

Union Of India & Ors vs S.K. Saigal & Ors on 15 November, 2006

Equivalent citations: AIR 2007 SUPREME COURT 1211, 2007 (14) SCC 556, 2007 AIR SCW 1269, 2007 LAB. I. C. 1455, (2007) 3 JCR 77 (SC), 2006 (12) SCALE 367, 2007 (3) SERVLJ 129 SC, 2007 (2) SRJ 446, (2007) 49 ALLINDCAS 586 (SC), (2007) 1 SCT 286, (2007) 1 SERVLR 207, (2006) 12 SCALE 367

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Bench: H.K.Sema, P.K.Balasubramanyan

CASE NO.:

Appeal (civil) 2600-2601 of 2005

PETITIONER:

Union of India & Ors

RESPONDENT:

S.K. Saigal & Ors.

DATE OF JUDGMENT: 15/11/2006

BENCH:

H.K.SEMA & P.K.BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T H.K.SEMA, J The challenge in these appeals is to the orders dated 22.8.2003 and 27.2.2004 passed by the Division Bench of the High Court affirming the order dated 30.10.2002 passed by the Central Administrative Tribunal (CAT) allowing the petition of the respondents.

Briefly stated, the facts are as follows:

The respondents were working as Junior Hydro- Geologist, Junior Geophysicist Chemists and Hydro- Meteorologists (Scientists Grade 'B'). Their cases for consideration for promotion to the posts of Scientists Grade 'C' were declined on the ground that the departmental candidate should have put in at least 5 years as Scientists Grade 'B' in the scale of Rs. 2200-4000 in accordance with Rule 7 (2)(b) read with column 12 of Central Ground Water Board (Scientific Group 'A' Posts) Recruitment Rules, 1995 (hereinafter 'the Rules'). We will deal with the Rules later at an appropriate time.

The grievance raised before the Tribunal was that the deputationists with 8 years of experience in the scale of Rs. 2000-3500 were allowed to be promoted as Scientists Grade 'C' in the scale of Rs. 3000-4500 whereas in the case of the departmental

candidates working in the scale of Rs. 2200- 4000 it was made mandatory for putting in regular 5 years service in Grade 'B' for promotion to Grade 'C' and it is, therefore, discriminatory. It was also claimed that although the respondents have not completed 5 years of service in Grade 'B' in the scale of Rs. 2200-4000, they have already completed 8 years of service in the scale of Rs. 2000-3500 and, therefore, they are entitled to be promoted to Grade 'C' posts in the scale of Rs. 3000-4500, as in the case of deputationists.

The Tribunal was of the view that the eligibility condition that promotion to the post of Scientist Grade 'C' for departmental candidates can be made only after completion of 5 years regular service in the scale of Rs. 2200-4000, whereas for candidates on deputation, the condition of 8 years service in the scale of Rs. 2000-3500 for promotion to Grade 'C' posts in the scale of Rs. 3000-4500 is discriminatory between the departmental candidates and deputationists. According to the Tribunal, therefore, two sets of candidates having the same qualifications seeking promotion to the same Grade cannot be required to fulfill different eligibility criteria in terms of length of service in a particular grade merely on the ground that one set of candidates are departmental candidates and the other set of candidates are deputationists. The Tribunal was further of the opinion that the rules that apply to the deputationists should also apply to the departmental candidates, if otherwise, the qualifications are the same. On the basis of the above view, the Tribunal allowed the petition and directed the respondents (appellants herein) to consider the promotion of the applicants to the rank of Scientists Grade 'C' from the date they completed 8 years of service in the pre-

revised scale of Rs. 2000-3500, albeit without striking down the Rules.

The core question posed for determination is as to whether the particular Rules governing service conditions could be brushed aside without challenging the Rules and the mandate of the Rules could be ignored in the absence of a challenge and without striking them down? Rule 7 (2)(b) of the Rules, which is relevant for the present purposes reads as under:

"Rule 7 (2)(b): The departmental officers who have rendered in the respective grade the requisite regular service specified in column (12) of the Schedule may be recommended by the Board of Assessment comprising the officers specified in column (13) of the Schedule for promotion to the next higher grade. While evaluating the suitability of the officers for promotion, the Assessment Board shall take into consideration their qualifications, performance, merit and seniority. The selection shall be on the basis of confidential reports and interview. However, the Assessment Board, may at their discretion, consider in absentia the candidature of such officer who is unable to present himself for the interview. The Assessment Board shall draw up a list of officers who are assessed as fit for promotion to the next higher grade. In so far as persons undergoing training in India or abroad (under F.R. 51) are concerned, they shall be promoted to the next higher grade with effect from the date

they would have been so promoted had they not proceeded on training subject to the following conditions being fulfilled:-

- (i) The period of such training is treated as duty under F.R. 9(6)(b).
- (ii) They have been approved for promotion to the next higher grade.
- (iii) All their seniors, except those regarded as unfit for promotion to the particular grade, available have been promoted to that grade."

Further Column 12 reads:

"For Hydrology Discipline:

Promotion: Junior Hydrologist with 8 years' service in the grade rendered after appointment therein on a regular basis.

For other disciplines:

Promotion: Scientist 'B' with 5 years regular service in the grade.

Transfer on deputation: (including short-term contract): Officers under the Central/State Governments Universities/ Recognised Research Institutions Public Sector Undertakings/ Statutory or Autonomous Organisations:-

- (a) (i) holding analogous posts on a regular basis, or
- (ii) with 5 years' regular service in post in the scale of Rs. 2200-4000 or equivalent;
or
- (iii) with 8 years' regular service in posts in the scale of Rs. 2000-3500 or equivalent;
and
- (b) Possessing the educational qualification and experience prescribed for direct recruits under column (8).

(The departmental officers in the feeder grade who are in the direct line of promotion will not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion).

(Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/ department of the Central Government shall not exceed 3 years).

The maximum age-limit for appointment by transfer on deputation shall not be exceeding 56 years as on the closing date of receipt of applications."

The mandate of the Rule, as noticed above, clearly shows that the deputationists for promotion to the post of Grade 'C' required 8 years experience as Jr. Hydrologists on a regular basis whereas departmental candidates must have completed 5 years regular service in Grade 'B' in the scale of Rs. 2200- 4000.

We have been taken through the entire petition filed by the respondents herein before the Tribunal. There is not even a whisper of challenging the Rules as discriminatory or ultra- vires, much less Rule 7(2)(b) of the Rules. Similarly, in paragraph 4, clause (v), the petitioners (respondents herein) stated as under:

"(v.) That petitioners as Scientists-B have not completed 5 years regular service. Petitioners have not worked for 5 years on analogous posts on regular basis. Petitioners have also not served 5 years on regular basis in the post of scale of Rs. 2200-4000. However, petitioners have definitely worked for over 8 years on regular basis in the post in the scale of Rs. 2000-4000 can definitely be treated as equivalent to regular service in the post in the scale of 2000-3500."

It was, therefore, clearly an admitted case of the respondents by themselves that they had not worked for 5 years as Scientists 'B', which is the mandate of the Rules and, therefore, the Tribunal transgressed its jurisdiction granting the relief to the respondents de hors the mandate of the Rules. It is now settled principle of law that no mandamus can be issued which would be contrary to the Act and the Rules. See *State of U.P. v. Harish Chandra* (1996) 9 SCC 309; *Union of India v. Association for Democratic Reforms and Anr.* (2002) 5 SCC 294.

Mr. Manoj Swarup, learned counsel appearing for the respondents contended that the deputationists and the departmental candidates have formed one class of the officers and, therefore, it would be impermissible to create any class within the class under the Rules. In this connection he referred to the decision of this Court in *S.G. Jaisinghani v. Union of India and Ors.* 1967 (2) SCR 703. This contention would be of no help to the respondents in the absence of challenge to the vires of the Rules.

Learned counsel for the respondents also referred to the various decisions of the Rajasthan High Court in which similar questions had been raised and the relief was granted by the High Court and the High Court orders were implemented. According to him, taking note of the line of the decisions of the Rajasthan High Court, the order impugned passed by the High Court in the present case may not be disturbed. We are not at all impressed by such submissions. Such orders, if any, passed de hors the rules will not bind us, notwithstanding the orders being implemented. Those orders are also under challenge in appeals that are transferred to this Court in T.P (C) Nos. 197 to 220 and pending. Moreover, illegal decisions cannot be allowed to be perpetuated. A decision which is contrary to law and rules does not form a precedent. A decision becomes a precedent when it decides the law in accordance with the Act and the Rules.

In the result, the order dated 30.10.2002 passed by the Tribunal in OA 422/2002 and the order of the Division Bench of the High Court dated 22.8.2003 in passed in CWP No. 13192 of 2003 are hereby set aside. The OA No. 422/2002, filed by the respondents, stands dismissed. The appeals are allowed. No costs.