

(1977) 09 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4325 of 1973

Virendra Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-1977

Acts Referred:

Constitution (Forty-Second Amendment) Act, 1976 — Section 38, 58(2)

Constitution of India, 1950 — Article 14, 16, 226, 245, 246

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4

Citation : (1977) AWC 619

Hon'ble Judges : P.N. Bakshi, J;K.N. Singh, J

Bench : Division Bench

Advocate : A.N. Kaul and Gopi Nath Kunzru, for the Appellant;

Judgement

K.N. Singh, J.—The Petitioner filed the present writ petition in 1973 praying for a writ of mandamus directing the State of U.P. and the Chief Engineer, Irrigation Department, Lucknow, to fix his salary as Assistant Engineer and also to place his name above Respondents Nos. 3 and 4 in the seniority list of Engineers.

2. After the coming into force of the Constitution (Forty Second Amendment) Act, 1976, an application was made on behalf of the State Government with a prayer that the petition be disposed of as having abated u/s 58(2) of that Act, on the ground that the Petitioner has an alternative remedy of raising his claim before the Services Tribunal constituted under the U.P. Public Services (Tribunals) Act, 1976. The Petitioner also filed an application for the amendment of the writ petition and raised grounds challenging validity of the U.P. Public Services (Tribunals) Act. Both these applications have been heard by us at some length.

3. Section 58(2) of the Constitution (Forty Second Amendment) Act lays down that every pending petition before a High Court which could not be admitted by the High Court under the provisions of Article 226 as substituted by Section 38 of the Act if such petition had been made after the appointed day, shall abate and any interim order shall stand vacated Article 226 as amended by this Act

specifically prohibits the entertainment of a writ petition if an alternative remedy is available to the Petitioner. The Petitioner had no doubt an alternative remedy to raise his claim, before the Services Tribunal on the appointed day (1st February 1977) and, as such, the petition is liable to abate.

4. Sri G.N. Kunzru, learned Counsel for the Petitioner contended that the U.P. Public Services (Tribunals) Act, 1976, is ultra vires the State Legislature. He urged that the State Legislature had no legislative competence to enact a law creating special tribunal to hear and decide the dispute raised by public servants. Having given our anxious consideration to the submission made by the learned counsel, we find no merit in the submission. Articles 245 and 246 read with Schedule VII lay down the area and the extent of legislative competence of the Central as well as State legislatures. The State Legislature is exclusively competent to enact laws in respect of matters mentioned in List II of the Seventh Schedule. Entry 41 of List II of the Seventh Schedule is as under:

State Public Service; State Public Service Commission.

This entry confers exclusive jurisdiction on the State Legislature to enact laws relating to public servants as well as to State Public Service Commission. The State Legislature in the instant case has enacted the U.P. Public Services (Tribunals) Act, 1976, which contains provisions for adjudication of claims of public servants by a tribunal constituted under the Act to the exclusion of the jurisdiction of the Civil Court. The entry "State Public Service" contemplates enactment of laws covering entire field relating to public service. It is well settled principle that while considering the extent of the legislative competence of a legislature with respect to an entry contained in the Seventh Schedule the entry must be given its wide amplitude. The entry "State Public Services" in its wide amplitude contemplates enactment of laws covering various aspects of public service which may contain provision for creation of public services, procedure of recruitment, conditions of service as well as the procedure and manner for the adjudication of any grievance raised by a member of the public service. The enacting clause of Article 309 contemplates making of laws by the State Legislature regulating recruitment, conditions of service of persons appointed to public service and, posts in connection with the affairs of the State. Any provision made by a legislature for the adjudication of the claims raised by a public servant would be in respect of conditions of service. In our opinion, the State legislature had full jurisdiction to enact the U.P. Public Service (Tribunals) Act, 1976, and as such, the Act is valid.

5. Sri Kunzru then urged that the Petitioner had raised a grievance of discrimination in the present writ petition and since this matter cannot be decided by the Tribunal, the present petition cannot be abated. We again find no merit in this contention. Article 14 of the Constitution is a general provision which guarantees equality before law, while Article 16 guarantees equality in public service. The Petitioner's grievance is that he was discriminated in the matter of fixation of salary and in fixing his seniority. Obviously, Petitioner is

seeking protection of Article 16 of the Constitution. u/s 4 of the U.P. Public Services (Tribunals) Act, a public servant is entitled to raise grievance of discrimination as contemplated by Article 16 of the Constitution and the Tribunal is empowered to deal with that grievance and grant relief to the claimant.

6. In the result, we find no merit in the grounds raised in the amendment application. The writ petition stands abated u/s 58(2) of the Constitution (Forty Second Amendment) Act. There will be no order as to costs.