

(2002) 08 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12701 of 1999

Syed Mohammed Mahfooz

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-08-2002

Acts Referred:

Constitution of India, 1950 — Article 309
Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service (Rescission of Rules) Rules, 1991 — Rule 2
Uttar Pradesh Procedure for Direct Recruitment for Group C Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 1998 — Rule 2
Uttar Pradesh Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 — Rule 4, 4(1)

Citation : (2003) 94 RD 103 : (2002) 3 UPLBEC 2195

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Ashok Khare and Vikram D. Chauhan, for the Appellant; P.S. Baghel, for Rama Kant Yadav and Abinav Upadhyay for the respondent Nos. 1, 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Yog, J.—The undisputed facts relevant for the purpose of deciding controversy in the present writ petition are as follows :

Sayed Mohammad Mahfooz, the petitioner had worked as Assistant Accountant from 1.12.1994 to 31.3.1998 in Hamirpur, Dugdh Utpadak Sahkari Sangh Limited, called the Sahkari Sangh vide appointment letter dated November 26, 1994/Annexure 2 to the petition in connection with Central Sector Yojana for one year on contract basis at a consolidated salary of Rs. 2,000/- per month. The appointment letter also categorically mentioned that appointment was to come to an end automatically after expiry of one year the appointment was absolutely temporary and services were liable to be determined any time on one month" notice; petitioner has filed certificate, in proof of the fact that he did work as

Assistant Account in the said Sahkari Sangh w.e.f., 1.12.1994 to 31.3.1998; the petitioner admittedly worked as an employee of the said Sahkari Sangh up to 31.3.1998/Annexure 3 to the writ petition; petitioner also filed certificate dated 26.5.1998/Annexure 4 to the writ petition issued by the Manager of the Sahkari Sangh indicating his period of working as aforementioned in the Sahkari Sangh and further adding that petitioner was a "Retrenched Employee"; initially an advertisement was issued on 3.11.1997 providing certain age restrictions with reference to the cut of date as 1.7.1997; petitioner applied within the prescribed age limit; the selection process was not finalised due to certain orders/directions from the State Government; another advertisement dated 5.8.1998 (Annexure 1 to the Writ Petition) in Daily News Paper "Dainik Jagran, Kanpur" for making appointment on Group "C posts (out side the purview of the UP Public Service Commission) was issued under the Authority of Secretary Appointment and Personnel Department, U.P. Government; the petitioner again applied in pursuance to the said advertisement also; the said advertisement prescribed 1.7.1997 as the cut of date for computing age limit; petitioner was admittedly 8 months overage; the petitioner was, however, not overage if the period between the first advertisement and the second advertisement was excluded; the petitioner was however, called for written examination held on 13.12.1998. The petitioner appeared and declared successful in the written examination and after interview he was selected finally treating his application, as per information contained in the application itself; as a "Retrenched Employee" the petitioner was selected in the merit for appointment on the post of Assistant Accountant under general category; a letter of appointment dated 25.2.1999/Annexure 5 to the writ petition was issued; petitioner went to report on duty and join the post on 27.2.1999 but the Principal of the concerned Government College did not permit him to join the duties.

2. Being aggrieved the petitioner filed present writ petition before this Court making prayer to issue a writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioner to function as Assistant Account in Government Post Graduate College, Hamirpur and pay the petitioner his regular monthly salary on the said post, regularly every month and other ancillary reliefs.

3. It will be noted that present writ petition was filed on 30.3.1999. In the meanwhile the concerned authority had passed order cancelling appointment/selection of the petitioner vide order dated 24.3.1999 (which according to the petitioner was received by him on 30.3.1999). Consequently, petitioner filed an Amendment Application supported by an affidavit sworn by Sayed Mohammad Mahfooz on 9.4.1999. The Amendment Application was presented in the Court on 16.9.1999 and allowed on 31.8.2001. Petitioner also added grounds for assailing/impugning said order of cancellation dated 24.3.1999 (Annexure 3 to the affidavit filed in support of the amendment application and also as Annexure C.A. 7 to the counter-affidavit filed on behalf of the respondents Nos. 1, 2 and 3).

4. Contesting respondent Nos. 1, 2 and 3 has filed affidavit sworn by Dr. Satish Kumar, and Anr. counter-affidavit has been filed by respondent No. 4. The petitioner has filed Rejoinder Affidavit in reply to the aforesaid Counter-Affidavits.

5. Heard learned Counsel for the petitioner as well as the learned Counsels appearing for the respondents.

6. The learned Counsel for the petitioner argued that impugned order, cancelling appointment, is illegal, arbitrary and bad in law on the grounds-

(i) the petitioner is a "retrenched employee" and the reasons given in the impugned order denying the benefit to the petitioner as "retrenched employee" being against statutory rules;

(ii) the petitioner did not misrepresent or, otherwise attempted to mislead regarding his age; and

(iii) the impugned order was passed in violation of the principles of natural justice.

7. Taking the last argument regarding violation of the principles of natural justice it will be noted that there is no specific pleadings contained in the Writ Petition. Apart from it, the question of not affording opportunity to the petitioner before passing impugned order cancelling his appointment dated 24.3.1999 has lost significance since the petitioner has been given full opportunity of hearing before this Court which had heard the petitioner in length to place his case as he desired. It will be a mere formality in case impugned order is set aside and matter is remanded back to the concerned authority for reconsideration after hearing the parties in as much as contention/grievance of the petitioner can be fully adjudicated in the present proceedings on the basis of the admitted facts before this Court.

8. Regarding the question of age I do not find that any useful purpose will be served by entering into this question in view of the discussion and the final decision on the first point namely whether petitioner was a "Retrenched Employee" and thus eligible for additional preference/weightage under relevant advertisement (Annexure 1 to the Writ Petition) which contains application format and Clause 6 (D a) shows that there are codes giving different weightage to a "Retrenched Employee" on the ground of his length of service in the past.

9. Learned Counsel for the petitioner submitted that initially appointment on group "C" posts in the U.P. Government were regulated and governed by U.P. Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1975.

10. Rule 4 contains definitions vide notification dated 28.4.1979. Definition of the term "Retrenched Employee" inserted as class (gg) in the said Rules, 1975; which is, for convenience reproduced below" Retrenched Employee" means a person who was employed on a post under the rule making powers of the Government-

- (i) in permanent, temporary or officiating capacity;
- (ii) for a total minimum period of one year, out of which at least 3 months service must have been continuous service;
- (iii) whose services were or may be dispensed with due to reduction in winding up the establishment; and
- (iv) in respect of whom certificate of being a retrenched employee has been issued by the Appointing Authority but does not include a person employed on ad hoc basis only.

11. Subsequently vide Notification No. 20.3.82-Personnel 2-85, dated March 16, 1985 (w.e.f. 1.7.1986) the Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 were brought in existence.

12. The preamble to the Rules, 1985 reads in exercise of the powers conferred by the proviso to Article 309 of the Constitution, and in suppression of all existing Rules and Orders on the subject the Governor is pleased to make the following Rules regulating recruitment of ministerial staff in the subordinate Government Offices in the State Government.

Rule 4(I) "retrenched employee" means a person-

- (i) who was employed on a post under the rule making power of the Governor in permanent, temporary or officiating capacity for a total minimum period of one year, out of which at least three months" service must have been continuous service;
 - (ii) whose services were or may be dispensed with due to reduction in or winding up of the establishment, and
 - (iii) in respect of whom a certificate of being a retrenched employee has been issued by the Appointing Authority; but does not include a person employed on an-hoc basis only;
- (J) "year of recruitment" means the period of twelve months commencing from the first day of July of a calendar year.

13. Again new Rules were framed- called the Uttar Pradesh Procedure for Direct Recruitment for Group "C" Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 1998.

14. The learned Counsel for the Petitioner submitted that Rule 3 of said Rule, 1998 contains definition but the term "Retrenched Employee" has not been defined therein.

15. Learned Counsel for the Petitioner submitted that Rules, 1998 on having been enforced, Rules, 1975 and 1985 become non-existent as a consequence thereof the conditions attached to the definition of the term and expression "Retrenched Employee" became non-existent and in view of the Rules, 1998

(which contains no definition of "Retrenched Employee") the petitioner could not be deprived of the benefit of a "Retrenched Employee" by referring to definition "Retrenched Employee" under Rules, 1975 and 1985 and further that the case of the petitioner should be considered as a "Retrenched Employee" giving normal meaning to the expression "Retrenched Employee".

16. The learned Counsel for both the sets of the respondents have joined in submitting that Rules, 1998 did not wipe off or superseded Rule, 1985 altogether; Rules, 1998 had to be read along with the Rules, 1985 to the extent there was no inconsistency between the two for this purpose. Learned Counsel for the respondents referred to several provisions of Rules, 1985 regarding confirmment etc. which has not been dealt with in Rules, 1998. But submission on behalf of the respondents had been that Rules, 1998 confined themselves to the limited scope. The procedure for direct recruitment for Group "C" posts and not for other relevant aspect of the matter concerning ministerial staff recruitment directly.

17. On perusal of Rules, 1998 one can find that Rules, 1985 has not been repealed or superseded.

18. Rule 2 of Rules, 1998 provided for over riding effect which reads-

"These rules shall have effect notwithstanding anything to the contrary contained in any other Rules or Orders."

19. This clearly shows that Rules, 1985 will not be treated to have been wiped off with the enforcement of Rules, 1998.

20. At this juncture it will be relevant to refer to Rules titled as The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Services Rules, 1991.

21. Rule 2 of Rules 1991 define expression "Retrenched Employee" and laid down certain norms for their absorption in Government Service. The Rules, 1991 defined the term "Retrenched Employee" for the purposes of preference being given to a retrenched employee (as" defined under said Rules by absorption them in Government or Public Corporations).

22. Enforcement of Rules, 1991, which define the term "Retrenched Employee" made it unnecessary for rule making authority to provide for definition while framing Rules, 1998. In that view of the matter, whether petitioner is a retrenched employee or not has to be judged on the criterion provided in Rules, 1991 and the said Rules have to be read while considering applicability of the Rules, 1998.

23. It is not disputed by the petitioner that the petitioner is not an employee of the kind contemplated under definition of term "Retrenched Employee" under Rules, 1991 or 1985. On this reasoning I am clearly of the opinion that petitioner is not entitled to submit his explanation as "Retrenched Employee" nor the same

could be considered on that basis.

24. Apart from the above reasoning even, if it is assumed that none of the Rules, namely Rules, 1985, 1991, are applicable to the case of the petitioner as argued on his behalf, it will have to be seen as the case of the petitioner false within the scope of the term "Retrenched Employee" as commonly understood.

25. Expression "Retrench" has been defined in Webster's New Twentieth Century Dictionary, Unabridged Second Edition-Deluxe Color page 1548-

1. to cut off or out; to pare away; to omit; to delete as a portion of a book.

2. To lessen; to abridge; to curtail; to cut down; to reduce; as, to retrench superfluities or expenses.

3. To confine, to limit.

4. In fortification, to furnish with a retrenchment; as to retrench bastions Syn.-curtail, diminish, economize.

5. To live at less expense; to curtail expenses" to economize.

26. Reading of the aforesaid Dictionary meaning clearly shows that Retrenchment has to be an act of the employer which curtails right and privilege of an employee due to reduction of work or "winding up" of the establishment itself. If services of an employee are brought to an end by virtue of termination and by way of appointment, attaining age of superannuation, or by virtue of term and conditions of his employment under contract of service under which he joined services then it is not the case of retrenchment at the behest of the employer. All these categories are the situation wherein contract of service comes to an end as a consequence of terms of service.

27. In the present case petitioner was appointed on contractual basis for a fixed term of one year. Even if he was allowed to continue beyond one year nature of his contract of service, namely the same being time bound, did no change.

28. Moreover, no attempt has been made on behalf of the petitioner to bring on record the mode and the manner, the circumstance and the situation in which he had to leave his job with Sahkari Sangh in 1998. This Court is a loss to ascertain whether the petitioner himself left the job or his services were terminated on the basis of terms and conditions of contract of service.

29. In addition to the above, reference be made to the Para 5 of the writ petition. The last sentence of the said para reads-

".....Attention is drawn to the fact hat the services of the petitioner in Dugdh Utpadak Sahkari Sangh Limited. Had not been terminated on account of any disciplinary action or mis-conduct hut on account of lack of work."

(Emphasis laid down by me).

30. The aforesaid Para 5 of the Writ Petition has been replied by the respondent Nos. 1, 2 and 3 vide Para 7 of their Counter-Affidavit, relevant extract of which reads-

".....Petitioner was not a retrenched employee he had falsely claimed the benefits of retrenched employee in his application form. In fact, the services of the petitioner was not retrenched as he was working on a contractual basis for a limited period."

31. The said Para 7 of the Counter-Affidavit has been again replied vide para 6 of the Rejoinder-Affidavit and relevant extract of which reads-

"that the contents of Para 7 of the counter-affidavit are incorrect and are denied and in reply thereto the contents of Para 5 of the Writ Petition are reiterated. Full facts in this regard have already been stated in the preceding paragraph."

32. As noted above the case of the respondents is that petitioner's services in the Dugdh Sahkari Samiti were brought to an end in view of the terms and conditions of the contract of service. On this the petitioner, in Para 5 of the petition stated that his services were brought to an end on account of lack of work. As already noted above, no material is on record to support the aforesaid assertion averred in Para 5 of the Writ petition that his services were brought to an end because of reduction of his work or otherwise to cut down or cut off the work load.

33. In absence of any material on record and on the other hand respondents having categorically stated that he was not retrenched as alleged it cannot be accepted that petitioner was a "Retrenched Employee". Services of the petitioner was not retrenched as the term retrenched is commonly understood in normal circumstances and its connotation, the petitioner cannot be said to be a "retrenched employee". Leaving the definition of the term retrenched as contained in Rules, 1985 and 1991 or under Industrial Disputes Act etc.

34. Learned Counsel for the Petitioner has placed reliance on the following decisions-

1. Bageshwari Prasad Srivastava and others Vs. State of U.P. and others,
2. K. Vijayalakshmi Vs. Union of India (UOI) and Others,
3. S. Govindaraju Vs. Karnataka S.R.T.C. and Another,

35. As noted above, Citation at serial Nos. 1 and 3 are not relevant in view of the reasoning given in the judgment wherein his Court has found that petitioner was not retrenched from his services of Sahkari Samiti in as much as his services were brought to an end, on the basis of terms and conditions contained in his contract of service.

36. Citation at Serial No. 2 is relied upon in support with reference to his argument regarding violation of principles of natural justice. In support of the

said contention reference be made to the decision rendered in the case of-

(i) Km. Leena Gupta v. Ruhail Khand University, (1989) 1 UPLBEC 409.

(ii) S. Govindaraju Vs. Karnataka S.R.T.C. and Another, and

(iii) K. Vijayalakshmi Vs. Union of India (UOI) and Others,

37. This Court as noted above has given full opportunity to the petitioner to place his case and the same has been considered here. Hence on his scope (i.e., violation of principles of natural justice) petitioner is not entitled to the relief and it will be an exercise in futile.

38. Learned Counsel for the respondents have referred to following decisions in support of then argument that petitioner is not a retrenched employee-

(i) Jai Kishun and Ors., etc. v. U.P. Co-operative Bank Limited, Lucknow and Ors., etc. (1989) 1 UPLBEC 144 (Pr. 21 to 26)--deals with definition contained in Industrial Disputes Act (Central) hence not directly relevant.

(ii) Uptron India Limited Vs. Shammi Bhan and Another, . It lays down that in case of period, when services are terminated it does not amount to retrenchment.

(iii) Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt., deals with Definition of term "Retrenchment" u/s 2(oo)(bb) and hence not of much help in the present case.

39. As already observed the Rules dealing with the definition under Industrial Disputes Act are not relevant for the purpose of the present case. This aspect has already been dealt with in detail.

40. In view of the above petition lacks merit and it is, accordingly, dismissed.

41. No order as to costs.