appeals are, accordingly, dismissed.

It is made clear that the directions in the order dated 14th October, 2004, passed in Special Appeal No. 869 of 2004 that the order of the learned Single Judge shall be given effect to strictly in accordance with Rule 3(1) of the Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991, shall apply in all these appeals.

I.A. No. 7 is permitted to be withdrawn to take such remedy as is available to the applicant under law. I.A. No. 5 is permitted to be withdrawn.

It is apt to note here, thereafter, certain issues arose before this Court in contempt petitions with regard to the grant of salary component. We shall refer

to the said facet at a later stage.

6. When the matter stood thus, and in all possibility, all the affected employees of the Corporation felt relieved, inasmuch as the controversy had travelled to this Court and was put to rest. The writ petitions which were preferred in the year 2001 were still pending before the High Court and the expectation of the Petitioners therein was that the similar benefits shall enure to them, for the writ petitions instituted on later dates had been disposed. As is demonstrable, the learned Single Judge following the judgment of the Special Bench, as well as of this Court, allowed the writ petition.

7. On appeals being preferred by the State of U.P., the Division Bench by the impugned judgment, rather a longish one, adverted to many an aspect and posed the core question which is as follows:

The question still remains as to what is the ratio of Shailendra Kumar Pandey's case (supra), which was decided by the learned Single Judge of this Court vide its judgment and order dated 6th January, 2004 and affirmed in special appeal by Division Bench of this Court and in civil appeal by the Apex Court.

8. The Division Bench after posing the question, proceeded to state that:

As noticed above, the learned Single Judge in its judgment dated 6th January, 2004, in Shailendra Kumar Pandey's case (supra) noticed that the 1991 Rules were rescinded on 8th April, 2003, but a view was taken that since the retrenched employees fell within the category of the 1991 Rules and the Respondents were required to consider their rights for absorption within two months under the order of this Court passed on 20th September, 2002, the Respondents cannot take the benefit of delay caused by them in considering the claim of the writ Petitioners. It was also held that their rights crystallised much before the rules were rescinded. The learned Single Judge further held that two months period expired on 20th November, 2002 and the delay caused by Secretary (Karmik), Government of U.P. cannot be a ground to refuse due consideration required to be made by this Court before rescission of the rules. The above observation of the learned Single Judge makes it clear that basis of the direction by the Court was non compliance of the earlier directions dated 20th September, 2002 within the time allowed and that was the reason for direction to the State Government to consider the case of absorption. The said directions of the learned Single Judge dated 6th January, 2004, were issued on the special facts of that case.

As noted above, the special appeal filed against the judgment and order dated 6th January, 2004 was dismissed following earlier decision of the Division Bench in Special Appeal No. 869 of 2004. The order passed by the Division Bench of this Court in Special Appeal No. 869 of 2004 has also been quoted above by which decision the special appeal was dismissed with direction that the judgment of learned Single Judge be given effect to strictly in accordance with Rule 3 of the 1991 Rules. While dismissing the special appeal on 14th October, 2004, the

Division Bench had not adverted to the consequence of the Rescission Rules, 2003. The Division Bench in the aforesaid judgment having not considered or expressed any opinion with regard to the Rescission Rules, 2003, no such ratio can be read in the aforesaid judgment that despite Rescission Rules 2003 the right of retrenched employees, who could not be absorbed till 8th April, 2003, still subsists and can be enforced by a writ petition.

9. Thereafter, the Division Bench referred to the authority in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, AIR 2003 SC 511 : (2002) 10 JT 55 : (2003) 2 SCC 111 : (2003) 1 UJ 80 and Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal, AIR 2002 SC 3088 : (2002) CriLJ 4295 : (2002) 4 Crimes 122 : (2002) 6 JT 325 : (2002) 6 SCALE 147 : (2002) 7 SCC 222 : (2002) 2 SCR 1 Supp : (2002) 2 UJ 1314 : (2002) AIRSCW 3555 : (2002) 6 Supreme 77 which deal with binding nature of a judgment and thereafter, it referred to the decision in Special Appeal No. 233 of 2007 decided on 15th March, 2007, wherein the 1991 Rules and 2003 Rules were considered and opined thus:

A Division Bench of this Court in Special Appeal No. 233 of 2007 (Subhash Prasad v. State of U.P. and Ors., decided on 15.3.2007) had considered the similar issues pertaining to right under the 1991 Rules and the effect of the Rescission Rules 2003. The Appellant in the aforesaid case had filed a writ petition for a direction for absorption under the 1991 Rules. The writ petition was dismissed by the learned Single Judge against which special appeal was filed. In paragraphs 8 and 9 of the said judgment the Division Bench noted Rule 3(1) of the Rescission Rules 2003. The argument of the learned Counsel for the State that after the Rescission Rules 2003 came into force the right under the 1991 Rules came to an end was also noticed. The Division Bench held that at the highest the applicant has to be considered like any other employee but the said right came to an end when the rules were rescinded in 2003.

10. The Division Bench expressed the view that decision in Subhash Prasad (supra) was squarely applicable and governed the field. It also referred to the decision in W.P. No. 51252 of 2006 [Prabhu v. State of U.P. and Ors.], wherein the learned Single Judge had opined that merely because some incumbents had been offered appointment under the cover of the orders passed by the Court, it will not improve the case of the Petitioners therein as two wrongs would not make a thing right. Endorsing the said view, the Division Bench proceeded to state that:

...We having found that the right of consideration for absorption under the 1991 Rules having come to an end after the Rescission Rules 2003, no mandamus can be issued for enforcing the said right. However, it is relevant to note that under the Rescission Rules 2003 as well as under the 2009 Act certain benefits have been provided to the retrenched employees even after 8th April, 2003. The retrenched employees, i.e. writ Petitioners are fully entitled to take the benefit of the aforesaid Rule 3(ii) of the Rescission Rules 2003 and Section 3(2) of the

2009 Act.

The appeals filed by the retrenched employees challenging the order of the learned Single Judge in Prabhu Nath Prasad's case deserves to be and are hereby dismissed in view of the foregoing discussions. Thus all the appeals of Group-I, Group-III and Group-IV are partly allowed setting aside the directions issued by the learned Single Judge for absorbing the writ Petitioners. However, it is directed that retrenched employees of U.P. Cement Corporation, Bhadohi Woollen Mills and U.P. State Sugar Corporation shall be entitled for the benefits as contemplated Under Rule 3(ii) of the Rescission Rules 2003 and saved Under Section 3(2) of the 2009 Act on Group "C" and Group "D" posts.

11. We have heard Mr. Amarendra Sharan and Mr. Manoj Prasad, learned senior Counsel for the Appellants and Mr. Sunil Kumar Verma, the Appellant in-person in Civil Appeal No. 9165 of 2010 and Ms. Reena Singh, learned Additional Advocate General for the State of U.P.

12. We have already adumbrated the facts in extenso to understand the nature of controversy. It is evident from the narration of the factual score that Mukund Lal Singh, who had approached the High Court in 2004, did not stand on a better footing than the present Appellants herein. The learned Single Judge had treated him as a retrenched employee on similar facts. The Special Bench had declined to interfere and this Court, while dismissing the civil appeals, as the order would clearly show, had directed to give effect to the order passed in Special Appeal No. 869 of 2004, strictly in accordance with Rule 3(1) of the 1991 Rules and it was eloquently stated that the Rule would apply to the batch of appeals. Needless to emphasise, the writ petition preferred by the present Appellants should have been listed along with the writ petition preferred by Mukund Lal Singh and Shailendra Kumar Pandey, but, unfortunately, it did not so happen.

13. Be it stated, there had already been interpretation of 2003 Rules by the learned Single Judge which has been affirmed up to this Court. In such a situation, we really fail to fathom how the Division Bench could have thought of entering into the analysis of the ratio of the earlier judgment and discussion on binding precedents. That apart, the Division Bench should have also kept itself alive to the direction issued by this Court in the civil appeals.

14. We will be failing in our duty if we do not take note what followed thereafter. After the directions were issued by this Court, Contempt Petition No. 255 of 2008 in Civil Appeal No. 782 of 2006 and certain other contempt petitions were filed. This Court issued directions from time to time as the employees were not absorbed. Thereafter, they were absorbed and this Court directed for payment of salary component and certain other consequential benefits from the date of retrenchment. This Court referred to the order passed by the State Government and reproduced the same. It is extracted hereunder:

Hon"ble Governor has been pleased to accord its sanction to extend following facilities/benefits to the Petitioners of Contempt Petition No. 255/2008 Mukund

Lal Singh v. Atul Kumar Gupta, Secretary, Government of Uttar Pradesh; Contempt Petition No. 256/2008 Shailendra Kumar Pandey and Ors. v. Kunwar Fateh Bahadur Singh and Ors.; and Contempt Petition No. 15/2009 (Civil Appeal No. 782/2006) Mohd. Shakiluddin and Ors. v. Shri Atul Kumar Gupta and Ors. and other connected Civil Appeals pending before the Hon''ble Supreme Court as well as those Petitioners who are covered by the judgment and order of the Hon''ble Supreme Court dated 31.1.2008 and in furtherance to government order No. 3504/77-1-2009/13(Cement)/2004 dated 3.12.2009.

1) All the Petitioners of the aforesaid Contempt Petitions and all others who are covered by the judgment of the Hon''ble Supreme Court dated 31.1.2008, will be deemed to have been absorbed in the government service with effect from the date of their retrenchment by the Uttar Pradesh State Cement Corporation Limited.

2) If it is not possible to absorb Petitioners of the aforesaid Contempt Petitions and all others who are covered by the judgment of the Hon''ble Supreme Court dated 31.1.2008, on the posts on which they were working in the Uttar Pradesh Cement Corporation Limited on the date of their retrenchment, then they be protected in the pay scale for the post on which they are being absorbed, in such a manner that their salaries are closest to the salaries which they were withdrawn on the date of their retrenchments from the Corporation. It was further decided in the meeting that if the last salary drawn by them was higher than the salary being given to them after their absorption in the government service, then such a difference be considered as personal pay and such personal pay be given to them from the date of their retrenchment. But before doing so, an undertaking must be obtained from the concerned personnel that he has not already received any other benefits, salary, retrenchment compensation etc. from the Official Liquidator, for the period after their retrenchment from parent department. If any personnel has already availed any benefit from the official liquidator for the period after his retrenchment, then same will be adjusted from the arrears of the said personnel. Affidavit of undertaking given by the personnel should also be got verified from the official liquidator.

3) Besides above, these personnel will also be entitled to added increment and arrears with effect from the date of their retrenchment.

4) These benefits are being extended to all the Petitioners of the aforesaid Contempt Petitions and all others who are covered by the judgment of the Hon''ble Supreme court dated 31.1.2008, in accordance with the directions given by the Hon''ble Supreme Court. However, these benefits would not have been available to them in normal course. It is also pertinent to mention here that no other personnel will be entitled to such benefits in future.

5) Services rendered by these personnel in U.P. Cement Corporation Ltd., i.e., before their absorption in government service, will not be considered for the purpose of their pensionary benefits.

15. After reproducing the said order, this Court noted that as the order had been substantially complied with the direction given by the High Court and the order passed by this Court, there is no valid reason to continue with the contempt proceedings. Additionally, this Court added, which we may profitably reproduce:

If the Petitioners are not satisfied with the fixation of their pay etc., they may make representation(s) to the competent authority. Such representation shall be disposed of by the concerned authority within next two months by passing speaking order. If the Petitioners are not satisfied with the order passed on their representation(s), then they shall be free to avail appropriate legal remedy.

16. In the obtaining factual matrix, we are disposed to think that it was absolutely inappropriate on the part of the High Court to go in search of ratio of the judgment rendered by the Single Judge on the earlier occasion, when the controversy had really been put to rest by this Court. The Division Bench, we are disposed to think, should not have entered the arena which was absolutely unwarranted. The decision rendered by this Court inter se parties was required to be followed in the same fact situation. When the factual matrix was absolutely luminescent and did not require any kind of surgical dissection, there was no necessity to take a different view. Needless to say, this kind of situation procrastinate the litigations and the litigants, as has been stated, though in a different context in *Koppisetty Venkat Ratnam (D) through LR. Vs. Pamarti Venkayamma*, (2009) 4 JT 446 : (2009) 3 SCALE 706 : (2009) 4 SCC 244 : (2009) 3 SCR 574 is extremely expensive and time consuming.

17. In this regard, a few lines from *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, AIR 1991 SC 1893 : AIR 1990 SC 261 : (1990) 68 CompCas 20 : (1989) 25 ECR 129 : (1990) 183 ITR 130 : (1989) 3 JT 57 : (1989) 2 SCALE 7 : (1989) 3 SCC 396 : (1989) 3 SCR 405 : (1989) 2 UJ 485 is worth reproducing:

...One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority.

We have highlighted this aspect as we intend to ingeminate that this kind of unnecessary enthusiastic quest should be avoided. It is because it is contrary to the principles of judicial discipline. In this regard reference to *Official Liquidator Vs. Dayanand and Others*, (2008) 4 CompLJ 401 : (2008) 11 JT 467 : (2009) 3 LLJ 305 : (2008) 13 SCALE 558 : (2008) 10 SCC 1 : (2009) 1 SCC(L&S) 943 would be apt. In the said ruling, it has been observed thus:

There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of

the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system.

18. In view of the aforesaid analysis, we find no reason that the Appellants herein should not reap the benefits of absorption and, accordingly, it is directed that they shall be absorbed by the State Government as per their seniority and be given the benefit of increments, within eight weeks hence. Needless to say, they will be entitled to their seniority as per the prevalent rules. If anyone has been retired from service, he shall get the retiral benefits inclusive of pension.

19. At this juncture, the question arises as to what amount should be paid towards back wages. In this context, our attention has been invited to the order passed by this Court in contempt proceeding. However, after some debate, learned Counsel for the Appellants left it to the discretion of this Court. Ms. Reena Singh, learned Additional Advocate General for the State vehemently opposed with regard to grant of any back wages. Having heard the learned Counsel for the parties on this score and regard being had to the facts and circumstances of the case, we think that the cause of justice would be best subserved if each of the Appellant is paid 40% of the back wages, and it is so directed. It shall be computed as per our directions issued hereinbefore within a period of twelve weeks hence and be paid to the Appellants.

21. The aforesaid appeals which relate to U.P. State Cement Corporation Limited are allowed accordingly. There shall be no order as to costs.