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PRAHALAD SHARMA
v.
STATE OF U.P. AND ORS.

FEBRUARY 24, 2004

B

[BRIJESH KUMAR AND ARUN KUMAR, JJ.]

Service Law:

C 13.

U.P. Government Servants (Discipline and Appeal) Rules, 1999: Rule

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Service Rules—Adoption of—By a Government Corporation through a resolution—Applicability of—In disciplinary proceedings—Against an employee of the Corporation—Employee of the Corporation dismissed by MD of the Corporation—But, in appeal, Chairman of the Corporation reinstated the employee—State Government, using its revisional power under R. 13, reversed the Chairman's order—High Court dismissed employee's writ petition—Correctness of—Held: By adopting the Rules same procedure or protection of the employees of the Corporation would be applicable—However, the revisional power would not vest in the State Government—It would only be exercised by the Appellate authority i.e. the Chairman of the Corporation—Hence, High Court judgment not sustainable.

Words & Phrases:

"Mutatis mutandis".

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The appellant was working as a Service Engineer in the U.P. State Agro Industrial Corporation, which was a Government company. The Managing Director of the Corporation dismissed the appellant from service. The Appellate authority i.e. the Chairman of the Corporation allowed the appeal preferred by the appellant and reinstated him in service.

Against the order passed by the Chairman, the revisional power of the State Government under Rule 13 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 was invoked by the Corporation. The State Government allowed the revision and found that the charges were proved

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against the appellant.

The High Court dismissed the appellant's writ petition holding that by means of a resolution, the Corporation had *mutatis mutandis* adopted the U.P. Rules of 1999 and, therefore, the provisions of the said Rules including Rule 13 were applicable to the employees of the Corporation. Hence the appeal.

The following question arose before the Court:

"Whether or not the revisional power under Rule 13 of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 was available to the State Government in relation to the employees of the Corporation?"

Allowing the appeal, the Court

HELD: 1. A Corporation or any other organization may adopt the rules on any subject, as may be applicable in the State Government or any other organization. However, by doing so only the rules are adopted not the authorities unless specifically provided for. Otherwise, it would result in a queer situation where the authorities of the organization would start exercising those powers in relation to the matters of the organization adopting the rules, which would obviously not be permissible. If the organization adopts the rules pertaining to disciplinary matters as prevalent in the Government or other organization, it would only mean that same procedure would be applicable in respect of the employees of the organization adopting the rules namely, the manner of holding an enquiry into the charges, opportunity of hearing, provision for appeal or revision would be applicable in respect of the employees of the organization adopting the rules but such powers would be exercisable by the corresponding authorities in the organization adopting the rules. If some power is vested in a particular authority, for example, in this case in the State Government or for that matter it could be with any other officer or functionary of the State Government that would not subject the employees of a Corporation or organization to the control of those authorities of the organization whose rules have been adopted. If an appeal is provided to be preferred against an order of punishment to an authority who is higher than the punishing authority, that remedy may be available to the employees of the organization adopting the rules for preferring the appeal to the higher authority of his own organization but not that the appellate authority would also be the same belonging to the organization whose rules are adopted.

- A Similarly, if any authority corresponding or parallel to the State Government is available in the Corporation such authority may exercise revisional powers as conferred upon the State Government in the U.P. Government Servants (Discipline and Appeal) Rules, 1999. The authorities of a foreign organization cannot be vested with such powers merely because of adoption of the rules on a particular subject as applicable to other organizations. The same procedure or protection will be applicable and available to the employees of the Corporation as may be provided under the U.P. Rules of 1999 but the corresponding authorities would obviously be different. Otherwise authorities of the other department whose Rules are adopted may get wide powers like looking into any records of the organization adopting the rules and exercising powers like in this case vested under Rule 13, upsetting, modifying, reversing orders passed by the authorities of the adopting organization.

[600-C-H; 601-A-B]

2. The Managing Director or the Chairman are the authorities and functionaries of the Corporation. Incumbent of such offices may even though sometimes be Government servants on deputation but while working as Chairman or the Managing Director or any authority in the organization or the Corporation, they would not be subordinate to the Government. Then perhaps the right to invoke the revisional powers may be available only to the “concerned government servant” as provided under Rule 13 and may not be available to the employees of the Corporation. Therefore, adoption of rules are implemented in a manner as they fit in the structure of the adopting organization and not as a strait jacket application to the adopting organization. [601-D-E]

- Dr. S.L. Aggarwal v. The General Manager, Hindustan Steel Ltd.*, [1970] 1 SCC 177 and *Maharashtra State Co-operative Cotton Growers' Marketing Federation Ltd. v. Employees' Union*, [1994] Supp. 3 SCC 385, relied on.

3. The expression “*mutatis mutandis*”, itself implies applicability of any provision with necessary changes in points of detail. The rules, which are adopted, as has been done in the present case, make the principles embodied in the rules applicable and not the details pertaining to a particular authority or the things of that nature. In the present case, the High Court has found that the U.P. Rules of 1999 have been adopted *mutatis mutandis*. Therefore, the revisional power, which has been vested in the State Government in respect of the employees of the State, may be exercisable by an authority parallel or corresponding thereto in the Corporation in regard to employees of the

Corporation. [602-G-H; 603-A]

4. It is clear that the rules as applicable to the employees of the State Government, in the matters relating to disciplinary action, suspension or subsistence allowance etc. were made applicable to the employees of the Corporation. Since for the employees of the State Government some new rules were promulgated namely, the U.P. Government Servants (Discipline and Appeal) Rules, 1999, a second resolution was passed specifically incorporating those rules for the purposes of disciplinary matters against the employees of the Corporation. In this light of the matter, the question of giving retrospective effect to the U.P. Rules of 1999 does not arise. Even if no specific resolution was passed for incorporation of the U.P. Rules of 1999 even then it would not have made any difference since the U.P. Rules of 1999 would also be applicable without any further resolution as whatever rules as may apply to the employees of the State Government in the matters relating to disciplinary action etc. would be applicable to the employees of the Corporation.

[603-G-H; 604-A-B]

5. The judgment of the High Court holding that the revisional power as vested in the State Government under Rule 13 of the U.P. Rules of 1999 shall be available in respect of the employees of the Corporation is erroneous and not sustainable. [604-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1257 of 2004.

From the Judgment and Order dated 28.2.2003 of the Allahabad High Court in C.M.W.P. No. 35872 of 2001.

Uday U. Lalit, Prashant Kumar, Rohan Thawani, Joseph Pookkatt, Ms. Pooja Dhar and Prashant Kumar for the Appellant.

Altaf Ahmad, Additional Solicitor General, Rajesh for the Respondent Nos. 3-5.

Subodh Markandeya, Kamendra Mishra and Rajeev Dubey for the Respondent Nos. 1-2.

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. Leave granted.

- A This appeal is directed against the judgment and order passed by a Division Bench of the Allahabad High Court dismissing the writ petition preferred by the appellant challenging the order passed by the State of Uttar Pradesh purportedly in exercise of its revisional power under Rule 13 of U.P. Government Servants (Discipline & Appeal) Rules, 1999 (hereinafter referred to as 'the U.P. Rules of 1999') setting aside the order passed by the
- B Chairman of the U.P. State Agro Industrial Corporation (for short 'the Corporation') and restoring the order passed by the Managing Director imposing penalty of dismissal against the appellant.

- C The Corporation is a Company incorporated under the Companies Act. It is a Government company. The appellant has been working as a Service Engineer in the said Corporation at Hapur. It is the case of the Corporation that the appellant had committed serious financial irregularities which came to the light of the Corporation and in respect thereof the Managing Director of the Corporation instituted a departmental enquiry some time in October, 1997. The charges were found proved and ultimately the Managing Director
- D passed the order dated 29.7.2000 dismissing the services of the appellant with immediate effect. An appeal was preferred to the Chairman of the Corporation against the order of punishment. The appellate authority by order dated 14.9.2000 partly allowed the appeal and ordered for reinstatement of the appellant with an observation that if the Managing Director desires, he may inflict minor punishment of censure against the appellant. It was also
- E found by the appellate authority that no charges were proved against the appellant nor the Corporation has suffered any financial loss. The conduct of the appellant, it has been observed, was "infirm" in following the departmental rules and procedure and he has been careless in his dealings.

- F It appears that against the order passed by the Chairman reinstating the appellant, revisional power of the State Government as provided under Rule 13 of the U.P. Rules of 1999, was invoked by the Corporation. The State Government allowed the revision and found that charges of serious financial irregularities were proved against the appellant. The punishment of dismissal as inflicted by the Managing Director was justified. The order passed by the
- G Chairman allowing the appeal was set aside and the order of punishment was restored.

- H It appears that before the State Government a plea was raised about the jurisdiction of the State Government to entertain the revision under Rule 13 of the U.P. Rules, 1999. In the revisional order, however, it is mentioned that the above said U.P. Rules of 1999 were adopted by the Board of Directors

of the Corporation, in that view of the matter the State Government was empowered to hear the revision. This point relating to the jurisdiction of the State Government, to exercise the power under Rule 13 was raised before the High Court also. The High Court observed that by means of a resolution dated 10.7.2001 the Corporation had *mutatis-mutandis* adopted the U.P. Rules of 1999. Hence the provisions of the aforesaid rules are applicable to the employees of the Corporation. After quoting the provisions for revision namely, rule 13, the High Court opined that since the aforesaid rules are adopted by the Corporation, the State Government has power to entertain the revision.

We may straightaway address to the question about the exercise of revisional power by the State Government as provided under the U.P. Rules of 1999. The Resolution dated 10.7.2001 passed by the corporation reads as under:

"Additional Agenda No.1

In respect of incorporating the U.P. Government Servant (Discipline and Appeal) Rules, 1999 in the Corporation Service Rules, 1984

"Proposal is passed taking a decision that the U.P. Government Servant (Discipline and Appeal) Rules, 1999 notified by the Special Secretary, Labour Department - I vide notification no.13/9/98-Ka-1-99 dated 9th June, 1999 along with necessary amendments will be made applicable to the officers/employees of the Corporation and it is permitted to incorporate the same in the Service Rules, 1984 of the Corporation."

In view of the above resolution, the U.P. Rules of 1999 have been made applicable to the officers/employees of the Corporation and they were permitted to be incorporated in the Corporation's service rules of 1984.

Rule 13 of the U.P. Rules of 1999 provides as under :

"Revision - Notwithstanding anything contained in these rules, the Government may of its own motion or on the representation of concerned Government servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules; and

(a) confirm, modify or reverse the order passed by such authority; or

- A (b) direct that further inquiry be held in the case, or
(c) reduce or enhance the penalty imposed by the order; or
(d) make such other order in the case as it may deem fit.”

The U.P. Rules of 1999 relate to the employees of the State Government.

- B The revisional power has thus been vested in the State Government to exercise the same on its own motion or on the representation of concerned government servant. In exercise of this power the State Government could call for the record of any case decided by an authority subordinate to it and pass appropriate order confirming or modifying or reversing the order under revisional scrutiny besides other powers as provided for under the Rule. The
- C question for consideration is as to whether or not this revisional power is available to the State Government in relation to the employees of the Corporation. In this connection it may be observed that a Corporation or any other organization may adopt the rules on any subject, as may be applicable in the State Government or any other organization. But by doing so only the
- D rules are adopted not the authorities unless specifically provided for. Otherwise it would result in a queer situation where the authorities of the organization whose rules on a particular subject have been adopted by another organization would start exercising those powers in relation to the matters of the organization adopting the rules, which would obviously not be permissible.
- E If the organisation adopts the rules pertaining to disciplinary matters as prevalent in the government or other organization, it would only mean that same procedure would be applicable in respect of the employees of the organization adopting the rules namely, the manner of holding an enquiry into the charges, opportunity of hearing, provision for appeal or revision would be applicable in respect of the employees of the organization adopting
- F the rules but such powers would be exercisable by the corresponding authorities in the organization adopting the rules. If some power is vested in a particular authority, for example, in this case in the state government or for that matter it could be with any other officer or functionary of the state government, would not subject the employees of a corporation or organization to the control of those authorities of the organization whose rules have been adopted.
- G If an appeal is provided to be preferred against an order of punishment, to an authority who is higher than the punishing authority, that remedy may be available to the employees of the organization adopting the rules for preferring the appeal to the higher authority of his own organization but not that the appellate authority would also be the same belonging to the organization
- H whose rules are adopted. Similarly, if any authority corresponding or parallel

to the state government is available in the corporation such authority may exercise revisional powers as conferred upon the state government in the U.P. Rules of 1999. The authorities of a foreign organization cannot be vested with such powers merely because of adoption of the rules on a particular subject as applicable to other organizations. The same procedure or protection will be applicable and available to the employees of the corporation as may be provided under the U.P. Rules of 1999 but the corresponding authorities would obviously be different. Otherwise authorities of the other department whose Rules are adopted may get wide powers like looking into any records of the organization adopting the rules and exercising powers like in this case vested under rule 13, upsetting, modifying, reversing orders passed by the authorities of the adopting organization.

The learned counsel for the appellant also draws our attention to rule 13 to indicate that if the rule is to be applicable, as it is, then the government will have power to revise the order only in case it has been passed by an authority subordinate to it. The Managing Director or the Chairman are the authorities and functionaries of the corporation. Incumbent of such offices may even though some times be Govt. servants on deputation but while working as Chairman or the Managing Director or any authority in the organization or the corporation, they would not be subordinate to the government. It is again to be noticed that then perhaps the right to invoke the revisional powers may be available only to the "concerned government servant" as provided under rule 13 and may not be available to the employee of the corporation. Therefore, it is submitted and in our view, rightly, that adoption of rules are implemented in a manner as they fit in the structure of the adopting organization and not as a straight jacket application to the adopting organization. It has also been pointed out that according to the provisions of the rule 13, as it is, an order can be subjected to the revisional power of the State only if the order has been passed in exercise of any power conferred under rules of 1999. It is submitted that the orders passed by the Managing Director or the Chairman cannot be said to be orders passed under the U.P. Rules of 1999 and not under the rules as adopted by the Corporation.

The appellant has placed reliance upon a decision reported in 1970 (1) SCC 177, *Dr. S.L. Aggarwal v. The General Manager, Hindustan Steel Ltd.*, In this case services of an officer of Hindustan Steel Ltd. were terminated. He sought protection of Article 311 of the Constitution of India. This Court held that the appellant was an employee of the Hindustan Steel Ltd. which has its independent existence. Thus rules and provisions relating to the

A government employees could not be applicable to those employees. In paragraph 10 of the judgment it is held as follows :

“..... We must, therefore, hold that the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members.”

It was also observed that even though a corporation may be completely owned by the government or the directors may be appointed by the President of India, nevertheless in the eye of the law the company was a separate entity and had a separate legal existence.

The other decision which has been referred by the learned counsel for the appellant is reported in 1994 Supp. (3) SCC 385, *Maharashtra State Co-operative Cotton Growers' Marketing Federation Ltd. & Anr. v. Employees' Union and Anr.* In this case, in the appointment letter which was issued to the seasonal employees, it was specified therein that their conditions of service shall be governed by Model Standing Orders. Some of the provisions of the Model Standing Orders provided for making the services of some categories of employees permanent. The seasonal employees also claimed the same benefit. It has been held that it was incorrect to say that all the Model Standing Orders would be applicable to the seasonal employees. It has been observed that the Model Standing Orders would be applicable to the seasonal employees *mutatis-mutandis*. It is further observed that the Model Standing Order no.4-B in particular, will be inapplicable to the seasonal employees because of the very nature of their employment and hence it could not be read into service conditions of the seasonal employees even though it was mentioned in their letter of appointments that they shall be governed by the provisions of the Model Standing Orders. It was further held that only such conditions of service would be applicable which could be applied to the seasonal employees and not the other conditions. It has also been observed that the Model Standing Orders would be applicable to the seasonal employees *mutatis-mutandis*.

The expression “*mutatis-mutandis*”, itself implies applicability of any provision with necessary changes in points of detail. The rules which are adopted, as has been done in the present case, make the principles embodied in the rules applicable and not the details pertaining to particular authority or

the things of that nature. In the present case, we find that the High Court has found that the U.P. Rules of 1999 have been adopted *mutatis-mutandis*. Therefore, in our view, the revisional power which has been vested in the state government in respect of the employees of the state may be exercisable by an authority parallel or corresponding thereto in the Corporation in regard to employees of the Corporation.

Learned counsel appearing for the appellant submits that the revision was filed before the state government prior to the resolution dated 10.7.2001 by which U.P. Rules of 1999 have been adopted by the corporation. On that ground also, the state government had no power to interfere in the matter since the appeal had already been decided in the year 2000 which order had become final before adoption of U.P. Rules of 1999. It is also submitted that since it is provided under rule 13 of the U.P. Rules of 1999 that the revisional powers would be exercisable in respect of the orders passed under the U.P. Rules of 1999 also leads to the inference that they are prospective in nature and would not be applicable to the orders which have not been passed under the U.P. Rules of 1999. We, however, find no substance in this submission as learned counsel for the respondent has drawn our attention to the resolution dated February 16, 1991 passed by the Board of Directors of the Corporation. The office order dated February 16, 1991 in relation to the decision of the Board of Directors of the Corporation as taken on 21.6.1990 vide resolution no.7 is quoted below:

“24(A) Disciplinary action, suspension and subsistence allowance, payment related rules and orders of the U.P. Government will be applicable on officers and employees of the Corporation”.

In pursuance of the above noted resolution rule 24-A was substituted in Chapter I of General Service Regulations of 1984 of the Corporation. Rule 24-A, as substituted, reads as under :

“24(A) Disciplinary action, suspension and subsistence allowance payment related rules and orders of the U.P. Government will be applicable on officers and employees of the Corporation.”

In view of the decision of the Board of Directors and the resolution and later on as a consequence thereof substitution of Rule 24-A in the General Service Regulations of 1984 of the Corporation, it is clear that the rules as applicable to the employees of the U.P. Government, in the matters relating to disciplinary action, suspension or subsistence allowance etc. were made applicable to the

A employees of the Corporation. It appears that since for the employees of the
state government some new rules were promulgated namely, the U.P.
Government Servants (Discipline and Appeal) Rules, 1999, a second resolution
was passed on 10.7.2001 specifically incorporating those rules for the purposes
of disciplinary matters against the employees of the Corporation. In this light
B of the matter the question of giving retrospective effect to the U.P. Rules of
1999 does not arise. We feel that even if no specific resolution was passed
for incorporation of U.P. Rules of 1999 on 7.10.2001 even then it would not
have made any difference since rule 24-A was substituted in the regulations
of 1984 in the year 1991 itself by virtue of which U.P. Rules 1999 would also
be applicable without any further resolution as whatever rules as may apply
C to the employees of the state government in the matters relating to disciplinary
action etc. would be applicable to the employees of the corporation.

D In our view, the judgment of the High Court holding that the revisional
power as vested in the state government under rule 13 of the U.P. Rules of
1999 shall be available in respect of the employees of the Corporation is
erroneous and not sustainable. The High Court abruptly formed the opinion
without examining the question at all.

E We, however, need not go into the question, as sought to be raised, as
to who would be an authority parallel or corresponding to the state government
in the Corporation to whom a revision may lie, since it is not involved in this
case,

F In the result, we allow the appeal and set aside the order passed by
the High Court as well as the order dated 15.9.2001 passed by the state
government in revision, having been passed without jurisdiction. There will,
however, be no order as to costs.

V.S.S.

Appeal allowed.