



2025:UHC:1846-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

**HON'BLE JUSTICE SRI MANOJ KUMAR TIWARI AND
HON'BLE JUSTICE SRI ASHISH NAITHANI**

Writ Petition (S/B) No. 576 of 2019

Hari Prasad Dobhal and others --Petitioners

Versus

State of Uttarakhand and another --Respondents

With

Writ Petition (S/B) No. 14 of 2020

Him Ram and others --Petitioners

Versus

State of Uttarakhand and another --Respondents

Presence:-

Mr. M.C. Pant, Advocate for the petitioners

Mr. Devendra Singh Bora, Standing Counsel for the State

The Court made the following:

JUDGMENT: (per Hon'ble Justice Sri Manoj Kumar Tiwari)

1. Since these two writ petitions involve common questions of law and fact, they were heard together and are being decided by this common judgment. However, for the sake of brevity, facts of Writ Petition (S/B) No. 576 of 2019 alone, are being considered and discussed.

2. Petitioners were initially appointed in a Government Company, known as "HILTRON". HILTRON was wound up due to heavy losses and its employees were adjusted in various government departments. Petitioners, in this writ petition, were adjusted in Department of Training and Employment of the State Government.



3. State Government framed Uttarakhand Technical Education Department and Skill Development & Employment Department Absorption Rules, 2019. Petitioners have challenged validity of Rule 6(1), 6(2), 6(3), 6(4), 6(5), 6(6), 6(7), 6(8) and Rule 8 and 9 of the said rules on the ground that they are arbitrary and unreasonable.

4. Rule 6(1) provides that, date mentioned in the absorption order issued in favour of a HILTRON employee shall be treated as the date of his substantive appointment. Rule 6(2) provides that absorbed employees shall be placed at bottom of the seniority list in the cadre in which they are absorbed; however, inter-se seniority of absorbed employees shall remain as it was in HILTRON. Rule 6(3) provides that absorbed employees will have to become member of New Pension Scheme of Technical Education Department and Skill Development & Employment Department. Rule 6(4) provides that last pay slip of the absorbed employees is issued as per 5th Pay Commission report and Technical Education Department shall fix basic pay of the absorbed employees notionally as per pay scale of 6th Pay Commission and revised pay scale would be admissible to them only from the date of their absorption and absorbed employees will not be entitled to arrears of salary. Rule 6(5) provides that if pay of an absorbed employee is more than the pay scale admissible for the post on which is absorbed, then pay of the absorbed employee shall be fixed at a scale nearest to his basic pay and his pay will be protected. Rule 6(6) provides that if HILTRON employees are absorbed on a



post carrying lower pay scale, then they shall be given designation of such post with lower pay scale, however their pay shall be protected as per the last pay certificate issued by previous employer. Rule 6(7) provides that the absorbed employees shall be placed on probation and upon completing the period of probation as per the Recruitment Rules applicable for the post, their services shall be confirmed, however, in case an absorbed employee do not meet the eligibility criteria for confirmation, the appointing authority may extend his probation period. Rule 6(8) provides that from the date mentioned in the absorption order, an absorbed employee shall acquire the status of government servant and all benefits admissible to State employees, shall be available to him.

5. Rule 8 of the Absorption Rules provides that cut-off date for absorption of HILTRON employees in Technical Education Department shall be 27.11.2015.

6. Rule 9 of the said Rules provides that before absorption, concerned employees will have to exercise give an option as to whether they are willing for absorption as per conditions mentioned in the Absorption Rules. It further provides that if an employee desires to go back to his previous employer, then he will have the option to do so during the period of probation and anyone who expresses unwillingness for absorption, will be reverted back to his previous employer and such employee will not be entitled to any compensation.

7. Learned counsel for the petitioners contends that



aforesaid provision of Absorption Rules, 2019 are unsustainable as benefit of past services rendered in HILTRON cannot be denied to petitioners; their seniority has to be fixed at an appropriate level by taking into account the service rendered by them in HILTRON and benefit of increments earned by them, while serving in HILTRON also, cannot be denied to them.

8. Learned State Counsel, however, submits that previous employer of the petitioners i.e. HILTRON was wound up due to heavy losses; State Government was under no obligation to adjust and absorb HILTRON employees in other government departments, however, taking a sympathetic view, HILTRON employees were temporarily adjusted in government departments and ultimately, State Government came out with Rules for their absorption.

9. He submits that, in normal circumstances, employees of government companies, which are wound up, are retrenched and petitioners should be thankful to the State Government that HILTRON employees were not retrenched and were given opportunity to serve in other government departments.

10. He submits that there is no infirmity in Absorption Rules, employees who were permitted to be absorbed in Technical Education Department cannot be placed above the existing employees of the said department, thereby disturbing their seniority and the rules rightly provide that absorbed employees will be placed in seniority list, after junior most employee serving in the cadre.



11. He further submits that as HILTRON employees, petitioners were not entitled to pension; state employees, appointed after 01.10.2005, are covered by New Pension Scheme, and, HILTRON employees upon absorption in the department are also given benefit of New Pension Scheme, thus they are treated at par with other government servants for all practical purposes.

12. He further submits that pay of HILTRON employees would be protected upon their absorption and benefit of revised pay scale is also available to them as per the absorption Rules. He submits that since petitioners are appointed to a new service by absorption, therefore, there is nothing wrong if they have to undergo probation as per service rules applicable for the post.

13. He submits that all benefits available to the government servants, are assured to the petitioners and there is no provision in the Rules, which can be said to be arbitrary and discriminatory.

14. This Court finds substance in the submission made by learned State Counsel. Petitioners were earlier employees of a Government Company and were not enjoying the status of a government servant, however, upon absorption in terms of the Rules in question, they acquired status of government servant. The grievance raised by petitioners that they are denied benefit of past services for seniority, increment, etc. is not sustainable in the eyes of law, as they have become employee of a different organization, for which they also exercised option.



15. Rule 9 provides that those who are desirous of absorption, as per the conditions of the absorption Rules alone, shall be absorbed.

16. Petitioners have given option in terms of Rule 9 and only then their services would have been absorbed. Thus, they cannot now turn around for challenging the provisions of the same Rules under which they are absorbed.

17. Law is well-settled that a statute can be challenged only on following grounds:

- (a) Lack of legislative competence;
- (b) Violation of any of the fundamental rights.

18. This aspect has been considered and discussed by Hon'ble Supreme Court in the case of **State of A.P. Vs. McDowell & Co.** reported in **(1996) 3 SCC 709**. Para 43 of the said judgment is reproduced below:-

43. Shri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is 'arbitrary' and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in *State of T.N. v. Ananthi Ammal* [(1995) 1 SCC 519] . Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, Parliament is supreme. There are no limitations upon the power of Parliament. No court in the United Kingdom can strike down an Act made by Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the Federal Government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and



two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness — concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary [An expression used widely and rather indiscriminately — an expression of inherently imprecise import. The extensive use of this expression in India reminds one of what Frankfurter, J. said in *Hattie Mae Tiller v. Atlantic Coast Line Railroad Co.*, 87 L Ed 610 : 318 US 54 (1943). “The phrase begins life as a literary expression; its felicity leads to its lazy repetition and repetition soon establishes it as a legal formula, indiscriminatingly used to express different and sometimes contradictory ideas”, said the learned Judge.] or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety (see *Council of Civil Service Unions v. Minister for Civil Service* [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174] which decision has been accepted by this Court as well). The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. (See the opinions of Lords Lowry and Ackner in *R. v. Secy. of State for Home Deptt., ex p Brind* [1991 AC 696 : (1991) 1 All ER 720] AC at 766-67 and 762.) It would be rather odd if an enactment were to be struck down by



applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. Now, coming to the decision in *Ananthi Ammal* [(1995) 1 SCC 519], we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed: (SCC p. 526, para 7)

“7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.”

19. It is not the case of petitioners that State Government lacks competence to frame Absorption Rules. The power to frame Rules can be traced to proviso to Article 309 of the Constitution. None of the fundamental right available to the petitioners can be said to be violated by any provision of Absorption Rules. In fact, petitioners have not challenged the Rules on any valid ground which is available for challenging a statute. Even otherwise also, the provisions of Absorption Rules cannot be said to be arbitrary or unreasonable.

20. State, as an employer, has certain inherent rights. State Government has exercised its inherent right by



framing the Absorption Rules. There are large number of employees serving in Technical Education Department since last several decades. State Government decided to absorb employees of a Government Company in said department, however, rights and interests of existing employees of Technical Education Department cannot be scarified while absorbing employees of Government Company in the said department. State Government rightly attempted to balance the interest of existing employees and the employees, who were to be absorbed in Technical Education Department, by making the impugned provisions.

21. Learned counsel for petitioners relied upon a judgment rendered by Hon'ble Supreme Court in the case of **Sub-Inspector Rooplal and another Vs. Lt. Governor through Chief Secretary, Delhi and others** reported in **(2000) 1 SCC 644**. Para 23 of the said judgment, on which heavy reliance was placed by petitioners' counsel, is extracted below:-

"23. It is clear from the ratio laid down in the above case that any rule, regulation or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayer of the appellant-petitioners and the offending words in the memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned memorandum. Consequently, the right of the appellant-petitioners to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police,



is restored.”

22. The ratios of said judgment do not apply to the facts of present case. Here, petitioners were not taken on deputation, but they were simply adjusted as the Government Company in which they were employed, was wound up. A deputationist can go back to his parent organization, however, petitioners do not have that choice, as their parent organization does not exist anymore. The judgment relied by petitioners’ counsel deals with a case of deputationist, thus is distinguishable.

23. In case of deputation, consent of lending organization and the person going on deputation, has to be obtained, however, in the present case, there was no lending organization nor Technical Education Department had requisitioned services of petitioners. Petitioners were simply adjusted, as they had no place to work, therefore, the principle, which applies to deputationist cannot be made applicable to petitioners.

24. Since, petitioners have voluntarily accepted absorption in Technical Education Department as per condition of Absorption Rules, therefore, they cannot now question the provisions contained in Absorption Rules. Learned State Counsel rightly submits that Absorption Rules have to be either accepted in toto or rejected out rightly. After securing benefit of absorption as per Rules. Petitioners cannot selectively question certain provisions of the same Rules under which they were absorbed.

25. In view of aforesaid discussion, this Court does not find any force in the challenge thrown by petitioners to



the Absorption Rules.

26. Learned counsel for petitioners then submits that certain HILTRON employees, upon their absorption in Technical Education Department, have retired and some of them have also passed away, however, their monetary/terminal dues are not being released, even though HILTRON had discharged its liability by providing necessary funds for the purpose to the State Government.

27. This Court, while refusing to interfere with the Absorption Rules, 2019, directs the Competent Authority in the State Government to release admissible retiral/terminal dues to such employees, who retired or passed away, upon their absorption in government service. The Competent Authority in the State Government shall also examine claim of the petitioners for grant of ACP and seniority, as per applicable Rules/Government Policy, within six months.

MANOJ KUMAR TIWARI, J.

ASHISH NAITHANI, J.

Dt: 18TH March, 2025
Mahinder