

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 9th July, 2010
Judgment Delivered On: 12th July, 2010

+ **W.P.(C) NO.4471/2010**

UNION OF INDIA Petitioner
Through: Mr. A.S. Chandhiok, ASG with Mr.
Sachin Datta, Mr. Sandeep Bajaj, Mr.
Manikya Khanna, Advocates

versus

U.P. PROVINCIAL POLICE SERVICE ASSOCIATION & ORS.
..... Respondents
Through: Mr.D.K. Singh, Mr. Pradeep Shukla,
Advocates for respondents No.1 and
2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. We had heard arguments on 09.07.2010 and reserved the matter, not because any contentious issue arose requiring deliberation of a kind that the matter had to be reserved for judgments, but on account of paucity of time to dictate the decision in Court.

2. Respondent No.1, U.P. Provincial Police Service Association and Respondent No.2 working as Additional Superintendent of Police approached the Central Administrative Tribunal by filing O.A.No.3430/2009, praying that directions be issued to the petitioner and Government of Uttar Pradesh to complete the cadre review of the Indian Police Service (IPS)

Cadre before the date 31.12.2009 so that the right of consideration of the eligible police officers belonging to the Provincial Police Service (PPS) in the State of Uttar Pradesh is protected.

3. Vide order dated 09.12.2009, holding that the issue of law had attained finality in view of the various decisions of the Supreme Court, it has been held that it was incumbent that the cadre review exercise was completed before 31.12.2009, for otherwise, everything would lapse and as a result the eligible police officers in the Provincial Police Service in the State of Uttar Pradesh would lose their right by default.

4. To this extent, nobody can quarrel with the proposition, for indeed, the law is clear that as per the applicable regulations it is mandatory that cadre review exercise is completed every five years before the end of the calendar year in question.

5. But, what could be done, if the situation was such that the exercise could not be completed by 31.12.2009. It may be highlighted that the direction in question has been issued by the Tribunal on 09.12.2009, by which date only 22 days were left in the calendar year 2009 and that the number of working days were 18.

6. The petitioner filed an application praying that the time be extended.

7. The application has been dismissed vide order dated 08.01.2010. The reason is obvious. As per the law, if the cadre review exercise was not completed by 31.12.2009, the right of the eligible candidates would be lost.

8. Before dealing with the facts in question, whether the petitioner is at fault, it may be noted that in W.P.(C). NO.19103-04/2006 Hemraj Singh Chauhan & Ors. Vs. UOI & Ors., a Division Bench of this Court held that the exercise of cadre review could be completed even beyond the calendar year in question and

thus it was held that a cadre review exercise which had to be completed by 30.04.03 pertaining, to the employees in the State Civil Services for promotion in the Central Civil Services (IAS), be completed pursuant to the directions issued by the Division Bench.

9. However, the challenge to the said decision before the Supreme Court succeeded in C.A. No.2651-52/2010 UOI Vs. Hemraj Singh Chauhan & Ors. But, exercising power under Article 142 of the Constitution of India, the Supreme Court, in para 49 of its decision dated 23.03.2010 disposed of the appeals in the following words: *"Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4(2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the Court can, especially having regard to its power under Article 142 of the Constitution, given suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees. The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively."*

10. Now, this Court is not vested with the power under Article 142 of the Constitution of India. This Court exercises jurisdiction under the shadow of: 'Satyamav Jayate' i.e., 'Truth shall prevail' and the Supreme Court exercises jurisdiction under the shadow: 'Yato Dharmastato Jayah' i.e. 'Truth alone I uphold'. Thus, we negate the plea urged by learned counsel for the

respondent that in conformity with the decision of the Supreme Court, we should pass directions that cadre review exercise may continue. But we hasten to add that we do not conclude upon the issue for the reason it has not directly arisen for consideration before us and we would not like to render any final opinion unless there are properly constituted pleadings before us.

11. The issue has reached our lap on the simple pleadings, whether Union of India justified not complying with the directions issued by the Tribunal within the time granted by the Tribunal.

12. It is trite that the maxim of law '*impotentia excusat legem*' is intimately connected with another maxim of law '*lex non cogit ad impossibilia*.'

13. Impotentia excusat legem is that when there is necessary or invincible disability to perform the mandatory part of the law, that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. It means that where the law creates a duty but the party on whom the duty is cast is disabled to perform it, and has no remedy over it, there the law will in general excuse him.

14. It is not in dispute that the cadre review exercise requires the active participation of the State Government. It is also not in review that the necessary proposal with the relevant information has to emanate from the State Government.

15. The pleadings before the Tribunal show that as far back as 30.09.2008, conscious of the fact that the cadre review exercise had to be completed by 31.12.2009, preceding one year and three months before the time would have expired, the Union of India through the Ministry of Home Affairs sent a communication to the Government of the State of Uttar Pradesh to submit the necessary proposal so that the petitioner could take up further follow up action. It is unfortunate that the State

of Uttar Pradesh slept over the matter and did nothing inspite of reminders being sent till respondents 1 and 2 were compelled to approach the Central Administrative Tribunal. It was only on 25.12.2009 that the State of Uttar Pradesh did the needful.

16. It is also not in dispute that the further process of cadre review requires matter to be processed not only at the Cabinet Secretariat but at the Ministry of Finance and the Ministry of Personnel and Training and only then the Cadre Review Committee meets.

17. It is apparent that the entire blame, prima facie, lies on the shoulders on those responsible in the State of Uttar Pradesh and not the petitioner.

18. Be that as it may, we are informed that the respondents 1 and 2 have initiated contempt proceedings before the Central Administrative Tribunal for non-compliance of the directions issued by the Tribunal.

19. Thus, who is to be blamed, would be gone into by the tribunal in said contempt proceedings. Thus, highlighting the aforesaid facts, we speak no further, but only draw attention of the Tribunal that while deciding the issue of contempt, the Tribunal will duly note the fact that supplementary and complementary roles have to be played by the petitioner as well as the State of Uttar Pradesh and that it has to be considered whether it is the State of Uttar Pradesh which is at fault or it is the petitioner, or both. If both, in what ratio has the blame to be apportioned. The Tribunal would also be conscious of the fact that it was impossible for the petitioner to comply with its directions issued on 09.12.2009.

20. We once again reiterate that in the instant proceedings, we cannot issue an substantive directions in light of what was directed by the Supreme Court in C.A. No.2651-52/2010, for which respondents 1 and 2 would be advised to take resort to substantive action as contemplated by law.

21. Further noting that there is no controversy between the parties as to the issue that the Cadre Review exercise was required to be done and completed by 31.12.2009 and to this extent the substantive findings recorded by the Tribunal are correct, confronted with the vexed question whether at all there was sufficient time to comply with the directions, we answer by holding that the time left to complete the exercise pursuant to the directions issued on 09.12.2009 was too less, in fact, was so less that it was impossible for the petitioner to comply with the directions. Declaring so, we bring the curtains down by clarifying that in the pending contempt proceedings before it, the Tribunal would take note of our present decision and would then proceed to consider whether the fault lies with the State of Uttar Pradesh or it is the Union of India which is in default. If the view taken is that both are in default, the blame would be apportioned. This would be in the contempt proceedings.

22. We clarify once again that if the respondents 1 and 2 take resort to a substantive action seeking directions to be issued in terms of what was issued by a Division Bench of this Court in W.P.(C). NO.19103-04/2006, the issue would be decided in said substantive proceedings.

23. The writ petition stands disposed of in above terms.

23. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

JULY 12, 2010
anb