

Narendra Nath Pandey and Others

Vs

State of U. P. and Others

Civil Miscellaneous Petition Nos. 23746-47, etc. of 1988, 687-90 and 1197-98 of 1989 in Civil Appeals Nos. 973-74 of 1985

(M. M. Dutt, Rangath Misra JJ)

09.03.1989

ORDER

1. These two appeals by special leave came before this Court against the common decision of the Allahabad High Court in two writ petitions. The interpretation of the Uttar Pradesh Non-technical (Class II) Services (Reservation of Vacancies for Demobilised Officers) Rules, 1973 and similar Rules of 1980 relating to dispute of inter se seniority was involved in the two appeals. By a common judgment dated July 21, 1988, the appeals were allowed in part and Rule 6 of the 1973 Rules was interpreted by us in a somewhat different manner than done by the High Court. Some of the respondents, on the allegation that they had not been served with notice in the appeals before this Court asked for a rehearing by filing these CMPs. Respondents 21, 27, 32, 35, 36, and 40 are represented by different counsel and we have heard them as also counsel for the appellants. Respondent 34 who on notice of appeal had appeared and was heard on the earlier occasion has with leave of the court placed an aspect peculiar to himself alone to which reference shall be made later.

2. In Uttar Pradesh three sets of rules on the same subject, namely, providing for entry of demobbed emergency recruits from the defence services into the State Civil Services were made in the years 1968, 1973 and 1980 each set of such rules being for a term of five years. This Court referred to Rule 6 of the 1973 Rules and held : (SCC p. 532, para 12)

Rule 6 only provides that after the discharge of a candidate from the armed force and his subsequent appointment in civil service on the basis of competitive examination, it will be assumed that he had joined the service at the second opportunity of competing for the recruitment. The second opportunity has been explained in the Explanation to Rule 6. It provides that the year of a candidate's second opportunity will be determined by the date of his birth in relation to the prescribed minimum age for competing for recruitment to the service. For example, if the minimum age for taking the competitive examination for recruitment is 21 years, the first opportunity of a candidate will be in the year he attains that age and the second opportunity will be in the next year, that is, at the age of 22 years. Under Rule 6, the recruitment of a war service candidate will be assumed to have been made in the year in which he had the second opportunity of competing for such recruitment. In other words, the seniority of such a candidate will be computed on the basis that he had joined the civil service in the year of his second opportunity of competing for the recruitment.

3. This view is not assailed. This Court thereafter held : (SCC p. 533, para 14)

Thus, if a candidate is discharged in the year 1968, he should be given three years' time to avail

himself of the opportunity of competing in the examination. Suppose, he is successful in the examination held in 1971 and posted in 1973. In view of Rule 6, he would be deemed to have entered service at the second opportunity of competing for recruitment and the entire period from the date of assumed entry in the service up to his recruitment in 1973 shall be taken into account for the purpose of computing seniority and pay. If, however, a candidate does not avail himself of the opportunity within three years of his unsuccessful the period between his discharge and subsequent recruitment will not be taken into account for the purpose of computing the seniority. Rule 6 should be given a reasonable interpretation. We do not find any reason to interpret Rule 6 in a way which will be doing injustice to the appellants who have been recruited under the Service Rules after competing successfully in the examination.

A period of three years for the purpose of computing seniority shall be available, notwithstanding the fact that longer period has been taken for a demobbed officer to get recruited under the Rules. Even if the demobbed officer, for one reason or the other, does not get recruited within three years of release from the defence services and takes a longer time, he would have credit only of three years for the purpose of seniority and no more except the period between recruitment and posting. There is no limitation of time for taking the recruitment examination under the rules for a demobbed officer but we reiterate that notwithstanding the period taken by him for getting recruited the total benefit of seniority shall be confined to a period of three years.

4. In view of the categorical statement of the legal position, it is not necessary to deal with specific cases of some of the respondents which had been placed before us. It shall be for the State to take into account the main judgment, as clarified now, for the purpose of drawing up of the list as directed in the judgment.

5. Respondent 34 who argued his case in person for the first time brought to our notice that he had put in three years of service in a similar classification in Madhya Pradesh prior to his recruitment under the U. P. Rules and asked us to give him the benefit of taking that period for purposes of seniority. We do not find any scope to accept his request to the prejudice of officers in the cadre.

6. Respondents 47 and 48, Shri Jitendranath Mishra and Shri Deepak Raj, were not parties to the writ petitions nor were they parties to the appeals but they were added as respondents in the CMPs and have appeared pursuant to notice. Their names are deleted on the footing that they are not before the court in the litigation. The Uttar Pradesh Government shall now proceed to comply with the directions given in the judgment.

7. Parties are directed to bear their own costs.

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