

RAJA SINGH & ANR.

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v.

STATE OF U.P. & ANR.

(Civil Appeal No. 4642 of 2019)

MAY 06, 2019

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[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]

Service law:

UP Minority Welfare Department Gazetted Officers Service Rules 2001: Appointment – Post of District Minority Welfare Officer on deputation/transfer of service basis – Appellant selected for appointment to the said post prior to coming into force of UP Service Rules 2001 and continued as such – UP Service Rules 2001 providing for filling up the posts in cadre of District Minority Welfare Officers by way of direct recruitment or by way of promotion – Representation by the appellant seeking absorption in the cadre of District Minority Welfare Officer – Thereafter, writ petition by the appellant seeking quashing the UP Service Rules 2001 and for issuance of mandamus directing respondents to regularize their services on the post of District Minority Welfare Officer – Dismissed by High Court – On appeal, held: Appellants having been appointed prior to coming into force of UP Service Rules 2001, their appointment cannot be said to be on deputation – In the absence of any material to show that the appellants were appointed only against temporary posts created only for a period of two years, it cannot be held that they were appointed only against temporary posts for a period of only two years – Though UP Service Rules 2001 is silent about the appointment of the appellants made prior to coming into force of the Rules, the appellants having been appointed on the post of District Minority Welfare Officer prior to coming into force of UP Service Rules 2001, cannot be deprived of their rights of absorption in the Minority Welfare Department – Pension to be paid to the appellants as admissible to the District Minority Welfare Officer – Order of the High Court set aside.

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A **Allowing the appeal, the Court**

- HELD:** 1.1 In the letter of Secretary, Minority Welfare Department dated 15.11.1997 communicated to other departments, the employees of their departments-appellants were selected for appointment ‘on the post of the District Minority Welfare Officer’ by service transfer. Even though the said letter states that the appellants were appointed by deputation/service transfer, considering the surrounding circumstances that the appellants have undergone the selection process by appearing for interview before the Committee and that they were selected for appointment shows that it was ‘selection and appointment’ in the Department of Minority Welfare and not ‘deputation’. Even though, the appellants were appointed for the period of two years, after two years, no order was passed repatriating them to their Parent department. Of course, in the meanwhile, writ petitions came to be filed by the appellants. However, there was no communication from the Department of Minority Welfare and Waqf to the other departments proposing for repatriation of the appellants to their Parent department. [Para 12] [177-C-F]

- 1.2 At the time of appointment of the appellants, there were no Service Rules. The appellants having been appointed prior to coming into force of UP Minority Welfare Department Gazetted Officers Rules 2001, their appointment cannot be said to be on deputation. Though it is stated that their appointment was only temporary, there is nothing on record to show that the posts were only temporary posts for a fixed time. In the absence of any material to show that the appellants were appointed only against temporary posts created only for a period of two years, it cannot be held that they were appointed only against temporary posts for a period of only two years. [Para 14] [178-D-E]

- 1.3 Rule 5 of the UP Minority Welfare Department Gazetted Officers Service Rules 2001 contemplated that 75% post of District Minority Welfare Officer will be filled up through Public Service Commission by direct recruitment and 25% by promotion through Public Service Commission from amongst substantively appointed Chief Waqf Inspectors and Senior Waqf Inspectors who have completed ten years’ service as Chief Waqf Inspector or Senior Waqf Inspector or both. Though UP Minority Welfare

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Department Gazetted Officers Service Rules 2001 is silent about the appointment of the appellants prior to coming into force of 2001 Rules, the appellants having been appointed on the post of District Minority Welfare Officer prior to coming into force of Service Rules 2001, cannot be deprived of their rights of absorption in the Minority Welfare Department. [Para 15] [178-F-H]

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1.4 It is stated that since appellant R has retired, the Parent department of R has paid all the retiral dues and pension is being paid at the admissible rate in the Department of Training and Employment. Since appellant R and three other appellants are held to be the employees of Department of Minority Welfare and Waqf in the cadre of District Minority Welfare Officer, they are entitled to the retiral benefits and pension as to the District Minority Welfare Officer, after adjusting the pension paid to appellants R and H. [Para 17] [179-F-G; 180-A]

1.5 The impugned order of the High Court is set aside. The appellants would be absorbed in post of District Minority Welfare Officer in the Department of Minority Welfare and Waqf from the date of their appointment. Insofar as the retired employees R and H, the Minority Welfare Department would comply with the aforesaid directions. [Para 18] [180-B-C]

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Managing Director, UP Rajkiya Nirman Nigam v. P.K. Bhatnagar and others (2007) 14 SCC 498 – referred to.

Case Law Reference

(2007) 14 SCC 498 referred to Para 13

referred to

Para 13

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4642
of 2019.

From the Judgment and Order dated 07.03.2014 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 13148 of 2002.

With

Civil Appeal Nos. 4643, 4644 of 2019.

Ratnakar Das, A.T.M. Rangaramanujam, Sr. Advs., Kamal Kant Tripathy, Ms. Anu Gupta, Sanjay Mani Tripathi, Advs. or the Appellants.

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A Pradeep Misra, Upendra Mishra, Suraj Singh, Vinay Garg, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

- B 2. These appeals arise out of the judgment and order dated 07.03.2014 passed by the High Court of Judicature at Allahabad in CMWP No. 13148 of 2002 and batch in and by which the High Court held that the appointment to the post of District Minority Welfare Officer is to be governed by UP Minority Welfare Department Gazetted Officers Service Rules 2001 and that the appellants have no legal right to claim their absorption in the Minority Welfare Department and the same has been rightly rejected by the State Government.
- C 3. In all these appeals, the point falling for consideration is one and the same and all the appeals shall stand disposed of by this common judgment. For easy reference, the facts in appeal arising out of SLP(C) D No.8725 of 2014 are referred to.

4. Brief facts which led to filing of these appeals are:

- E That the State Government of Uttar Pradesh vide its Notification No. 4056/XX-E-95-539(2)/95 dated 12.08.1995 created four Departments known as:- (a) Minority Welfare Department; (b) Backward Class Welfare Department; (c) Handicapped Welfare Department; and (d) Ambedkar Village Development Department. The Secretary, Minority Welfare and Muslim Waqf Department, Government of U.P. vide its letter No. 2160/52/1-96-1(85)/95 dated 22.11.1996 addressed to all Principal Secretaries/Secretaries of Government of U.P. stated that the F posts of District Minority Welfare Officer is to be filled through U.P. Public Service Commission and due to non-availability of adequate officers, it had been decided to fill such posts by way of deputation/ transfer of service of the officers having at least twelve years of experience and working in the pay scale of immediately below Rs.2000- 3500. The Secretary requested heads of various departments that the names of interested applicants be forwarded for appointment for the post of District Minority Welfare Officer on deputation/transfer of services basis.
- G 5. The appellants applied for the newly created post of District Minority Welfare Officer through proper channel and they were directed H

to appear for interview and selection process. After facing the interview, the appellants were selected for appointment for the post of the District Minority Welfare Officer vide Government Order dated 30.12.1997. In the said appointment orders, it was stated that their deputation/service transfer was for a period of two years or till further orders whichever is earlier. The appellants continued in the post even after two years. The Government framed UP Minority Welfare Department Gazetted Officers Service Rules 2001. The said Rules provided that 75% post of District Minority Welfare Officer will be filled up through Public Service Commission by direct recruitment and 25% by promotion through Public Service Commission from amongst substantively appointed Chief Waqf Inspectors and Senior Waqf Inspectors who have completed ten years' service as Chief Waqf Inspector or Senior Waqf Inspector or both, on the first date of the year of recruitment.

6. The appellants made representations before respondent No.1 on 14.02.2002 and 16.02.2002 seeking absorption in the cadre of District Minority Welfare Officer in the Department of Minority Welfare and Waqf. When their representation was pending for consideration, the appellants filed writ petition being WP(C) No.13148/2002 seeking issuance of writ of certiorari for quashing the UP Minority Welfare Department Gazetted Officers Service Rules 2001 insofar as it excludes the clause of merger/absorption on the post of District Minority Welfare Officer and for issuance of Mandamus directing respondents to regularize the services of the appellants on the post of District Minority Welfare Officer. By an interim order, the High Court protected the service of the appellants till the disposal of the writ petition. The Government vide its order No.2188A/52-1-2002-Writ/2002 dated 02.08.2002 rejected the appellant's representation seeking absorption in the cadre of District Minority Welfare Officer in the Department of Minority Welfare and Waqf. While rejecting the representation, the Government observed that there is no provision in the Service Rules 2001 to fill the posts in the cadre of District Minority Welfare Officers from any other source except either by way of direct recruitment or by way of promotion.

7. In WP(C) No.13148/2002 then pending, the appellants moved an amendment application with a prayer for quashing the aforesaid order dated 02.08.2002. The respondents filed their counter opposing the writ petition as well as amendment. The respondents averred that the appellants do not belong to the Minority Welfare Department and that

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- A they were borrowed on deputation basis and their lien in the Parent department still exists. It was averred that the appellants were retained in the Minority Welfare Department only on account of interim order passed by the High Court and that the appellants have no right to continue in the Department of Minority Welfare and Waqf and claim absorption.
- B 8. The High Court dismissed the writ petition by the impugned order dated 07.03.2014 by stating that the issue involved in the writ petition is similar to the issue involved in WP No. 44112 of 2011 and that the writ petition has no merits. In the relied upon judgment in WP No. 44112 of 2011 titled *Saeed Ahmad Khan & Ors. v. State of U.P. Through Secretary Ministry of Welfare Department and Others*, the High Court held that the appellants who were on deputation/transfer of service in the Department of Minority Welfare have no legal right to claim absorption of their services in the Minority Welfare Department.
- C 9. We have heard the learned senior counsel appearing for the parties and carefully considered the submissions and perused the impugned judgment and also the relied upon judgment in WP(C) No.44112 of 2011 and WP(C) No.44100 of 2013 and the other materials placed on record.
- D 10. The point falling for consideration is that the appellants having been selected and appointed as District Minority Welfare Officer prior to coming into force of UP Minority Welfare Department Gazetted Officers Rules 2001, can it be said that the appellants were only on deputation and that they have no legal right to claim absorption as District Minority Welfare Officer.
- E 11. After the separation of the Social Welfare Department, a new department i.e. Minority Welfare Department was carved out in the year 1995. The Government Order dated 22.11.1996 was issued to the various departments of Uttar Pradesh inviting applications from the eligible candidates of various departments for the post of District Minority Welfare Officer on service transfer/deputation basis. In the said Government order, it was specifically pointed out that the candidates may apply for the aforesaid post or in the pay scale of Rs.2000-3500 or just below the pay scale of Rs.2000-3500 and he is eligible for promotion in pay scale of Rs.2000-3500 or above.
- F 12. Appellant Raja Singh was District Employment Officer.
- G Appellant Makrand Prasad was Assistant Employment Officer in

Employment Department. Appellant Dharam Deo Tripathi was the Senior Auditor in the Office of District Audit Officer (Finance Department) at Deoria. Appellant Hem Raj Singh was working as Superintendent in Social Welfare Department. All the appellants applied for the post of District Minority Welfare Officer through proper channel and after facing interview before the Selection Committee and undergoing the selection process, they were duly selected for the post of the District Minority Welfare Officer. The appointment letters were issued on 03.10.1997. As per the office order dated 30.12.1997, the appellants were appointed “*to the temporary post of newly created Minority Welfare Officers under the Minority Welfare and Waqf Department on deputation/service transfer for the period of two years or till further orders whichever is earlier*”. In the letter of Secretary, Minority Welfare Department dated 15.11.1997 communicated to other departments, the employees of their departments viz. Makrand Prasad, Raja Singh, Dharam Deo Tripathi and Hem Raj Singh were selected for appointment ‘on the post of the District Minority Welfare Officer’ by service transfer. Even though the said letter states that the appellants were appointed by deputation/service transfer, considering the surrounding circumstances that the appellants have undergone the selection process by appearing for interview before the Committee and that they were selected for appointment shows that it was ‘selection and appointment’ in the Department of Minority Welfare and not ‘deputation’. As pointed out earlier, even though, the appellants were appointed for the period of two years, after two years, no order was passed repatriating them to their Parent department. Of course, in the meanwhile, writ petitions came to be filed by the appellants. However, there was no communication from the Department of Minority Welfare and Waqf to the other departments proposing for repatriation of the appellants to their Parent department.

13. In *Managing Director, UP Rajkiya Nirman Nigam v. P.K. Bhatnagar and others* (2007) 14 SCC 498, it was held that the mere fact the employee has spent several years in service in the Department where he has been sent on deputation, will not alter the position from that of a deputationist to a regular employee. Of course, it is well-settled that the employee who has been sent on deputation, has no right to claim absorption. But in the case in hand, as we have discussed earlier, appointment was not on deputation; but by transfer of service much prior to coming into force of the Service Rules 2001.

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A 14. UP Minority Welfare Department Gazetted Officers Service Rules 2001 came into force w.e.f 02.07.2001. Rule 3(h) of the said Rules defines 'Member of the Service' as under:-

- B 3(h) 'Member of the service' means a person substantively appointed under these rules or the rules or orders in force prior to the commencement of these rules to a post in the cadre of the service.

Rule 3(k) defines 'Substantive appointment' as under:-

- C 3(k) 'Substantive appointment' means an appointment not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the rules and, if there were no rules, in accordance with the procedure prescribed for the time being by executive instructions issued by the Government.

- D Be it noted that at the time of appointment of the appellants, there were no Service Rules. The appellants having been appointed prior to coming into force of UP Minority Welfare Department Gazetted Officers Rules 2001, their appointment cannot be said to be on deputation. Though it is stated that their appointment was only temporary, there is nothing on record to show that the posts were only temporary posts for a fixed time. In the absence of any material to show that the appellants were appointed only against temporary posts created only for a period of two years, it cannot be held that they were appointed only against temporary posts for a period of only two years.

- E 15. Rule 5 of the UP Minority Welfare Department Gazetted Officers Service Rules 2001 contemplated that 75% post of District Minority Welfare Officer will be filled up through Public Service Commission by direct recruitment and 25% by promotion through Public Service Commission from amongst substantively appointed Chief Waqf Inspectors and Senior Waqf Inspectors who have completed ten years' service as Chief Waqf Inspector or Senior Waqf Inspector or both. Though UP Minority Welfare Department Gazetted Officers Service Rules 2001 is silent about the appointment of the appellants prior to coming into force of 2001 Rules, the appellants having been appointed on the post of District Minority Welfare Officer prior to coming into force of Service Rules 2001, cannot be deprived of their rights of absorption in the Minority Welfare Department.

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16. In the impugned order, the High Court relied upon WA No. 44112 of 2001 which is a subject matter of challenge in SLP(C) No.8885/2014 which in turn relied upon CMWP No. 44100 of 2013 titled ***Chandrabhan Srivastava and Another vs. State of U.P. and Others.*** In WP No. 44100 of 2013, the petitioners thereon were selected and joined in the cadre of District Minority Welfare Officer on 27.09.2009, long after the service Rules 2001 came into force. In that context, the High Court held that the persons who were appointed to the Minority Welfare Department, are governed by the Uttar Pradesh Minority Welfare Department Gazetted Officers Service Rules 2001. The petitioners thereon having been appointed by the Office Memorandum dated 27.07.2009, cannot claim to be a 'Member of the Service' as they do not fulfill the requirement under Rule 3(h) of the Rules. The said case in WP No. 44100 of 2013 is clearly distinguishable on facts. In the present case, the appellants having been appointed in 1997 much prior coming into force of UP Minority Welfare Department Gazetted Officers Service Rules 2001 clearly covered under Rule 3(h) of the Rules and stand on different footing. The High Court, in our view, was not right in placing reliance on ***Saeed Ahmad Khand*** and ***Chandrabhan Srivastava*** to dismiss the writ petition filed by the appellants.

17. It is stated that Raja Singh and Hem Raj Singh retired on 30.06.2018. Claiming their ACP (Assured Career Progression) and other benefits, WP No.23563(S/B) of 2018 was filed by Raja Singh which was disposed of by the High Court vide order dated 31.08.2018 directing the Parent department namely Department of Training and Employment to process the pension papers relating to payment of post-retirement dues. It is stated that pursuant to the said direction of the High Court, Director of Training and Employment vide its order dated 30.10.2018 sanctioned payment of all retiral benefits and other dues payable to appellant Raja Singh. It is stated that the Parent department of Raja Singh has paid all the retiral dues and pension is being paid at the admissible rate in the Department of Training and Employment. Since appellant Raja Singh and three other appellants namely Hem Raj Singh, Dharam Deo Tripathi and Makrand Prasad are held to be the employees of Department of Minority Welfare and Waqf in the cadre of District Minority Welfare Officer, they are entitled to the retiral benefits and pension as admissible to the District Minority Welfare Officer. Department of Minority Welfare and Waqf shall process the pension

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- A papers and pay all the retiral benefits after adjusting retiral benefits paid to the appellants Raja Singh and Hem Raj Singh by their respective departments. The pension shall be paid to the appellants as admissible to the District Minority Welfare Officer after adjusting the pension paid to appellants Raja Singh and Hem Raj Singh.
- B 18. In the result, the impugned order of the High Court is set aside and these appeals are allowed. The appellants shall be absorbed in post of District Minority Welfare Officer in the Department of Minority Welfare and Waqf from the date of their appointment. Insofar as the retired employees Raja Singh and Hem Raj Singh, the Minority Welfare Department shall comply with the directions in para(17) above expeditiously. We make it clear that this judgment shall not be quoted as a precedent as it is passed in the peculiar facts and circumstances of the case that these officers were appointed in the post prior to coming into force of Service Rules 2001 and continued as such.

Nidhi Jain

Appeals allowed.