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Court : Allahabad

Decided On : Jul-30-1974

Reported in : (1975)IILLJ463All

Judge : D.S. Mathur and ; N.D. Ojha, JJ.

Appellant : The State of U.P. and ors.

Respondent : Prem Shankar and ors.

Judgement :

D.S. Matthur, J.

1. This order shall govern Special Appeals Nos. 283 and 284 of 1971 both by the State of Uttar Pradesh and the Public Service Commission, U.P. Allahabad, against the order of the learned single Judge allowing the writ petitions of Prem Shankar Bhargava and of R.P.B. Singh and seven others and quashing the impugned order terminating the services of the petitioners as District Statistics Officer.

2. The material facts of the case are that the post of District Statistics Officer in the Directorate of Economics and Statistics has always been and still is temporary. However, in 1958 the scale of pay admissible to them was Rs. 250-850. In 1961, as a matter of economy, all the posts were downgraded with a time scale of Rs. 200-500. The Pay Rationalisation Committee recommended the scale of Rs. 250-

600 for this post, which was accepted by the Government. The result was that all the candidates who had applied for the post on the reduced time scale of Rs. 200-500, were sanctioned the pay scale of Rs. 250-600. The selection was made through the Public Service Commission.

3. Under G.O., dated 4-4-1967 the Government abolished all the posts of District Statistics Officer in the time-scale of Rs. 250-600 and by the same order created the same posts in the new time-scale of Rs. 300-900. The Accountant General pointed out a difficulty in fixing the salary of the District Statistics Officers with the result that the Government modified the earlier order on 20-2-1969 whereby in spite of the posts being abolished they were upgraded to the scale of Rs. 300-900. After the upgrading of the posts the Government decided to fill in the posts of District Statistics Officers in the new time-scale by direct recruitment through the Public Service Commission in which the erstwhile District Statistics Officers were also to appear. Those approved by the Public Service Commission were appointed District Statistics Officers in the new time-scale and those not found suitable were either reverted or services terminated. It may be that some of them did not appear before the Public Service Commission. The petitioner in Civil Misc. Writ No. 697 of 1970, out of which arises Special Appeal No. 283 of 1971, is Prem Shanker Bhargava, who was not approved by the Public Service Commission and was reappointed after termination of the earlier services to the lower post of Statistical Assistant. R.P. Gupta petitioner No. 3 of the other writ petition, stands in the same category as Prem Shanker Bhargava. The services of R. G. Bali, Murari Singh and Gopal Rai, petitioners Nos. 2, 5 and 7, were terminated. It has not come on record what order was passed in respect of the other four petitioners of Writ Petition No. 698 of 1970. However, they had also been served with notices to appear before the Public Service Commission and they could be retained on the higher scale only when approved by the Public Service Commission.

4. In both the writ petitions, the prayer made was for declaring the selection proceedings including the result thereof to be a nullity and to direct that the petitioners be deemed to have already been approved by the Public Service Commission for appointment to the posts of District Statistics Officer. There was also the prayer to quash the notice of termination of service and for a direction to

treat the petitioners to be still in continuous service as District Statistics Officers.

5. The last but one paragraph of the judgment of the learned single Judge makes it clear that in his opinion the order of the Government directing the petitioners to appear before the Public Service Commission for interview was illegal. He meant to quash this direction and also the subsequent action taken but in the operative part only the orders of termination of service of the petitioners followed by in the case of two re-employment on a lower post were quashed.

6. The petitioners of both the cases were interviewed by the Public Service Commission in 1963 for appointment to the posts of District Statistics Officer. The time scale of this post was raised twice once on the basis of the recommendation, of the Pay Rationalisation Committee and the second time in 1967. Even though in the G.O. of 1969 the word 'upgrading' has been used, nothing has been brought to our notice which may show that there was in substance, upgrading. Upgrading generally implies not merely raising the time scale of pay but changing the status of the post, for example, if the post of a lower division assistant is upgraded to that of an upper division assistant what it implies is that that work being of importance will now carry the time scale of a higher post or grade. There is occasional change in the duties also more responsible work being entrusted to the post. If there is no charge except for the salary attached to the post there is no ungrading except for the higher salary being prescribed for the same post.

7. We could have formed a different opinion if different qualifications had been prescribed for the post carrying the higher emoluments or there were two grades of the same post. Grade I carrying the higher time scale while Grade II the lower one. What is necessary is that there should be some difference in, or in the work assigned to the posts carrying different time scales of pay.

8. Whenever the time scale of any service or post is raised, it does not mean that there is uprooting of the holders of the post in that; if they are already confirmed in the lower time scale they should again be confirmed on the higher time scale fixed by the Government. In such case the salary is fixed on the basis of the Financial Rules. There is no reason why the same rule be not applied to temporary Government servants also. The only difference between temporary and permanent

Government servants is that the services of temporary Government servants can be terminated in the exigencies of service on giving one month's notice. Where the work goes down and it becomes necessary to keep certain posts in abeyance or to abolish them, the service of the juniormost officer can be terminated. Similarly, the services of temporary employees can be dispensed with on giving one month's notice on their being found unsuitable for the post. Unsuitability depends upon the past record and not how the old employees stand with reference to new candidates for the similar post. In the instant case, there was no termination or service, in some cases followed by appointment to a lower post, on the ground of unsuitability, it was as a result of Government decision to direct all the incumbents to appear again before the Public Service Commission for interview along with the outsiders that resulted in their termination of services.

9. Those who had been recruited in the earlier time scale of Rs. 250-850 were placed in one category and the above Government order did not apply to them. They were automatically absorbed in the new time scale of Rs. 300-900. Those recruited in the time scale of Rs. 200-500 and later employed in the time scale of Rs. 250-600 had to appear for fresh interview before the Public Service Commission. This classification cannot be said to be reasonable. The purpose of fresh selection appears to be to terminate the services of those District Statistics Officers who could not compete fairly with the new entrants. If such was the basis of classification, there appears to be no reason why this rule should not have been applied to those originally recruited in the time scale of Rs. 250-850. It may here be mentioned that qualifications prescribed prior to 1961 were lower than prescribed subsequently. An additional experience of a few years could not make a difference. This differentiation between the District Statistics Officers based upon the time scale at the time of initial recruitment is not at all connected with the purpose sought to be achieved and, therefore could be struck down under Articles 14 and 16 of the Constitution.

10. We are thus of opinion that the Government order directing the petitioners to apply afresh and to appear for interview before the Public Service Commission along with the outside candidates is by itself invalid and when it is made applicable to only one group of the officers and not to the others it is clearly hit by Articles 14

and 16 of the Constitution. The Government order directing the petitioners to appear for interview before the Public Service Commission is thus invalid and deserves to be struck down. The natural result is that all the subsequent orders also deserve to be quashed.

11. The order of termination of service is being quashed on the aforesaid ground only and it shall be open to the State Government to take other action, if necessary, in accordance with law.

12. Both the Special Appeals have thus no force and they are hereby dismissed with costs of both the Courts. It is further ordered that not only are the orders of termination of service (Annexures I and II to the supplementary affidavit) quashed but also the proceedings taken on the basis of the Government order directing the petitioners to apply afresh for the post of District Statistics Officer and to appear for interview before the Public Service Commission.

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