SUPREME COURT OF INDIA

Gurpreet Singh Bhullar

Vs.

Union of India

C.A.No.1586 of 2006

(H. K. Sema and Dr. A. R. Lakshmanan, JJ.)

08.03.2006

JUDGEMENT

H. K. SEMA, J.:-

1. Leave granted.

2. The challenge in this petition is to the order dated 3-8-2005 passed by the High Court of Punjab and Haryana at Chandigarh in C. W. P. No. 15847-CAT of 2004.

3. The background facts :

Respondent No. 5 Sukhmohinder Singh was appointed as Deputy Superintendent of Police on 27-10-1988 and was confirmed on the said post on 26-2-90. In December 1991, he was made

Superintendent of Police in his own rank and pay and thereafter promoted as S. P. on ad hoc basis in the year 1994.

3A. A case No. RC 2(S)/94 was registered against the respondent under Ss.120-;B, 342/365, I. P. C. by the CBI and is pending before the Special CBI Court, Ambala. A chargesheet was filed on 1-7-2000. By a letter dated 24-3-2001, the Government of India, Ministry of Home Affairs, determined the year-wise vacancies-4 for the year 1999, 3 for the year 2000, and nil for the year 2001. The Selection Committee meeting was held on 25-1-2002 for preparation of the year-wise list for the year 1999-2000 for promotion of the State Police Officers to IPS Cadre of Punjab. On 9-4-2002, a Notification was issued by the Government of India in which the name of Respondent No. 5 was included in the select list of 1999 and 2000 at Serial Nos. 3 and 1 respectively with a condition that the name of Respondent No. 5 has been included in the list provisionally, subject to his clearance in Criminal Case pending against him.

4. On 22-8-2004, respondent No. 5 filed O. A. No. 617/PB/2000 in the Central Administrative Tribunal, Chandigarh Bench, challenging the Notification dated 9-4-2002 seeking inter alia for issuance of direction to the respondent to consider the claim and to issue notification of appointment of the respondent to IPS on the basis of his name being in the select list for the year 1999-2000. The Central Administrative Tribunal by its order dated 15-9-2004 directed that respondent No. 5 herein be given benefit of being placed in the select panel of the year 1999-2000 without taking consideration of the pendency of the criminal case which was registered against him on 18-4-1994. It was further directed that the promotion of respondent No. 5 to IPS should remain subject to the outcome of the result of criminal case pending against him. It was further directed that the promotion so made on provisional basis could be cancelled in the event he is convicted in the pending criminal case.

5. Being aggrieved, the Union of India (respondent No. 1 herein) filed a Civil Writ Petition No. 15847 of 2004 before the Punjab and Haryana High Court for quashing the order of the Tribunal. The High Court by its order impugned dismissed the Writ Petition. Hence, the present special leave petition.

6. In the order impugned the High Court noticed that the criminal case was pending against the respondent No. 5 under Sections 120B, 342/365, I. P. C. The High Court also noticed that the challan was presented in the Court on 1-7-2000. The High Court, however, in our view, committed the fundamental error by misinterpreting the explanation 1 to Regulation 5(5) and Regulation 7(3) of Indian Police Service (Appointment by Promotion) Regulations 1955 (in short the Regulation). The High Court noticed that the chargesheet was filed in the Court on 1-7-2000. The High Court also noticed that Explanation 1 to Regulation 5(5) makes it clear that the proceeding shall be treated as pending only after chargesheet has actually been issued to the officer or filed in a Court, as the case may be. Having noticed that the chargesheet has been filed in the Court on 1-7-2000 and Explanation 1 to Regulation 5(5), the High Court, has erroneously came to the conclusion as under :

"We are of the considered opinion that a bare perusal of the Explanation 1 to Regulation 5(5) makes it abundantly clear that criminal proceedings could only be held to be pending against the Officer if the charge has been framed by the trial Court. In the present case, undoubtedly, the charge has not been framed."

(emphasis supplied)

On the aforesaid reasoning the High Court dismissed the Writ Petition.

7. Mr. Soli J. Sorabjee, learned Senior Counsel, rightly contended that the whole controversy is with regard to the interpretation of Explanation 1 to Regulation 5(5) and Regulation 7(3). To appreciate the controversy in proper perspective, Regulation 5(5) and Explanation 1 are quoted below :-

"5. Preparation of a list of Suitable Officers :-

xxx xxx xxx

xxx xxx xxx

5(5) The list shall be prepared by including the required number of names first from amongst the officers finally classified as "Outstanding" then from amongst those similarly classified as "Very Good" and thereafter from amongst those similarly classified as "Good" and the order of names inter se within each category shall be in the order of their seniority in the State Police Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further while preparing yearwise select list for more than one year pursuant to the 2nd proviso to sub-regulation (1), the officer included provisionally in any of the select list so prepared shall be considered for inclusion on the select list of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

EXPLANATION 1 : The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the Officer or filed in a Court as the case may be."

(emphasis supplied)

8. Explanation 1 as quoted above will make it crystal clear that the proceedings shall be treated as pending only if a chargesheet has actually been issued to the officer or filed in a Court. The language employed in the statute is unambiguous. The Explanation nowhere states about charges having been framed by the Trial Court. The High Court, in our view, erroneously read something to the Explanation, which is not provided by the Regulation. There is no concept of charge being framed by the Trial Court in the context of Explanation 1 of the Regulation.

9. Explanation 1 to Regulation 5(5) is further clarified in Regulation 7(3). Regulation 7 speaks of select list. Regulation 7(3) reads as under :

"(3). The list as finally approved by the Commission shall from the Select List of the members of the State Police Service.

Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge-sheet or a charge-sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional."

10. A conjoint reading of Explanation 1 to Regulation 5(5) and proviso to Regulation 7(3) speaks about the chargesheet being filed against an officer in a Court of law. There is no concept of charges being framed under the Regulation.

11. In Prakash Kumar v. State of Gujarat (2005) 2 SCC 409, the Constitution Bench of this Court observed in paragraph 20 at SCC p. 423 thus: 2005 AIR SCW 493,Para 19

"20. Before we proceed to consider the rigours of Ss. 15 and 12 we may at this stage point out that it is a trite law that the jurisdiction of the Court to interpret a statute can be invoked only in case of ambiguity. The Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction which would reduce the legislation to futility. It is also well

settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the consequences of the alternative constructions."

12. In Nasiruddin v. Sita Ram Agarwal (2003) 2 SCC 577, the three Judge-Bench of this Court pointed out in paragraphs 35 and 37 (SCC p. 588) and (SCC p. 589) as under:- 2003 AIR SCW 908, Paras 36 and 38

"35. In a case where the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom."

"37. The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or substract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

(See also Mohan Kumar Singhania v. Union of India, 1992 Supp (1) SCC 594 at SCC p. 624, para 67). AIR 1992 SC 1,Para 67

13. In the case of Balram Kumawat v. Union of India (2003) 7 SCC 628 the three-Judge Bench of this Court pointed out in paragraph 2003 AIR SCW 4658,Para 22 23 at SCC p. 635 as under :-

"Furthermore, even in relation to a penal statute any narrow and pedantic, literal and lexical construction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve. The purpose of the law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so."

and further in paragraph 30 at SCC pp. 638-39 it was pointed out as under :- 2003 AIR SCW 4658,Para 30

"30. Yet again in Supdt. and Remembrancer of Legal Affairs to Govt. of W. B. v. Abani Maity, (1979) 4 SCC 85, the law is stated in the following terms (SCC p. 90, Para 18) : AIR 1979 SC 1029,Para 19

"19(18). Exposition ex visceribus actus is a long-recognised rule of construction. Words in a statue often take their meaning from the context of the statute as a whole. They are therefore, not to be construed in isolation. For instance, the use of the word 'may' would normally indicate that the provision was not mandatory. But in the context of a particular statute, this word may connote a legislative imperative, particularly when its construction in a permissive sense would relegate it to the unenviable position, as it were, 'of an in effectual angel beating its wings in a luminous void in vain.' 'If the choice is between two interpretations', said Viscount Simon, L. C. In Nokes v. Doncaster Amalgamated Collieries Ltd., 1940 AC 1014 at AC p. 1022).

'the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result'."

14. The interpretation of the statute assigned by the Division Bench of the High Court as sought to be done in the present case, if accepted, would negate the intendment of the Legislature and frustrate the statute itself. In fact, there is no ambiguity in the statute, which would require interpretation negating the intendment of the Legislature as sought to be done by the High Court.

15. Filing of charge-sheet is preceded by an indepth investigation. Charges are filed in Court when the prima facie case is established in course of the investigation. The intendment of the Legislature is that a person who is charged with a criminal offence in which charge is filed in Court and the case being pending for trial, that too against a police officer, the inclusion of such officer in the list shall be treated as provisional. The dangerous interpretation assigned to the statute by the High Court would negate the intendment of the Legislature. In our view, the High Court has committed grave fundamental error of law and the same is unsustainable in law.

16. Mr. L. Nageshwar Rao, learned senior counsel, in his usual fairness submitted that he is not persuaded to join in issue on the interpretation of regulations. He, however, challenged the locus standi of the appellants herein. According to him, the appellants are not aggrieved parties and the Special Leave Petition is not maintainable. It is his say, that in the vacancies considered there were

four vacancies in 1999 and three vacancies in 2000 and the zone of consideration is one to three in each vacancy. The appellant No. 1 being in Sl. No. 53 of the seniority list and appellant No. 2 in serioal No. 27 of the seniority list, they do not possess any right to be considered for promotion to the post occupied by the respondent No. 5 and as such they are not aggrieved parties. He relied on the decision of this Court rendered in the case of Gopabandhu Biswal v. Krishna Chandra, Mohanty, (1998) 4 SCC 447 where this Court in paragraphs 13 and 14 at SCC pp.454-455 held that only aggrieved party has locus standi to challenge the decision. he also referred to the decision of this Court in the case of Dr. Duryodhan Sahu v. Jitendra Kumar Mishra, (1998) 7 SCC 273, and the decision of this Court rendered in the case of Dattaraj Nathuji Thaware v. State of Maharashtra, (2005) 1 SCC 590, where this Court held that the PIL is not maintainable in service matters. 1998 AIR SCW 1678,Paras 13 and 14

1998 AIR SCW 3467

2005 AIR SCW 46

17. This contention need not detain us any longer. Because, permission to file SLP has already been granted by this Court on 6-1-2006.

18. Be that as it may, in this case both the Union Public Service Commission and Union of India have filed counter in support of the appellants. Union Public Service Commission-respondent No. 4 has in paragraphs 5(d) and 5(e) supported the contentions of the appellants that the Writ Petition filed by the Commission was dismissed inter alia on the wrong interpretation of the Regulations by the High Court. Union of India-respondent No. 1, also filed counter in support of the appellants. It is contended inter alia in the counter that the Union of India and the Union Public Service Commission were also intended to file Special Leave Petition before this Court and because of that reason the appointment of respondent No. 5 was made subject to the right of the Government and that of Union Public Service Commission to file the Petition before this Court. However, since the petitioners have filed Special Leave Petition, they, instead of filing separate Special Leave Petitions filed counter in support of the petitioners.

19. On the assertion that the appellants are not aggrieved parties and the Special Leave Petition is not maintainable, counsel for the appellants, contended that in fact vacancies in 1999-2000 were carried forward to 2002. In 2002, 8 vacancies were considered and the seniority of appellant No. 1 was in serial No. 24 and the appellant No. 2 was in serial No. 12. It is further contended that had one vacancy in favour of respondent No. 5 was not wrongly considered both the appellant Nos. 1 and 2 could have been well within the zone of consideration. Their rights to be considered has been deprived and, therefore, they are the aggrieved parties.

20. Counsel also referred to the counter filed by the Special Secretary, Government of Punjab, Department of Home Affairs and Justice, on behalf of the respondents Nos. 2 and 3. It is stated that both the appellants are direct recruit DSP's of 1990-91 batch. They have more than eight years of

service and were eligible for consideration during the selection committee meeting held on 25-1-2002 for preparation of select list for the year 1999-2000. In view of the categorical stand taken by the Government of Punjab in its counter it cannot be said that the appellants are not within the zone of consideration and that they are not the aggrieved parties.

21. In the view we have taken, the impugned order of the High Court is not legally sustainable. It is, accordingly, quashed and set aside. Consequently, the Notification dated 30-9-2005 is also quashed. The appeal is allowed with no order as to costs.

Appeal allowed.