

(2012) 01 AHC CK 0381

In the Allahabad High Court

Case No : Contempt Application (Civil) No. - 3636 of 2011

Vijay Saxena and Others

APPELLANT

Vs

Kishan Singh Atoria, I.A.S. and Another

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Uttar Pradesh Government Servants (Seniority) Rules, 1991 — Rule 8A

Uttar Pradesh Government Servants Seniority (Third Amendment) Rules, 2007 — Rule 8A

Citation : (2012) 01 AHC CK 0381

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Vikram Nath, J.—Pursuant to the order dated 21.12.2011, Sri Jaipal Singh, Engineer-in-Chief (Establishment), Irrigation Department, Government of U.P., Lucknow is present. Sri A.C. Mishra, learned Standing Counsel has filed an affidavit on his behalf annexing a copy of The Uttar Pradesh Government Servants Seniority Rules, 1991 (hereinafter referred to as the 1991 Rules) and also the amendment brought out in the said 1991 Rules vide The Uttar Pradesh Government Servants Seniority (Third Amendment) Rules, 2007 whereby Rule 8-A was inserted in the 1991, Rules.

2. Sri Ranjit Saxena, learned counsel appearing for the applicant has placed before the Court a Division Bench judgment of the Lucknow Bench of this Court dated 4.1.2011, passed in a bunch of Writ Petitions in which the leading case was registered as Writ Petition No.1389 (S/B) of 2007, Prem Kumar Singh and others versus State of U.P. and others and has further placed before the Court The Zildar"s Service Rules, 1963 (hereinafdter referred to as the 1963, Rules).

3. In the year 2005, examinations were held for considering the Amins for promotion to the post of Zildar under 1963, Rules. The said examination was subsequently cancelled by order dated 28.2.2006. The applicants and other

Amins filed Writ Petitions before this Court, challenging the order dated 28.2.2006, cancelling the qualifying examination of 2005. The leading case was registered as Writ Petition No.15910 of 2006, Mohammad Rafi and others versus State of U.P. and others. Learned Single Judge vide judgment dated 19.1.2011, allowed the writ petitions with directions as contained in paragraph 25 of the aforementioned judgment. The same is reproduced below

25. In the result, all the writ petitions are allowed. The impugned order dated 28.02.2006 is hereby set aside. However, this judgment shall not preclude the respondents from taking appropriate decision in respect to such Amins who were ineligible to appear in qualifying examination, 2005, by passing a fresh order in accordance with law. On the vacancies of Zildar the eligible petitioners who validly qualify qualifying examination 2005 shall be considered for promotion in accordance with 1963 Rules. The petitioners shall also be entitled to costs which is quantified to Rs. 5000/- for each set of petition.

4. Non compliance of the said directions has given rise to the filing of the present contempt application in which notices were issued and the affidavits have been exchanged.

5. In the various affidavits filed by the Engineer-in-Chief of the Irrigation Department, the defence taken is that pursuant to the directions of the learned Single Judge a list of eligible and valid candidates, to be considered for the promotion to the post of Zileedars, has already been prepared. However on account of an order of status quo passed by the Apex Court, the promotions to the post of Zildar has been stalled as it would come in conflict with the interim order of the Apex Court.

6. The litigation before the Apex Court arise from the decision of the Division Bench judgment of the Lucknow Bench of this Court dated 4.1.2011 wherein challenge was to the insertion of Rule 8-A in the U.P. Government Servants Seniority Rules 1991 brought out by way of third amendment in 2007. By insertion of Rule 8-A a person belonging to the Scheduled Castes/Schedule Tribes, on his promotion by virtue of rule of reservation/roster would be entitled to consequential seniority also. The said rule was challenged as being invalid, unconstitutional and ultra vires before the Lucknow Bench in number of writ petitions by the Government servants belonging to different departments. The Division Bench in its judgment dated 4.1.2011 declared the Rule 8-A of the 1991 Rules as invalid, ultra vires and unconstitutional. Further it provided that the State Government in case decides to provide reservation in promotion, then before extending any such reservation it will have to undertake an exercise under the constitutional provisions, keeping in mind the law laid down by the Apex Court in the case of M. Nagaraj and Others Vs. Union of India (UOI) and Others, . The operative portion of the Division Bench judgment is quoted hereunder-

For the reasons given above and the discussions made, we declare the provisions of Section 3(7) of the Act, 1994 and that of Rule 8-A of the U.P. Government

Servants Seniority (Third Amendment) Rules, 2007 as invalid, ultra vires and unconstitutional. Consequently, the Government Order dated 17.10.2007 is also hereby quashed.

In view of our finding that reservation in promotion as provided u/s 3(7) of the Act, 1994 is no more available, the Eligibility List Rules, 1986 as amended in 1995 and 2001, in so far as they provide for preparation of separate eligibility lists of general category and scheduled castes and scheduled tribes candidates with accelerated seniority, lose their significance and shall remain no more operative.

Consequent to the aforesaid declaration, we quash all the seniority lists, which have been prepared by applying Rule 8-A and are subject-matter of challenge in their respective writ petitions in the bunch. This direction will equally be applicable to all the departments of the State Government and the Corporations, etc.

We further clarify that in case the State Government decides to provide reservation in promotion to any class or classes of posts in the services under the State, it is free to do so after undertaking the exercise as required under the constitutional provisions, keeping in mind the law laid down by the Apex Court in the case of M. Nagraj. But till such an exercise is done and enactment/Rule is consequently made, no reservation in promotion on any post or classes of posts under the services of the State including the corporations, etc. shall be made henceforth. However, all promotions already made as per the provision/rule of reservation, where the benefit of Rule 8-A has not been given, while making the promotions, shall not be disturbed by the declaration aforesaid and shall stand protected.

All the writ petitions are, therefore, allowed. Costs easy.

7. It is against the said judgment that the State Government approached the Apex Court by way of Special Leave Petitions. The Apex Court vide order dated 28.2.2011 after granting leave issued notices and further directed for maintenance of status quo by the parties until further orders. The parties have placed before the Court the subsequent orders passed by the Apex Court in the bunch of Civil Appeals in which hearing was said to be going on in the month of October, 2011. The fact remains that the civil appeals are pending before the Apex Court and the interim order of the Apex Court is continuing.

8. It has been submitted by Sri A.C. Mishra, learned Standing Counsel, upon instructions, that on account of the order of the status quo the promotions to the post of Zileedars are not being given effect to as directed by the learned Single Judge and as and when the matter is thrashed out by the Apex Court with regard to the validity of Rule 8-A the promotions will be made according to the rules.

9. Sri Ranjit Saxena, learned counsel for the applicants has sought to argue that the matter before the Lucknow Bench was relating to the candidates falling under

Group A, B & C categories whereas the applicants fall under Group D category and the said judgment and the interim order will have no application to the present case.

10. In the opinion of the Court, the argument of Sri Saxena cannot be accepted as Rule 8-A had been held to be invalid, ultra vires and unconstitutional and so long as the issue is not finally decided the preparation of the seniority list and consequential promotion will give rise to further complication which would not be in the interest of either the applicants or the institution. It is not in issue that 1991 Rules applies to the applicants who are government servants.

11. Accordingly list this contempt application after Civil Appeals are decided before the Apex Court. Personal appearance of the Engineer-in-Chief (Establishment), Department of Irrigation, Government of U.P. is exempted till further orders.