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Court : Allahabad

Decided On : Dec-11-2007

Reported in : [2008(116)FLR838]

Judge : Devi Prasad Singh, J.

Appellant : Hamida Khatoon

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

Devi Prasad Singh, J.

1. This writ petition under Article 226 of the Constitution of India has been preferred against the order of termination as well as denial on the part of the State Government to grant age relaxation for the petitioner's appointment, though she was elected and her name found place in the waiting list.

2. The brief facts of the present case are that by an order dated 17.3.1986 (Anneuxre-1), the petitioner was engaged in the work charge establishment on the consolidated salary of Rs. 250/-, Since March, 1986, the petitioner has been continuing to discharge duty in the work charge establishment in the cadre of Junior Clerk. In the year 1989, selection against the regular post of Junior Clerk

was held and a select list was released. According to the petitioner's Counsel, the petitioner was selected on the post of Junior Clerk, though it has been stated in the counter affidavit that the petitioner's name was in the waiting list. An appointment letter dated 18.7.1991 (Arvnexure-2) was issued permitting the petitioner to discharge duty. In consequence thereof, the petitioner joined duty on 31.7.1991. An undertaking was given, by the petitioner that her joining shall be subject to relaxation in age granted by the State Government. It appears that the matter was referred to the State Government for grant of relaxation in age but the State Government declined to grant such relaxation in age. An order was communicated by letter dated 27.8.1991 (Annexure-10 to the counter affidavit), in consequence whereof, by office memorandum dated 18.9.1991 (A.nnexure-4 to the writ petition), the petitioners services were terminated in pursuance to the power conferred by U.P. Temporary Government Servants (Termination of Service) Rules, 1975 (in short hereinafter referred to as 'Rules'). Feeling aggrieved with the impugned order of termination and denial on the part of the State Government to relax the age, present writ petition has been preferred.

3. While assailing the impugned action of the State Government, it has been submitted by the petitioner's Counsel that the State Government has relaxed the age in regard to two persons, namely Komal Prasad and Ganeshs Datt Mishra. Accordingly, the submission is that since the relaxation in age was granted with regard to two persons, it was incumbent on the part of the State Government to accord relaxation in age for the petitioner's regular appointment against regular vacancy.

4. On the other hand, Mr. R.D. Shahi, learned Standing Counsel proceeded to submit that the petitioner's name was not found in the select list; rather she was in the waiting list, a copy of which has been filed as Annexure-6 to the counter affidavit. Accordingly, the submission of the learned Standing Counsel is that the State Government was right in rejecting the petitioner's claim with regard to relaxation in age.

5. However, while assailing the impugned action, the petitioner's Counsel stated that the matter as to whether the controversy relates to a person whose name

finds place in the select list or waiting list shall not make any difference, once the right to livelihood is concerned, more so when wait listed person comes in the field of eligibility for appointment, on account of arising of vacancy. Relaxation in age is granted to persons who are serving in the department like the petitioner and denying the same amounts to hostile discrimination. It has also been submitted that since the petitioner was selected in accordance with law by the newly constituted Selection Committee, even if her name was found place in the waiting list, denial of appointment only because of overage is neither reasonable nor just and proper. The petitioner's Counsel has relied upon an Apex Court's decision in *Yamuna Shankar Sharma v. State of Rajasthan and Ors.* : 2007 (113) FLR 14 (Sum.) : (2007) 2 SCC 611 : 2007 (52) AIC 231.

I have considered the arguments, advanced by the parties' Counsel at length.

6. It is not disputed that the petitioner has been serving in the work charge establishment since 1986 continuously. He appeared in the regular test and succeeded to enroll herself in the waiting list. The persons whose names were found in the select list were appointed and thereafter the candidates whose names were found in the waiting list were considered. The petitioner's name was considered and an appointment order was issued subject to the rider that in case the State Government does not accord approval for relaxation hi age, her services may be dispensed with. As discussed above, the State Government has declined to grant relaxation in age by the impugned order dated 27.8.1991. The Order dated 27.8.1991 seems to be unreasoned and non-speaking order. The reason for rejection of the petitioner's claim for relaxation in age has not been assigned. What prompted the State Government to reject the petitioner's claim for relaxation in age does, not emerge from the impugned order. Why the State Government has granted relaxation in age to the persons whose names were found place in the original select list but denied the same benefit to the petitioner? Once the petitioner was found fit for appointment keeping in view her name having found place in the waiting list, then the contrary decision taken by the State Government for grant of relaxation in age seems to be not justified. It is settled provision of law that right to life is a fundamental right and once the petitioner was found fit for appointment even if her name was in the wailing list, then her case was at par with

the persons who were eligible on account of their names having found place in the original select list. Once a candidate who qualifies in the test and whose name finds place in the waiting list and at later stage, on account of non-filling of vacancy from the persons whose names contain in the regular list, he or she is found eligible, then in such situation, the case of persons whose names contained in the waiting list comes at par with the persons whose names contained in the regular select list. Once a person qualifies for appointment or becomes eligible on account of non-joining of the persons whose names contained in the regular list, then denial of opportunity to get appointment with different treatment seems to be hostile discrimination and hit by Article 14 of the Constitution of India. It was incumbent on the part of the State Government to provide the same treatment to, the petitioner for the purpose of relaxation in age as was given to two persons whose names have been referred hereinabove, may be their names having existed in the original select list.

7. There is one other aspect of the matter. The petitioner was discharging duty since 1986 continuously. She was a, member of the work charge establishment. A person who discharges duty in the work charge establishment or as daily wager has got legitimate expectation to claim appointment whenever regular vacancy arises in accordance with rules. Ordinarily, the State Government should exercises its powers to relax the age So that the services rendered by such incumbent does not become useless and the department may be benefitted from the experience earned by such person. In the case of Yamuna Shankar Sharma (supra), referred by the petitioner's Counsel, their Lordships of the Apex Court have ruled that while considering the cases of daily wager, ordinarily the State Government should, consider to-grant relaxation in age and the past services of the employees should be given due weightage. Relevant portion from the judgment of Yamuna Shankar Sharma (supra) is reproduced as under:

8. The order was challenged before the Division Bench which as noted above partly modified the order and held that regularisation was not to be granted as claimed but directed that the appellant's case was to be considered on following the criteria as per the applicable rules. It. was further directed that while subjecting the appellant for selection process, past service rendered by him was to be given

due weightage. It was further directed that he was not to be denied regularisation on the ground that he has become overage. But no other relief was given.

12. The manner in which the claim for regularisation has to be dealt has been the subject-matter of this Court's decision in several cases. In *Secy., State of Karnataka v. Umadevi*, a Constitution Bench of this Court has considered the matter at great length. In view of what has been held therein, the conclusions of the High Court in the matter of regularisation suffered from no infirmity.

8. In view of the above, there appears to be discriminatory treatment imparted by the respondents while considering the petitioner's case for grant of relaxation in age. Non-disclosure of the reason itself is an arbitrary act on the part of the respondents. It is settled provisions of law that every order passed by the administrative authority should be reasoned order and unreasoned order shall always be deemed to be arbitrary in nature and hit by Article 14 of the Constitution of India. In the present case, the order dated 27.8.1991 is, at the face of record, an unreasoned order, hence I hold it to be arbitrary, unjust and unfair.

9. The impugned order of termination dated 18.9.1991 seems to be consequential order, passed by the authorities on account of denial on the part of the State Government to relax the age for the purpose of regular appointment. As held hereinabove, the order dated 27.8.1991 because of being unreasoned Order and arbitrary, shall not survive. Therefore, the consequential order of termination dated 18.9.1991 shall also be bad in law. Since the petitioner has been discharging duty in pursuance to the interim order passed by this Court, hence it shall be appropriate that she should be permitted to discharge duty in pursuance, to the appointment letter dated 18.7.1991, issued by the competent authority, a copy of which has been filed as Annexure No. 2 to the writ petition, with all consequential benefits.

10. Accordingly, the writ petition deserves to be allowed.

11. The writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 27.8.1991 (Annexure-10 to the counter affidavit) as well as the office memorandum dated 18.9.1991 (Annexure-4 to the writ petition),

passed by the Executive Engineer, Rural Engineering Service, Faizabad Region with consequential benefits. The petitioner shall be permitted to continue to discharge duty with all consequential benefits.

A writ in the nature of mandamus is issued further directing the State Government to pass fresh order for relaxation in age keeping in view the observations, made hereinabove, expeditiously. Let necessary exercise be done by the respondents keeping in view the present judgment, expeditiously and preferably within a period of four months from the date of receipt of a certified copy of this order.

12. The writ petition is allowed accordingly with no order as to costs.

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