

(1997) 02 AHC CK 0102
In the Allahabad High Court
Case No : C.M.W.P. No. 13726 of 1990

Udai Pratap Shukla

APPELLANT

Vs

Zila Parishad and Another

RESPONDENT

Date of Decision : 24-02-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 39
Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 16F,
16F(4), 237, 40, 44
Uttar Pradesh Zila Parishad (Central Transferable Cadre) (Amendment) Rules, 1987 —
Rule 1, 2
Uttar Pradesh Zila Parishad (Central Transferable Cadre) Rules, 1966 — Rule 3

Citation : (1997) 02 AHC CK 0102

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Ashok Bhushan and S.C. Dwivedi, for the Appellant; S.C. and Pradeep Chandra, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—By means of the present petition under Article 226 of the Constitution of India, the Petitioner prays for a writ, order or direction in the nature of mandamus commanding the Respondents to regularise his services on the post of Junior Engineer in Zila Parishad, Jhansi, to pay arrears of salary with effect from June, 1989 in the pay scale admissible to the regularly appointed Junior Engineer in the Zila Parishad from the aforesaid date.

2. Brief facts relevant for resolving the controversy involved in the present case are that it was on 2.7.1984 Zila Parishad, Jhansi requested the Commissioner of the Jhansi Division for sanctioning two more posts of Junior Engineers in the Zila Parishad, on account of increase in the work load in the Zila Parishad. On 23.8.1984 Upper Mukhya Adhikari, Zila Parishad, Jhansi wrote a letter to the Principal, Government Polytechnic College, Jhansi for sending ten names from the merit list of the candidates holding Civil Engineering Diploma for appointment

on the post of Junior Engineer. The said principal sent a list of the names of the meritorious candidates, in which name of the Petitioner was also included. Petitioner along with other candidates appeared before the Selection Committee. The Selection Committee recommended the name of the Petitioner for appointment as Junior Engineer on 18.9.1984. The District Magistrate approved the proceedings of the Selection Committee and the Petitioner was directed to join on 19.10.1984. In pursuance of the aforesaid order the Petitioner Joined as Junior Engineer on daily wage basis on 26.10.1984 as by that time the additional posts of Junior Engineers were not sanctioned. It was on 9.1.1985 that the Commissioner, Jhansi Division, Jhansi sanctioned two more posts of Junior Engineers for the Zila Parishad, Jhansi. On receipt of the sanction of two additional posts of Junior Engineers from the Commissioner, Jhansi the Zila Parishad, Jhansi asked the name from the Employment Exchange, Jhansi for regular selection on the aforesaid newly sanctioned post of Junior Engineers. As many as 65 names were sent by the Employment Exchange, including the name of the Petitioner. On 4.10.1985 the Zila Parishad, Jhansi issued interview letters to the candidates including the Petitioner for appearing before the Selection Committee on 20.10.1986. For permanent appointment. As many as 25 candidates, including the Petitioner appeared before the Selection Committee on 20.10.1986. The Selection Committee selected the Petitioner for appointment on permanent post of Junior Engineer. However, in the meanwhile, before the appointment letter was issued to the Petitioner a radiogram dated 18.2.1987 was received in the Zila Parishad, Jhansi from the Government, which reads as under:

The Posts of Junior Engineers and Ayurvedic Doctors are being included in Central Transferable Cadre of Zila Parishad Shortly (.) Thus no appointment is to be done nor these Posts henceforth under any circumstances (.) Intimate Total Number of Existing Posts Indicating vacancies against them in your Zila Parishad urgently (.).

Sd. (G. S. Srivastava) Under Secretary.

3. On the basis of the aforesaid radiogram, although the Petitioner was selected for appointment, but no appointment letter was issued to him by the Zila Parishad. According to the Petitioner he was legally entitled to be appointed on the post of Junior Engineer on the basis of the aforesaid selection. He, therefore, submitted a representation to the District Magistrate/Adhyaksha, Zila Parishad, Jhansi for appointing him on the post of Junior Engineer. The District Magistrate/Adhyaksha, Zila Parishad wrote a letter to the Government for appointing the Petitioner as Junior Engineer, who was holding the said post with effect from 26.10.1984. Since the appointment of the Petitioner was not made in spite of letter dated 31.8.1987, another letter dated 10.1.1990 was written by the Adhyaksha/Zila Parishad, Jhansi to the Government for permitting the Zila Parishad to appoint and regularise the services of the Petitioner. Since no action was taken by the Government on the letters written by the Adhyaksha Zila Parishad, the Petitioner approached this Court and filed the present petition for the abovementioned reliefs.

4. On behalf of the Respondents a counter-affidavit was filed, in which it was stated that the Petitioner was initially appointed on temporary and daily wage basis with effect from 26.10.1984. After two posts of Junior Engineers were sanctioned, it is not disputed that the selection was held by the Zila Parishad for making the said appointments on the said post, in which the Petitioner was selected for appointment, but before the letter of appointment could be issued, a radiogram issued by the Government was received in the office of Zila Parishad stopping the Zila Parishad, Jhansi from making any further appointment on the post in question as the same was centralised. It is stated that the Adhyaksha, Zila Parishad wrote a letter to the Government for appointment of the Petitioner on humanitarian ground, as after 8.2.1989 only the State Government could make appointments on the post of Junior Engineers, It is stated that there was no violation of Articles 14, 16 and 39 of the Constitution of India in the present case and the Petitioner has got an alternative remedy for ventilation of his grievances by approaching the service tribunal.

5. It may also be noted that by U.P. Zila Parishad (Central Transferable Cadre) (Fifth Amendment) Rules, 1987 the post of Junior Engineers was included in Central Transferable Cadre of Zila Parishad with effect from 1.5.1987.

6. The learned Counsel for the Petitioner submitted that U.P. Zila Parishad (Central Transferable Cadre)(Fifth Amendment) Rules, 1987, for short the rules, have got no application in the present case, and on the basis of said amendment the Petitioner cannot be deprived of his legitimate rights, which have accrued to him or were acquired by him, prior to the aforesaid amendment. It has also been urged that the said rules were not retrospective in operation.

7. In substance, the argument of the learned Counsel for the Petitioner is that the process of selection in the present case, after the posts were sanctioned by the competent authority, begun from the date the Zila Parishad asked for the names of candidates from the Employment Exchange for making regular selection on the aforesaid post, or atleast from 4.10.1986 when Zila Parishad issued Interview letters to the candidates, including the Petitioner for appearing on 20.10.1986 before the duly constituted Selection Committee for regular selection/permanent appointment, and the Petitioner who was selected by the duly selected by the said Committee for appointment, was entitled to be appointed as Junior Engineer on the basis of said selection.

8. On the other hand the learned Counsel appearing for the contesting Respondents contended that the post in question being centralised and before the appointment letter was issued to the Petitioner, the aforesaid rules were enforced whereby the power of appointment was given to the State Government, the Petitioner was therefore not entitled to be appointed on the basis of selection made by the Selection Committee, appointed by the Zila Parishad.

9. I have considered the rival submissions made by the learned Counsel for the parties and also carefully perused the record.

10. In the present case the question which requires consideration is that as to whether the Petitioner was entitled to be appointed as Junior Engineer in Zila Parishad, Jhansi on the basis of his selection for appointment, on the said post on regular basis, held on 20.10.1986.

11. It is not disputed by the Respondents that the Petitioner was appointed as Junior Engineer by the Zila Parishad on daily wage basis and is working on the said post since 26.10.1984. It is also not disputed that two posts of Junior Engineers were sanctioned by the competent authority for Zila Parishad on 9.1.1995, on the basis of which names of the candidates were called from employment exchange for making appointments on permanent basis on the said posts by the Zila Parishad. It is also not in dispute that Zila Parishad issued interview letters to the candidates, including the Petitioner for appearing for an interview before the duly constituted Selection Committee on 20.10.1996 and the Petitioner in pursuance thereof appeared and was selected for appointment as Junior Engineer. However, before the appointment letter could be issued to the Petitioner a radiogram dated 18.2.1987, issued by the State Government was received in the office of the Zila Parishad, Jhansi, which prohibited the appointments on the post of Junior Engineers as the said post was centralized. It is thus apparent that the selection process for appointment on the post in question started much before the aforesaid rules were amended and enforced.

12. The aforesaid rules were framed in exercise of powers u/s 237 of the U.P. Kshettra Samities and Zila Parishad Manual, read with Sections 40 and 44 and Sub-section (2) of Section 46 of the said Adhiniyam with a view to amend the U.P. Zila Parishad (Central Transferable Cadre) Rules, 1966. Rules 1 and 2 of the amended Rules 1987 provide as under:

1. Short title and commencement -- (1) These rules may be called the Uttar Pradesh Zila Parishads (Central Transferable Cadre)(Fifth Amendment) Rules, 1987.

(2) They shall come into force with effect from the date of their publication in Gazette.

2 Amendment of Rule 3. -- In the Uttar Pradesh Zila Parishads (Central Transferable Cadre) Rules, 1966, hereinafter referred to as the same rules for the existing Rule 3 the following rule shall be substituted, namely:

Creation of Central Transferable Cadres. -- The State Government shall create transferable cadres of,-

(a) Karya Adhikaris, Abhiyantas, Kar Adhikaris and Junior Engineers of Zila Parishads separately consisting of as officers as the State Government may from time to time decide:

(b) Chikitsa Adhikaris, Chikitsa Adhikaris Uncharge Homoeopathic Dispensary), Vaid and Hakims separately consisting of as many officers as the State Government may from time to time decide:

Provided that the State Government may, from time to time, increase any of the cadres by creation of additional or temporary posts as may be found necessary or keep all or any of the posts in the cadres in abeyance.

13. The aforesaid rules were published in the U.P. Gazette Extraordinary Part IV, Sec. Kha, dated May 1, 1987. The said rules came into effect from the said date. It has not been provided specifically or by necessary implication that the said rules were applicable retrospectively. It is also not disputed that the Petitioner possessed the requisite qualifications as prescribed for appointment to the post of Junior Engineers, i.e., Diploma of Civil Engineering from an institution recognised by the Government. It is well settled in law that the selection process initiated for selection should normally be regulated by the then existing rules/orders and any amendment in the rules or orders pending the selection cannot affect the validity of the selection made by the selecting authority unless the amended rules or statutory orders either by expressed provision or by necessary intendment indicated that the amended rules, shall be applicable to the pending selections. A reference in this regard may be made to the decision In the case of N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others, . In the said decision, after considering the previous decisions on the subject, the Apex Court of the country was pleased to rule as under:

Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

It was further ruled in the said case as under:

Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and Government Orders and any amendment of the rules or the Government Order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended Rules or the amended Government Orders, issued in exercise of its statutory power either by express provision or by necessary Intendment indicate that amended Rules shall be applicable to the pending selection.

14. The facts of the present case are similar to the facts In the case of N. T. Devinkatti (supra), inasmuch as. in the present case also the Petitioner was selected for appointment by a duly constituted selection committee and his name was recommended for appointment on the post of Junior Engineer. In the aforesaid case before the Supreme Court, the names of the Appellants for appointment on the post of Tehsildar were finalized and were included in the final

selection list prepared in accordance with the Government Order dated 6.9.1969. The Government thereafter insisted for preparation of the select list in accordance with Government Order dated 9.7.1975, vide its Order dated 23.4.1986. It was under the said circumstances the Supreme Court, in the aforesaid case, ruled that the Government Order dated 9.7.1975 was not applicable, inasmuch as selection process for appointment on the post of Tehsildar started before the said Government Order was issued.

15. Similar view was taken by the Supreme Court in the case of A.A. Calton Vs. Director of Education and Another, , wherein, in paragraph 5 of the said judgment it was ruled as under:

The process of selection u/s 16F of the Act commencing from the stage of calling for applications for a post up to the date on which the Director becomes entitled to make a selection u/s 16F (4)(as it stood then) is an integrated one. At every stage in that process certain rights are created in favour of one or the other of the candidates. Section 16F of the Act cannot, therefore, be construed as merely a procedural provision. It is true that the Legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to Impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect. In the instant case admittedly the proceedings for the selection had commenced in the year 1973 and after the Deputy Director had disapproved the recommendations made by the Selection Committee twice the Director acquired the jurisdiction to make an appointment from amongst the qualified candidates who had applied for the vacancy in question. At the instance of the Appellant himself in the earlier writ petition filed by him the High Court had directed the Director to exercise that power. Although, the Director in the present case exercised that power subsequent to August 18, 1975 on which date the amendment came into force, it cannot be said that the selection made by him was illegal since the amending law had no retrospective effect. It did not have any effect, on the proceedings which had commenced prior to August 18, 1975. Such proceedings had to be continued in accordance with the law as it stood at the commencement of the said proceedings. We do not, therefore, find any substance in the contention of the learned Counsel for the Appellant that the law as amended by the U.P. Act 26 of 1975 should have been followed in the present case.

16. In view of the law laid down by the Apex Court in the aforesaid decisions and in view of the decisions in the cases of B.N. Nagarajan and Others Vs. State of Mysore and Others, ; Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, ; P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others, ; P. Mahendran and others Vs. State of Karnataka and others, . I am constrained to hold that the U.P. Zila Parishad (Central Transferable Cadre)(Fifth Amendment) Rules, 1987 which were enforced on 1.5.1987 and the radiogram

dated 18.2.1987 issued by the State Government had no application in the present case. The selection process for making appointment on the post of Junior Engineer in Zila Parishad, Jhansi was conducted and concluded by the competent authority in accordance with the then existing rules. The Petitioner was, therefore, entitled to be appointed on the said post on permanent basis on the basis of the aforesaid selection.

17. Admittedly, the Petitioner is working and discharging his duties as Junior Engineer in Zila Parishad, Jhansi since before he was selected for permanent appointment. He was thus entitled to his salary from the date of his selection for appointment on the permanent post, i.e., from 26.10.1986 in the pay scale admissible to a regularly selected Junior Engineer. He is being paid his salary on dally wage basis, which is illegal and unequitable.

18. In view of the aforesaid discussion, the writ petition deserves to be allowed.

19. The writ petition succeeds and is allowed. The Respondents are directed to treat the Petitioner as a permanent Junior Engineer of Zila Parishad, Jhansi with effect from 26.10.1986. The Petitioner shall be entitled to all consequential benefits, including the payment of salary in the pay scale admissible to a regularly selected/permanent Junior Engineer of Zila Parishad. Jhansi However, from the date of enforcement of the aforesaid rules, the Petitioner will be subject to and governed by the said rules in all other matters relating to his service.

20. No order as to costs.