



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 6091 OF 2021

(Arising out of SLP(Civil) No(s). 21736 of 2007)

**UNION OF INDIA, THROUGH THE
SECRETARY MINISTRY OF ENVIRONMENT
AND FOREST**

....APPELLANT(S)

VERSUS

TRILOK S. BHANDARI & ORS.

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The instant appeal is directed against the judgment and order dated 14th November, 2006 passed by the High Court of Uttarakhand directing the present appellant to adjust the original petitioner-1st respondent and other persons like him who were

earlier promoted in the cadre of Indian Forest Service (hereinafter being referred to as the “IFS”) in the year 1996 against the notional vacancies and consequential pensionary benefits keeping in view the judgment of this Court in **Union of India and Others Vs. Vipinchandra Hiralal Shah**¹.

3. The facts in brief which are relevant for the present purpose are that the 1st respondent was the member of State Forest Service of UP Cadre and after clubbing of the earlier year vacancies of 1984-96, promotions were made to the IFS cadre with effect from 6th September, 1996 by an Order dated 16th September, 1996 that came to be challenged by filing of an original application before the Central Administrative Tribunal(hereinafter being referred to as the “Tribunal”) on the premise that clubbing of vacancies is not permissible and it is in violation of Regulation 5 of the IFS(Appointment by Promotion) Regulations, 1966(hereinafter being referred to as “Regulations 1966”) based on the judgment of this Court in **Union of India and Others**(supra). The Tribunal allowed

1 1996(6) SCC 721

the application and quashed the order of promotion dated 10th September, 1997 as follows:-

“30. In view of the foregoing discussions, we have no manner of doubt that it was incumbent upon the respondents to prepare separate year wise vacancies restricting zone of consideration in relation to the vacancies of each year. This it is, however not to suggest that officers who are included in the year wise select list are to be given promotion retrospectively from the year in which they are selected. This was the proposition advanced... and we reject the same.

31. The Impugned select list is accordingly **quashed** only on the short point that this was a combined select list of vacancies which arose during a period of nearly 12 years. We direct the respondents to prepare year wise select list by holding review DPC in accordance with the law. Officers who have already been promoted on the basis of impugned zselect list need not, however, be reverted but their further continuance as members of IFS cadre would depend on the outcome of the review DPC which shall be held by the Respondents within a period not exceeding 2 months...”

4. The order of the Tribunal came to be challenged in Civil Miscellaneous Writ Petition No. 2663 of 1998 which came to be dismissed by a judgment dated 11th May, 2001 upholding the order of the Tribunal pursuant to which the review recommendations and appointments were made by notification dated 8th July, 2005 followed with notification dated 4th/5th October, 2005.

5. It may be relevant to note that the recommendations which were made by notifications dated 8th July, 2005 and 4th/5th October, 2005 pursuant to which the officers were promoted in the IFS were

never a subject matter of challenge at least in the instant proceedings.

6. The 1st respondent was earlier in the list of officers promoted under the IFS cadre by an order dated 16th September, 1996 but when the review recommendations were made pursuant to the order of the Tribunal, he did not find place in the list of officers promoted by notifications dated 8th July, 2005 and 4th/5th October, 2005. The 1st respondent stood retired from service on attaining the superannuation on 30th November, 1996 just three months after the promotions made in the first instance by an order dated 16th September 1996.

7. The 1st respondent filed a writ petition before the High Court of Uttarakhand seeking writ of mandamus that such of the officers whose name did not find place in the review recommendations made by the selection committee pursuant to which appointments were made by notifications dated 8th July, 2005 and 4th/5th October, 2005 may be adjusted keeping in view the directions issued by this Court in **Union of India and Others**(supra).

8. The writ petition filed at his instance came to be allowed by the High Court by a judgment and order dated 14th November, 2006, the operative part of the order is referred hereunder:-

“15. The petitioner as well as other persons like the petitioner, who were selected as per final seniority list of 1996 and were promoted were entitled to be adjusted against those eight vacancies against which the notional promotions were made as the notional promotions were only for the selection grade and for pensionary benefit. It is also clarified here that the petitioner has also retired, therefore he is also entitled for notional promotion allocating him year of allotment as per rules.

16. For the reasons recorded above, we allow the writ petition agreeing with the view taken by central Administrative Tribunal, Ahmedabad Bench which is in the light and spirit of the judgment of Hon'ble the Supreme Court in Vipinchandra Hiralal Shah's case (supra) and declare that the petitioner and other persons who were promoted in the year 1996 (w.e.f. 1992) stand adjusted as they have been promoted according to Rules on the recommendation of Union of Public Service Commission by the Union of India.”

9. The judgment impugned came to be challenged by the Union of India before this Court and while issuing notice dated 12th November 2007, this Court directed to maintain status quo in the meantime and because of the interim order passed by this Court for all practical purposes, officers who were earlier selected and appointed in the IFS cadre in 1996 but did not find place in the review selection committee held pursuant to which the appointments were made by notifications dated 8th July, 2005 and

4th/5th October, 2005 were de-facto allowed to continue in the IFS cadre. The relevant order of this Court dated 12th November 2007 is as under:-

“Issue notice on the application for condonation of delay as also on the special leave petition.

Status-quo as of today shall be maintained, in the meantime.”

10. Pending appeal in this Court, various interlocutory applications were filed seeking impleadment. Pursuant thereto, 12 officers were impleaded as party respondents and all of them jointly prayed that they may be granted the same benefits as being extended by the Division Bench of the High Court in favour of the 1st respondent Mr. Trilok S. Bhandari on whose instance the writ petition was filed.

11. It is informed that all the added respondents who although could not be promoted in the review selection committee pursuant to which appointments were made by notifications dated 8th July, 2005 and 4th/5th October, 2005, were appointed in IFS against the vacancies of subsequent years and lost their interest in the pending

appeal and it is contested only by respondent no. 13 who unfortunately could not be appointed against the subsequent year vacancies but was allowed to continue as de-facto officer in the IFS Cadre because of the interim order passed by this Court dated 12th November, 2007 and while holding the post in the IFS cadre stood retired from service in September 2013.

12. It is further informed to this Court that as a member of the IFS, after his superannuation in September 2013, he is getting a provisional pension and all other emoluments were paid to him as a member of the IFS although the fact is that his appointment in the cadre of IFS was quashed and set aside and he could not be selected in the review selection committee pursuant to which appointments were made by notifications dated 8th July, 2005 and 4th/5th October, 2005 or against the vacancies of later years, but he was allowed to continue de-facto in the IFS cadre because of the stay order passed by this Court, and all benefits were extended to him treating him to be the member of the IFS cadre.

13. Mr. Sanjay Jain, learned Additional Solicitor General, submits that the appointments made on the recommendations of the review

selection committee by notifications dated 8th July, 2005 and 4th/5th October, 2005 was never a subject matter of challenge and the judgment on which the reliance was placed of this Court was dealing with the appointments and selections made of the officers in the Indian Administrative Service and while holding that clubbing of vacancies was not permissible and being in contravention to Regulation 5 of Regulations 1955, the order came to be passed in exercise of power of this Court under Article 142 of the Constitution of India for adjustment of the officers against the future vacancies, was of no assistance and the High Court has exceeded its jurisdiction in granting such omnibus relief which was in clear violation of the Regulations 1966.

14. Mr. Ravindra Raizada, learned senior counsel appearing for the State of UP submits that the officers who could not be selected on the recommendations of the review selection committee in the year 2005 or against the subsequent year vacancies have no right to continue to be a member of the IFS cadre but they were allowed to continue because of the interim order passed by this Court in the instant appeal preferred at the instance of the appellant Union of

India and mere continuance in the cadre of IFS under the interim order of this Court would not confer any right to claim relief, more so, when the recommendations made by the review selection committee was never a subject matter of challenge.

15. As observed, the 1st respondent Trilok S. Bhandari stood retired from service on 30th November, 1996 and other officers who were impleaded in the instant appeal, as informed to this Court, were appointed in the IFS cadre against the vacancies of subsequent years and the only officer who was left out was respondent no. 13 who could not be selected even in the subsequent year vacancy and finally retired in September, 2013 and this fact is not disputed that he was allowed to continue in the IFS cadre because of the interim order passed by this Court directing the parties to maintain status quo in the meantime by an order dated 12th November, 2007.

16. Ms. Rekha Pandey, learned counsel appearing for respondent no. 13 submits that he was allowed to continue in the IFS cadre and finally retired from service while holding the post as an IFS officer, at the same time, his pension and other emoluments have

also been computed on the last pay drawn in the IFS cadre. In the given circumstances, learned counsel submits that there is no dispute so far as factual matrix is concerned, as he has throughout worked in IFS cadre and retired from service, in the peculiar facts and circumstances of the case, his service conditions may be protected as he has been paid his retiral benefits and getting his provisional pension as an IFS Officer.

17. We have called upon Mr. Ravindra Raizada, learned senior counsel appearing for the State of UP to take instructions that if this officer would not have been allowed to continue in the IFS cadre and allowed in the cadre of State Forest Service, what benefits he was entitled for when he finally retired in September 2013.

18. Learned counsel on instructions fairly submits that he was in the grade pay of Rs. 6600 as officer in the IFS cadre but if he would have been allowed to continue as State Forest Officer in 1996, he would have been in the grade pay of Rs. 5400 but the officer junior to him in the State cadre(State Forest Service), in the interregnum period, was promoted as Deputy Director in the grade pay of Rs. 6600 in the year 1997. There was further Assured Career

Progression Scheme for the state officers on completion of 10 years (Rs.6600), 6 years (Rs.7600) and 10 years (Rs.8700). If this Officer would have been continued to be a member of the State Forest Service, and his junior being promoted in the year 1997 in the grade pay of Rs. 6600, at least he would have been entitled for promotion and also for assured career progression scheme in future.

19. It is not disputed that respondent no. 13 who could not be appointed on the recommendations of the review selection committee in the year 2005 and also for the subsequent year vacancies in the IFS cadre but as a member of the State Forest Service, his pay scale at least could not have been detrimental to his interest as what being paid to him as an IFS officer. It cannot be denied that respondent no. 13 who could not be appointed against the subsequent year vacancies has no right to continue and the fact is that the officer has not challenged the appointments made on the recommendations of the review selection committee or the recommendations made by the selection committee against the vacancies of subsequent years. At the same time, this fact cannot

be ignored that he was allowed to continue till he attained superannuation in September 2013 as a de-facto IFS officer because of the interim order passed by this Court.

20. After we have heard learned counsel for the parties, we are of the considered view that the order passed by the High Court is unsustainable in law for the reason that in the absence of the recommendations made by the review selection committee pursuant to which the appointments were made by notifications dated 8th July, 2005 and 4th/5th October, 2005, being challenged, there was no justification for the High Court to pass such omnibus directions more particularly when the officer on whose insistence the writ petition was filed, stood retired from service in November 1996 on attaining the age of superannuation and the judgment in **Union of India and Others**(supra) on which the Division Bench blindly placed reliance, in our considered view, has no application in the facts of the instant case.

21. Thus, we are of the considered view that the judgment impugned dated 14th November, 2006 of the Division Bench of the

High Court is unsustainable and deserves to be quashed and set aside.

22. At the given time, taking into consideration the seriatim of facts which has been brought to our notice and other officers(impleaded respondents) who have been appointed against the subsequent year vacancies in IFS Cadre have lost their interest and so far as respondent no. 13 is concerned, who has contested this matter before this Court, although was not selected against the vacancies of subsequent years but was allowed to continue as an Officer of the IFS cadre for all practical purposes, remained a de-facto member of the IFS cadre because of the interim order passed by this Court dated 12th November, 2007 and stood retired from service in September 2013 as an IFS officer, while exercising our power under Article 142 of the Constitution of India, we direct the concerned authorities that the officer may be treated to be an Officer of the IFS cadre and his pension and all other retiral benefits be computed treating him to be a member of the IFS cadre for all practical purposes.

23. The appeal succeeds and accordingly allowed. The judgment of the High Court of Uttarakhand dated 14th November, 2006 is hereby quashed and set aside while protecting the rights and privileges availed by V.P. Singh, respondent no. 13, as afore-stated.

24. Pending application(s), if any, stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(ABHAY S. OKA)

NEW DELHI
SEPTEMBER 29, 2021