

UpSC Vs Uoi and ors.

UpSC Vs Uoi and ors.

SooperKanoon Citation : sooperkanoon.com/904993

Court : Delhi

Decided On : Jul-15-2010

Judge : Mr. Pradeep Nandrajog ; Mr. Mool Chand Garg. J J.

Acts : Central Civil Services (Pension) Rules, 1972, - Rules 38, 12

Appeal No. : W.P. (C.) No. 9363/2009

Appellant : UpSC

Respondent : Uoi and ors.

Advocate for Def. : Mr. K.B. Sinha ; Mr. R.K. Singh ; Mr. Kumar Gaurav, ; Mr. Pratap Singh Parmar, Advs.

Advocate for Pet/Ap. : Mr. Naresh Kaushik ; Ms. Amita Kalkal Chaudhary ; Ms. Aditi Gupta, Advs.

Judgement :

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

ORDER. (ORAL)

1. Rule DB.

2. Heard for disposal.

3. Instant case is a classic example as to how the Government breeds litigation notwithstanding repeated public posturing by the executive that the house of the Government is being put in order.

4. Various persons working in Group D posts under the Union of India were made to work for long duration as LDCs on ad-hoc basis.

5. They made repeated representations that their services be regularized and showed to the authority concerned the source of the power for the authority concerned to do the needful; namely, Rule 12 of the CSCS Rules 1962 which reads as under: "12 Recruitment to the Lower Division Grade of the Service-

(1) Vacancies in the Lower Division Grade shall be filled in the following manner, namely:-

(a) Fifteen percent of vacancies in each cadre may be filled by appointment, by promotion, of Group D employees borne on regular establishments working in the Ministries and offices participating in the Central Secretariat Clerical Service, in the following manner, namely :-

(i) Ten percent of the vacancies may be filled on the basis of qualifying examinations held for this purpose by the Staff Selection Commission; and

(ii) Five percent of the vacancies may be filled on the basis of seniority, subject to the rejection of the unfit, from amongst those Group D employees who are within the range of seniority prescribed by the Department of Personnel and Training qualified for appointment as Lower Division Clerk i.e. who have passed the Matriculation or an equivalent examination of a recognised Board or University;

Provided that if sufficient number of persons do not become available, the vacancies shall be filled in the manner prescribed in clause (b)

Provided further that if more of such employees than the number of vacancies available under this clause qualify at the said examination, such excess employees shall be considered for filling the vacancies arising in the subsequent

years so that the employees qualifying at an earlier examination are considered before those who qualify at a later examination.

(b) Eighty percent of the vacancies or such higher percentage as may be determined by the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions in accordance with the proviso to clause (a) shall be filled by direct recruitment on the basis of competitive examination held for the purpose by the Staff Selection Commission.

Provided that to the extent a sufficient number of qualified candidates of the competitive examinations referred to in clauses (a) and (b) are not available for appointment on the results of the such examinations, the vacancies may be filled provisionally or on regular basis, in such manner as may be prescribed by the Central Government in the Department of Personnel in the Ministry of Personnel, Public Grievances & Pensions.

(c) Five percent of the vacancies may be filled from amongst outstanding sportsmen to be recruited on a centralised basis on the basis of selection to be made by the Staff Selection Commission.

(1A) Notwithstanding anything contained in sub rule (1) recruitment to the Lower Division Grade of the Services may also be made from amongst persons holding post of Telephone Operators in any Ministry or office specified in column (2) and (3) of the First Schedule and who are declared qualified for induction to the service on the results of the qualifying examination held for this purpose by the Staff Selection Commission.

(1B) The rules for the examination referred to in sub-rule (1-A) shall be as determined by regulations made by the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions.

(2) Omitted vide Department of Personnel & Training Notification No. 12/3/93 - CS.II dated the 22nd November, 1995.

(3) Omitted vide Department of Personnel & Training Notification No.12/3/93-CS. II dated the 22nd November, 1995.

(4) The rules for the competitive examinations referred to in sub-rule (1) shall be as determined by regulations made by the Central Government in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions and the allotment of candidates from the results of such examinations to each cadre shall be made by the said Department.

12-A Power to relax in certain cases- Notwithstanding anything contained in rule 12, the cadre authority may fill not more than 5% of the vacancies in the Lower Division Grade arising in a year, otherwise than as provided for in these rules, by appointment of a son or daughter or wife or husband or brother or sister of a Government servant who dies during the period of his service or is retired on medical grounds under rule 38 of the Central Civil Services (Pension) Rules, 1972, before attaining the age of 55 years (57 years for Group 'D' employees). Provided that the aforesaid limit of 5% mentioned above may be relaxed in exceptional cases with the approval of the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions.

12-B Re-employment of officers- Notwithstanding anything contained in rules 11 and 12, if the exigencies of public interest so demand, any vacancy in any grade may, subject to the instructions issued by the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions from time to time, in this behalf, be filled by reemployment of an officer of that grade who has retired from service."

6. Needless to state they drew the attention to the proviso to Rule 12 (b), which inter alia, provides that to the extent a sufficient number of qualified candidates of the competitive examinations referred to in Clause (a) and (b) are not available for appointment on the result of such examinations, the vacancies may be filled provisionally or on regular basis in such manner as may be prescribed by the Central Government in the Department of Personnel, in the Ministry of Personnel, Public Grievances and Pensions.

13. To put it in clear language for even a layman to understand, what these persons were telling the competent authorities was that there was a power vested to fill up the posts of LDCs in such manner as may be prescribed by the Central Government provided that appointments were not made, whatever be the reason, under Clause (a) and (b) of Rule 12.

14. Not getting any relief they proceeded to the Central Administrative Tribunal which decided various Original Applications vide order dated 24.07.2007.

15. The Tribunal considered Rule 12 and in para 29 of its decision, held as under:

"29. In the light of the above, on examination of the facts before us, what we find is that the only mode of recruitment of an LDC in UPSC, which is a participating Unit in CSCS, is under Statutory Rule 12 framed under proviso to Article 309 of the Constitution. According to which, the only mode of filling up the vacancies is either through a competitive examination by SSC or by a qualifying examination in 10% quota for Group D employee educationally qualified. The only other quota carved out is 5% vacancies is to be filled up on seniority-cum-fitness. However, admittedly when SSC candidates were not available since 1989 till 2005 and no recruitment had taken place through competitive examination conducted by SSC, proviso to Rule 12 empowers the authority under CSCS Rules on a prescription by Central Government in DOPT to fill up these vacancies either provisionally or on regular basis. Accordingly, Group D employees who had been functioning with requisite qualifications in the recruitment rules for appointment of LDC have been subjected to a Typing Test and were appointed by resort to Regulation-7 *ibid* which empowers the Chairman to fill the vacancies of LDCs for a period not exceeding three months however, when approved candidates as per the Recruitment Rules are not readily available to be appointed. Accordingly, on resort to Regulation-7 and also as per the Do PT instructions of 1988 for ad hoc appointments, the applicants on short-term vacancies have been appointed and their appointments and been continued from time to time and in the instant case for a period of more than 15 years. No doubt, during this interregnum, though having a lien on substantive Group D post applicants were qualified to the appointed as LDC, had acquired sufficient professional experience on efficient discharge of the duties

attached to the promotional post of LDC. They have been given increments and their pay has been fixed, though on ad hoc, under FR 22 (a)(1)."

16. The Tribunal also noted the decision of the Supreme Court reported as 2006 (4) SCC 1 Secretary State of Karnataka and Ors. v. Uma Devi. The Tribunal further noted the law laid down in Uma Devis case and in particular para 53 where the Constitution Bench of the Supreme Court drew a distinction between appointments which were irregular and which were illegal and contrary to the statutory recruitment rules. The Tribunal also noted that in respect of irregular appointments, if there existed a power either to relax the recruitment rules or there existed any other power where under it was permissible to make appointments, such persons who had worked for years together on particular posts, subject to the same being again regular vacancies, would be entitled to be considered for regularization against the posts held.

17. Thus, the Tribunal directed the authority concerned to consider the entitlement of the applicants before the Tribunal in the light of the observations made by the Tribunal for purposes of regularization.

18. It is apparent that the authority concerned has to consider the facts that the proviso to Rule 12 (b) was the source of its power to make appointments if regular vacancies to the posts of LDCs were not filled up under Clause (a) and (b). Thereafter the authority concerned had to draw its attention to the fact that the applicants had worked as LDCs on ad-hoc basis for years together with breaks here and there. The authority had then to draw its attention where all these persons were subject to proficiency test and had cleared the same. Lastly law laid down in Uma Devis case had to be considered and finally a decision was to be taken.

19. Considering the directions of the Tribunal, UPSC which has been impleaded as a respondent No.2 in the petitions filed by the persons before the Tribunal, proceeded to pass an order dated 26.08.2008 where after penning down, by way of preamble, paragraphs after paragraphs, in para 30 it was observed "in view of the same one time relaxation cannot be granted to the officials in question, since Chairman UPSC is not the competent authority under CSCS Rules 1962."

20. Surprisingly, thereafter it stands recorded that the exception laid down in Uma Devis case for consideration of regularization would not apply to the present case. But why? No reasons have been stated.

21. We fail to understand the logic of the order where in one breadth the officer concerned writes that he is not the competent authority and in the very next breadth proceeds to hold that law does not permit relaxation.

22. What happened further is that the order dated 26.08.2008 became a subject matter of challenge in a fresh round when OA No. 2265/2008 was filed. The same has resulted in the order dated 01.05.2009. It is this order which is in challenge in the instant writ petition.

23. The order in question, rightly in our opinion, holds that the order under challenge has not considered the matter as was required to be considered in view of the decision in Uma Devis case and Rule 12 of the CSCS Rules 1962.

24. Indeed, learned counsel for the petitioner concedes so, but makes the submission that UPSC has no role to play while deciding whether the power under the proviso to Rule 12 (b) of the CSCS Rules 1962 has to be exercised. Learned counsel submits that the power has to be exercised by the Central Government and the actual exercise of power has to be by the Secretary of the Concerned Nodal Ministry i.e. DOP&T.;

25. It appears that everybody lost sight of the fact that there were two respondents before the Tribunal at the first stage of proceedings and even at the second. First respondent was the Union of India and the second respondent was UPSC.

26. Learned counsel for respondent No. 3 to 28 states that it is not the concern of said respondents as to who complies with the directions issued by the Tribunal vide order dated 24.07.2007, but somebody has to comply with the directions issued by the said order.

27. Now, nobody can have a quarrel with the said proposition; for indeed somebody has to apply himself and pass the necessary order.

28. We thus dispose of the instant writ petition issuing a direction that the Secretary UPSC would immediately get in touch with his counter-part i.e. Secretary in the Ministry of Personnel, Public Grievances and Pension. The two would sort out the issue as to who has to exercise the power under the proviso to Rule 12 (b) of CSCS Rules 1962. This would be done by the two officers within a period of 4 weeks from today. Thereafter, whosoever is the person agreed upon, to take the necessary decision, would decide, within further 8 weeks, the entitlement of the respondents to be regularized as LDCs by considering the power under Rule 12 (b) of the CSCS Rules 1962 in light of the fact that with intermittent breaks respondents 3 to 28 have functioned for long as LDCs and would keep in mind the distinction drawn between irregular and illegal appointments brought out in Uma Devis case. We clarify, it is not in dispute that the ad-hoc posts held by the respondents were in respect of regular vacancies which then existed and were not filled up under either Clause (a) or Clause (b) of Rule 12 of CSCS Rules 1962, and that there is some dispute on whether these posts were subsequently abolished.

29. The authority concerned would also take note of the fact that the decision of the Tribunal dated 24.07.2007 in OA No. 1538/2005 and OA No. 1321/2005 has attained finality and would specifically take note of the observations of the Tribunal in paras 29-38 of the said order.

30. No costs

31. Dasti.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com