State Of U.P. & Ors vs Hirendra Pal Singh Etc on 3 December, 2010

Equivalent citations: AIRONLINE 2010 SC 446, AIRONLINE 2010 SC 199

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Bench: B.S. Chauhan, Deepak Verma, J.M. Panchal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. ..... OF 2010
(Arising out of SLP (C) Nos.14992-93 of 2010)

State of U.P. & Ors. ..... Appellants

Versus

Hirendra Pal Singh etc. .....Respondents

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. Leave granted.

2. These appeals have been filed against the interim orders passed by the High Court of Allahabad (Lucknow Bench) dated 4.9.2008 in Writ Petition No. 7851(M/B) of 2008 and dated 30.11.2009 in Writ Petition No.11170 (MB) of 2009, by which the High Court has stayed the operation of amended provisions of the U.P. Legal Remembrancer Manual (hereinafter called L.R. Manual) and further directed the State Government to consider the applications for renewal of the all District Government Counsel whose term had already expired, resorting to the unamended provisions of the L.R. Manual and they be allowed to serve till they attain the age upto 62 years.

3. Facts and circumstances giving rise to these appeals are that the respondent no.1 in first case was appointed as a District Government Counsel (Revenue-1), Agra vide order dated 30.11.1988 for a

fixed tenure. His term was renewed from time to time upto 31.12.1992. The proposal for renewal of his tenure was forwarded by the District Magistrate, Agra in 1993 and 1996, however, no order was passed on the said proposals. Ultimately, the State Government passed an order dated 2.12.1998 dispensing with the services of the said respondent. Being aggrieved, he preferred Writ Petition No.3867 of 1998 challenging the order of dispensing with his services, wherein the interim order was passed that the said respondent would be allowed to continue till further orders of the court. Thus, he continued to work under the said interim order till 2008, when the provisions of L.R. Manual were amended with effect from 13.8.2008, reducing the age of District Government Counsel from 62 to 60 years. As he had already completed age of 60 years, thus was disengaged, whereby respondent preferred Writ Petition No. 11170(M/B) of 2009 praying therein to be permitted to continue upto 62 years. The High Court passed an interim order dated 30.11.2009 directing the State Authorities to consider his application for extension of service upto 62 years under the unamended provisions of the L.R. Manual.

4. Similarly, another order has been passed in Writ Petition No.7851 (M/B) of 2008 filed by the Association of District Government Counsel in representative capacity challenging the amendment dated 13.8.2008 to the L.R. Manual to the effect of dispensation of consultation by the District Magistrate with the District Judge, while making proposal to the State Government for appointment of such counsel, reducing the age of service from 62 years to 60 years. The High Court has stayed the operation of the amended provisions, and issued direction to consider applications for the Distt. Government Counsel for renewal in accordance with the unamended provisions of the L.R. Manual, till further orders. Hence, these appeals.

5. Shri P.S. Patwalia, learned senior counsel appearing for State of Uttar Pradesh has contended that in the said writ petitions, the amendment in the L.R. Manuals has been challenged. The amendment provided basically two changes (1) consultation with the District Judge by the District Magistrate before sending any proposal/recommendation to the State Government for appointment of the District Government Counsel has been dispensed with; and (2) age has been reduced from 62 to 60 years. Therefore, it has been submitted that as fixing the age even in government services falls within the exclusive competence of the State authorities, and thus, the court should not interfere in such matters being a policy decision, even at the final stage. The interim order should not be passed by the court, staying the operation of law as such unless the court is of the view that the law was patently unconstitutional. The High Court under no circumstance could direct the State authorities to consider the cases for renewal/extension under the provisions of the unamended L.R. i.e. non-existing provisions. Such interim order tantamounts to legislation by judicial orders. More so, a large number of similar orders were passed by the High Court and in all of them except this case, the operation of such interim orders has been stayed by this court. Thus, the appeals deserve to be allowed.

6. On the contrary, Shri Dhruv Mehta, learned Senior counsel appearing for the respondents' Association and Shri Manohar Lal Sharma appearing for the Distt. Government Counsel have submitted that in making the proposal for appointment of the Distt. Government Counsel by the Distt. Magistrate, dispensation of consultation with the District Judge itself is a serious matter and High Court has rightly stayed the operation of the amended provisions of the L.R. Manual and no

interference is required. In case the High Court has stayed the operation of the amended clauses of the L.R. Manual, the old L.R. Manual becomes automatically operative. Therefore, the High Court was justified in issuing direction to consider the cases of renewal/extension under the unamended provisions of the Manual. Thus, appeals lack merit and are liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

So far as the respondent District Government Counsel is concerned, admittedly, his term has not been extended/renewed by passing any order after 1992. He had been continuing under the interim order dated 7.12.1998 passed by the High Court. There is nothing on record to show what has happened subsequent to the said order. However, we have been informed that the said writ petition is still pending and the said respondent continued to work under the said interim order till he attained the age of 60 years.

So far as the issue of reduction of age from 62 to 60 years is concerned, it has not been brought to the notice of the High Court that it is within the exclusive domain of the State Government to reduce the age even in Government services. So in case of purely professional engagement, the age could validly be reduced by the State Government unilaterally.

8. A Constitution Bench of this Court in Bishun Narain Misra v. The State of Uttar Pradesh & Ors., AIR 1965 SC 1567 held that new rule reducing the age of retirement from 58 to 55 years could neither be invalid nor could be held to be retrospective as the said rule was a method adopted to tide over the difficult situation which could arise in public services if the new rule was applied at once and also to meet any financial objection arising in enforcement of the new rule.

9. In Roshan Lal Tandon v. Union of India & Ors., AIR 1967 SC 1889, a similar view has been reiterated by this Court observing that emoluments of the Government servant and his terms of service could be altered by the employer unilaterally for the reason that conditions of service are governed by statutory rules which can be unilaterally altered by the Government without the consent of the employee. (See also B.S. Vadera v. Union of India & Ors., AIR 1969 SC 118; The State of Jammu & Kashmir v. Triloki Nath Khosa & Ors., AIR 1974 SC 1; B.S. Yadav & Ors. v. State of Haryana & Ors., AIR 1981 SC 561; and State of Jammu & Kashmir v. Shiv Ram Sharma & Ors., AIR 1999 SC 2012).

10. In K. Nagaraj & Ors. v. State of Andhra Pradesh & Anr. etc., AIR 1985 SC 551, this Court examined the amended provisions of Andhra Pradesh Public Employment (Regulation of Conditions of Service) Ordinance, 1983 by which the age of retirement was reduced from 58 to 55 years and this Court upheld the amended provisions being neither arbitrary nor irrational. The court further rejected the submission of the appellants therein that the said amended provisions would have retrospective application taking away their accrued rights. (See also State of Andhra Pradesh etc. etc. v. S.K. Mohinuddin etc. etc., AIR 1994 SC 1474).

11. In view of the above, it is evident that even in government services where the terms and conditions of service are governed by the statutory provisions, the Legislature is competent to enhance or reduce the age of superannuation. In view of the above, it is beyond our imaginations as why such a course is not permissible for the appellant-State while fixing the age of working of the District Government Advocates.

12. In Bhavesh D. Parish & Ors. v. Union of India & Anr., AIR 2000 SC 2047, this Court observed that while considering the constitutional validity of statutory provisions, the court should be very slow in staying the operation of the statutory provisions. It is permissible for the court to interfere at interim stage "only in those few cases where the view reflected in the legislation is not possible to be taken at all".

Thus, the court should not generally stay the operation of law.

13. In Siliguri Municipality & Ors. v. Amalendu Das & Ors., AIR 1984 SC 653, this Court had taken note of the fact that the High Court had been passing stay orders in some cases involving the same question of law and facts though it vacated the interim orders passed earlier in some of the identical cases. In the said case, the validity of statutory provision was under challenge. This Court observed that the High Court should exercise self-restrain in passing interim orders, for maintaining consistency in similar cases. The court observed as under:

> "The main purpose of passing an interim order is to evolve a workable formula or arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardised and institutional embarrassment is eschewed."

14. In Bir Bajrang Kumar v. State of Bihar & Ors., AIR 1987 SC 1345, this Court held that cases involving identical points must be given identical treatment by the court, otherwise it may create an anomalous position, as there may be a possibility of contradictory orders being rendered in similar types of cases by the same court. The same view has been reiterated by this Court in M/s. Vinod Trading Company v. Union of India & Ors., (1982) 2 SCC 40.

15. In Vishnu Traders v. State of Haryana & Ors., (1995) Suppl.

> (1) SCC 461, while dealing with the similar issue, this Court observed as under:
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> "In the matters of interlocutory orders, principle of binding precedent cannot be said to apply. However, the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences

> require a different treatment so that there is an assurance of consistency, uniformity, predictability and certainty of judicial approach."

16. Admittedly, this Court has stayed the operation of the interim orders passed by the High Court in large number of identical cases and all such orders have been placed on record. Some of such cases are SLP(C) No.32910/ 2009 dated 14.12.2009; SLP(C) No.35279/2009 dated 5.1.2010; and SLP(C) No.11261/2010 dated 23.4.2010.

It is also pertinent to mention here that operation of the impugned order dated 30.11.2009 has already been stayed by this court vide order dated 3.5.2010. In fact there is a joint petition in these appeals and thus by inadvertence the operation of order dated 4.9.2008 in W.P. No.7851 (M/B) of 2008 could not be stayed. In order to maintain consistency in our order, it is required to pass the same order in the said case also.

More so, in the Ist case, the High Court, in spite of taking note that the petitioner therein had been working under the interim order of the court since December 1998, i.e. for twelve years entertained his second writ petition without deciding the first writ petition.

17. So far as the issue of dispensation of consultation with the District Judge is concerned, this court has hitherto taken a view that his opinion would have supremacy, thus requires to be examined considering the judgments of this court in Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. & Ors., AIR 1991 SC 537; Harpal Singh Chauhan & Ors. v. State of U.P., AIR 1993 SC 2436; State of U.P. v. Ramesh Chandra Sharma & Ors., AIR 1996 SC 864; State of U.P. & Anr. v. Johri Mal, AIR 2004 SC 3800; and State of U.P. & Ors. v. Netra Pal Singh & Ors., AIR 2004 SC 3513.

18. The High Court vide impugned interim orders stayed the operation of the amended provisions of the L.R. Manual and directed the State authorities to consider the applications for renewal etc. under the unamended provisions, i.e., which stood repealed by the amendment dated 13.8.2008. The question does arise as to whether such a course is permissible to the High Court for the reason that it has been canvassed by Shri Patwalia that the clauses of the L.R. Manual which stood repealed do not survive any more and no direction could have been given by the High Court to act upon the non-existing provisions.

19. It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly, i.e., protanto repeal (vide:

> M/s. Dagi Ram Pindi Lall & Anr. v. Trilok Chand Jain & Ors., AIR 1992 SC 990; Gajraj Singh etc. v. The State Transport Appellate Tribunal & Ors. etc., AIR 1997 SC 412; Property Owners' Association & Ors. etc. etc. v. State of Maharashtra & Ors., AIR 2001 SC 1668; and Mohan Raj v. Dimbeswari Saikia & Anr., AIR 2007 SC 232).

20. In M/s. Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras, AIR 1992 SC 1439, this Court explained the distinction between quashing of an order and staying the operation of the order observing as under:

> "While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending."

21. Thus, there is a clear distinction between repeal and suspension of the statutory provisions and the material difference between both is that repeal removes the law entirely; when suspended, it still exists and has operation in other respects except wherein it has been suspended. Thus, a repeal puts an end to the law. A suspension holds it in abeyance.

22. This Court in Bhagat Ram Sharma v. Union of India & Ors., AIR 1988 SC 740, explained the distinction between repeal and amendment observing that amendment includes abrogation or deletion of a provision in an existing statutes. If the amendment of an existing law is small, the Act prefaces to amend; if it is extensive, it repeals and re-enacts it.

23. In fact, the amended provisions of the L.R. Manual are under challenge before the High Court and the provisions repealed by the Amendment dated 13.8.2008 are not in existence and it will be assumed that the same had never been in existence. The Court while examining the validity of the amended provisions may reach a conclusion that the said provisions are ultra vires and unconstitutional and strike down the same but that may not automatically revive the provisions which stood repealed by the said amendment.

Thus, the High Court erred in issuing directions to the State authorities to proceed, as an interim measure, under a non-existing law. Such an order seems to have been passed only to fill up the vacuum. Generally quashing of a subsequent notification would not affect in revival of an earlier notification in whose place the subsequent notification had been issued, however, the legal effect of an earlier law when the later law enacted in its place is declared invalid, does not depend merely upon the use of the words like substitution; or suppression. It depends upon the totality of

circumstances and the context in which they are used. (Vide B.N. Tewari v. Union of India & Ors., AIR 1965 SC 1430; Indian Express Newspapers (Bombay) Private Ltd. & Ors. v. Union of India & Ors., AIR 1986 SC 515; West U.P. Sugar Mills Association & Ors. v. State of U.P. & Ors., AIR 2002 SC 948; Zile Singh v. State of Haryana & Ors., (2004) 8 SCC 1; and State of Kerala & Anr. v. Peoples Union for Civil Liberties, Kerala State Unit & Ors., (2009) 8 SCC 46).

(See also Ameer-un-Nissa Begum & Ors. v. Mahboob Begum & Ors., AIR 1955 SC 352; and India Tobacco Co. Ltd. v. The Commercial Tax Officer, Bhavanipore & Ors., AIR 1975 SC 155).

24. In Firm A.T.B. Mehtab Majid and Co. v. State of Madras & Anr., AIR 1963 SC 928, this Court while dealing with a similar issue held :

> "Once the old rule has been substituted by the new rule, it ceases to exist and it does not automatically get revived when the new rule is held to be invalid."

Therefore, it is evident that under certain circumstances, an Act which stood repealed, may revive in case the substituted Act is declared ultra vires/unconstitutional by the court on the ground of legislative competence etc., however, the same shall not be the position in case of subordinate legislation. In the instant case, the L.R. Manual is consisted of executive instructions, which can be replaced any time by another set of executive instructions. (Vide Johri Mal (supra).

Therefore, question of revival of the repealed clauses of L.R. Manual in case the substituted clauses are struck down by the court, would not arise. In view of this, the interim order would amount to substituting the legal policy by the judicial order, and thus not sustainable.

25. In view of the above, both the appeals succeed and are allowed. The impugned orders dated 30.11.2009 and 4.9.2008 are hereby set aside. However, in view of the peculiar fact-situation existing herein, the order (s), if any, passed by the State Authorities under the interim order dated 4.9.2008, would not be disturbed till the final disposal of the cases.

26. This Court after taking note of the nature of appointment involved in such cases made a request to the High Court in Special Leave Petition (C) No.12751 of 2009 (Ram Autar Saini, Advocate v. Ram Singh Lodhi & Ors.) vide order dated 15.5.2009 to dispose of the matters at an early date. However, it appears that the said order could not be brought to the notice of the High Court. Therefore, we again take the opportunity to request the High Court to consolidate all such matters and finally dispose them of, as early as possible. The appellant may place the copy of this judgment before the Hon'ble Chief Justice/Senior Judge for information and appropriate orders.

However, it is clarified that no observation made hereinabove shall be taken into consideration while deciding the writ petitions pending before the High Court as we have not expressed any opinion on merits and the above observations have been made only to examine the correctness of the interim orders passed by the High Court.

The appeals are disposed of accordingly. No costs.

.....J. (J.M. PANCHAL) .....J. (DEEPAK VERMA) .....

.....J. (Dr. B.S. CHAUHAN) New Delhi, December 3, 2010