

CASE NO.:
Appeal (civil) 2731 of 1997

PETITIONER:
UNION TERRITORY OF CHANDIGARH AND ORS.

RESPONDENT:
RAJESH KUMAR BASANDHI AND ANR.

DATE OF JUDGMENT: 08/09/2003

BENCH:
BRIJESH KUMAR & ARUN KUMAR

JUDGMENT:
JUDGMENT

2003 Supp(3) SCR 452

The Judgment of the Court was delivered by

BRIJESH KUMAR, J. : The Union Territory of Chandigarh has preferred this appeal against the judgment and order dated 25.10.1996 passed by the Central Administrative Tribunal, Chandigarh bench allowing the O.A. filed by the respondent Rajesh Kumar Basandhi, directing the present appellant, inter alia to consider his case for appointment to the post of Assistant District Attorney/Law Officer.

The whole case hinges upon the meaning and the interpretation of the expression "for the time being" as used in the Union Territory of Chandigarh Employees (Conditions of Service) Rules, 1992 (hereinafter to be called as 'the Rules'), framed in exercise of power under Article 309 of the Constitution of India. The question arose in the background of a notification of vacancies for recruitment to the post of Assistant District Attorney/Law Officer. Apart from other qualifications as laid down in the advertisement dated 16.5.1996, the age limit was required to be between 21-30 years as on the 1st day of January 1996. The respondent No. 1 applied as one of the candidates for the post. There is no dispute about the fact that he was then aged 33 years that is to say beyond the maximum age limit as provided in the notification for filling up of the vacancies. Hence, his application was not entertained. He approached the Central Administrative Tribunal and by means of an interim order, he was allowed to appear in the examination and the selection process but final result was not to be declared.

The case of the respondent Shri Rajesh Kumar Basandhi, who appeared in person, is that as per the rules applicable, the maximum age limit is 35 years but on the other hand according to the appellant it is 30 years. The Central Administrative Tribunal ultimately found that the maximum age limit is 35 years, therefore it directed to declare the result of the respondent and to consider his case for appointment to the post of Assistant District Attorney/Law Officer.

The Union Territory of Chandigarh was constituted on 1.11.1966 under the provisions of the States Reorganization Act. By means of a notification dated 1.11.1966 issued by Govt. of India, Ministry of Home Affairs, in exercise of its power conferred under the proviso to Article 309 of the Constitution of India, the Administrator of Union Territory of Chandigarh was authorized to exercise the power to make rules in regard to method of recruitment to the Central Civil Services under his administrative control in connection with the affairs of the Union Territory of Chandigarh. In the year 1992 by yet another Notification dated January 13, 1992 issued under Article 309 of the Constitution the President framed Conditions of Service of Union Territory of Chandigarh Employees Rules, 1992. It took effect from April 1, 1991. The Rules of 1966 in so far inconsistent with the provisions

of 1992 Rules were repealed. The Rules of 1992 provided as follows :

"Conditions of service of persons appointed to the Central Civil Services and posts under the administrative control of Administrator.- The conditions of service of persons appointed to the Central Civil Services and posts in Groups A, B, C and D under the administrative control of the Administrator of Union Territory of Chandigarh shall, subject to any other provision made by the President in this behalf, be the same as the conditions of services of persons appointed to corresponding posts in Punjab Civil Services and shall be governed by the same rules and orders as are for the time being applicable to the latter category of persons.

Provided that in the case of persons appointed to the services and posts under the administrative control of the Administrator, Chandigarh so far as they are drawing pay on the rates admissible to the corresponding categories of employees of the Government of Punjab, it shall be competent for the Administrator to revise their scales of pay from time to time so as to bring them at par with the scales of pay which may be sanctioned by the Government of Punjab from time to time to the corresponding categories of employees."

(Emphasis supplied)

According to the above provisions, persons appointed to the services of the Union Territory of Chandigarh, their conditions of service shall be governed by the same rules and orders as applicable for the time being to the corresponding posts in the Punjab Civil Services. So far Scales of pay is concerned it is provided that the Administrator will be competent to revise the same from time to time so as to bring it at par with scales of pay of Punjab Services.

The Punjab Civil Services Rules were framed in 1989 and Rule 7A prescribed the maximum age limit as 30 years for recruitment to the post of Assistant District Attorney/Law Officer. An amendment was made in the Punjab Civil Services Rules, 1989 in the year 1994 according to which the maximum age for technical posts was raised to 33 years. Thereafter, came yet another amendment in the Punjab Civil Services Rules, 1989 in 1996, increasing the maximum age limit to 35 years. In this view of the position, according to the respondent, his candidature could not be defeated on the ground that he was over age. The case of the appellant however is that amendment made to the Punjab Civil Services Rules, 1989 would not be ipso facto applicable for recruitment to the Union Territory of Chandigarh unless such amendments were also adopted by the administration of the Union Territory of Chandigarh. This having not been done, the Rules of Punjab Civil Services, 1989 as stood on 13.1.1992 at the time the Notification was issued, for applying those rules, for the services of employees of Union Territory of Chandigarh, would alone be applicable and not the subsequent amendments unless specifically adopted.

The Tribunal while holding that the amendment to the Punjab Civil Services Rules, 1989 made subsequent to January 13, 1992 shall also be applicable for recruitment to the posts in Union Territory of Chandigarh, relied upon the aforesaid proviso to 1992 Rules, wherein the term "from time to time" has been used in reference to the revision of scales of pay of the employees of Chandigarh Administration and it has been held that the expression "from time to time" used in the proviso shall also apply to the main provision itself. The Tribunal has then relied upon the meaning of the term "for the time being" as given in the Stroud's Judicial Dictionary (3rd Ed.) published by Sweet & Maxwell Ltd. London. The Tribunal also took note of the fact that the requirement of two years experience of practice at the Bar as introduced in the Punjab Civil Services Rules, 1989 on 24. 12.1991 was given effect to in the notification issued for recruitment for Law Officer/Assistant District Attorney. If that is so, the subsequent amendment made in 1996 shall also be applicable raising the age to 35 years.

It may be pertinent at this stage to see the meaning of the phrase "for the time being" as given in the Stroud's Judicial Dictionary as quoted in the judgment of the Tribunal. It reads as follows :

"The phrase 'for the time being' may according to its context, mean the time present, or denote a single period of time; but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time"

The respondent also refers to the Law Dictionary by Dr. A.R. Gupta 1979 Ed. Published by Eastern Law House and the phrase 'for the time being', has been indicated therein to mean as follows :

"Time Being. The phrase "for the time being" may, according to its context may mean the time present or denote a single period of time; but its general sense is that of time indefinite and refers to an indefinite state of facts which will arise in the future and which may vary from time to time. Re Gunter's Settlement Trusts, 1949 Ch. 502."

In the Law Lexicon by T.P. Mukherjee 1989 Ed. the phrase "for the time being in force" has been indicated to mean as under :

"For the time being in force - The expression "any other enactment for the time being in force" means any legislation enacted whether before or after the imposition of the tax by the corporation. The general sense of the phrase "for the time being" is that of time indefinite and refers to indefinite state of facts which will arise in future and which may vary from time to time. [See Constitution of India Art. 265] D. Kasturchandji v. State, AIR (1967) M.P. 268 at 274; 1966 Lab. L.J. 1143 : 1967 M.P.L.J. 47.

The expression may refer either to a particular point of time or to several periods of time and the interpretation that is to be adopted in any particular case must depend upon the context in which the expression occurs (See Defence of India Act, 1939, Sec. 19(l)(g) E.I. Film Studio v. P.K. Mukherjee, AIR (1954) Cal. 41 at 43"

And in Venkataramaiya's Law Lexicon "Legal Maxims", as revised by Justice M.C. Desai (2nd Ed.) 1966 (Reprint), the meaning of the phrase "for the time being" is given as follows :

"For the time being - The words "for the time being" are capable of different interpretations according to the context; for example, they might be used with a context showing clearly that they were intended to point one single period of time; and a case was put of a person intending to give a promissory note to a company, and giving it to the secretary "for the time being", meaning clearly the person who appeared to be the secretary at the particular time when the note become payable. It might be according to the context, that the same words would apply to a succession of periods. Take the common case of petition for payment of dividends to the rector to certain parish "for the time being" which, of course would point not to single period but a succession of periods - Ellison v. Thomas, [1862] 31 L.J. Ch. 867 at p. 869.

The general sense of the phrase "for the time being" is that of time indefinite, and refers to indefinite state of facts which will arise in future and which may vary from time to time. - See Ellison v. Thomas, (1862) 31 L.J. Ch. 867; D. Kasturchandji v. State, AIR (1967) M.P. 268 at P. 274; 1967 M.P. L.J. 47 at P. 55; 1966 Jab L.J. 1143"

We also find that in Law Lexicon by P. Ramanatha Aiyar, 2nd Ed., Reprint 2000, the expression "time being" has been indicated to mean :

"Time being, - The phrase "for the time being" may according to its context

mean the time present or denote a single period of time, but its general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the future, and which may (and probably will) vary from time to time. (Ellison v. Thomas, 31 L.J. Ch.867; 32, L.J. Ch.32; Coles v. Pack, L.R.5 C.P. 65)

A perusal of the meaning of the expression "for the time being" by different authors, based on decided cases makes it clear that it cannot be said that it must in every case indicate a single period of time. It may be for indefinite period of time depending upon the context in which the phrase is used. It is also evident that generally it denotes indefinite period of time, meaning thereby, the position as existing at the time of application of the rules, may be amended or un-amended. Therefore, to come to a conclusion as to whether it is for one time or for indefinite period of time, the context, purpose and the intention of the use of the phrase will have to be seen and examined.

The learned counsel for the appellant has heavily relied upon a decision reported in (1992) 3 Supreme Court Cases 576 -Jivendra Nath Kaul v. Collector/District Magistrate and Anr., more particularly, on the observations made at Page 579 where it has been observed :

"....we are of the view that the High Court Judgment in Bhaiya Lal case does not lay down correct law. The High Court has not given natural meaning to the expressions contained in sub-s. (12) and sub-s.(13) of Section 87A of the Act. The only meaning which can be given to the expression "half of the number of the members of the Board" is the members as existed on the date of its constitution. The total number of members on the date of composition of Municipal Board, Mugal Sarai was 16 and as such notwithstanding the removal of member/members, the motion of no confidence could only be passed if the motion was supported by more than 8 votes..".

It is further observed :

"Similarly the High Court fell into grave error by not appreciating the plain meaning of the words "for the time being" in sub-section 13 of Section 87-A of the Act. "For the time being" means at the moment or existing position. These words indicate the actual membership in existence on the date of motion of no confidence. The High Court on the basis of strain reasoning has given an interpretation which does not flow from the simple language of sub-sections (12) and (13) of Section 87A of the Act".

For appreciating the above position, it would be necessary to look to sub-sections (12) and (13) of Section 87A of the Act, which reads as follows :

"(12) "The motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total number of members of the Board'.

(13) 'If the motion.....which shall not be less than one-half of the

total number of members of the Board for the time being, no notice of any subsequent motion of no-confidence in the same president shall be received until after the expiry of a period of twelve months from the date of the meeting'."

1. 1970 All. L.J. 36

A perusal of the above provision clearly indicates that different phraseology has been used in the two sub-sections. In sub-s.(12) the expression "for the time being" has not been used. On the other hand it says that motion would be deemed to have been carried by majority of more than half of the total number of members. This has been taken to mean the total strength of the members of the Board irrespective of subsequent removals, if any. But for the purpose of sub.s.(13) where the expression

"for the time being" has been used, would mean the existing position at the moment; that is to say actual number of members in existence on the date of motion of no confidence. Thus the actual number of existing members may fluctuate or vary from time to time, i.e. one half of the total number of members for the time being would subsequently may also vary depending on the fact as to how many members are actually there when the motion of no confidence was moved. This position which emerges from the above decision, in our view, does not advance the case of the appellant in any manner. Rather it would be in support of the meaning of the phrase "for the time being" to the effect that in general sense, of time indefinite and refers to state of facts which would arise in future and may vary from time to time.

We may then examine the reasoning which has been given by the Central Administrative Tribunal to hold that meaning of the expression "for the time being" would be as may vary from time and not for one single time. For this purpose help was sought from the expression used in the proviso "from time to time" in respect of the revision of pay scale. It is true, as rightly canvassed before us that these words used in the proviso cannot be read in the main provision but it, in no way takes away the meaning which is generally assignable to the phrase "for the time being" as used in the main provisions. There has to be some special or tangible circumstance or context in which it may be said that the meaning to be assigned to the expression "for the time being" would be other than the general meaning and the phrase would mean for a single time. If we read the main provision without reading its proviso alongwith it, there is no reason for not assigning the meaning of the phrase "for the time being" as generally understood for indefinite period of time, as also held by this Court in the case of Jivendra Nath Kaul (supra). There is nothing to indicate which may restrict the general meaning to mean that it was only for one time. We are therefore of the view that it was not at all necessary for the Tribunal to seek assistance from the words used in the proviso "from time to time" to interpret the meaning of the phrase "for the time being" used in the main provision.

On the other hand, a close reading of the whole provision will indicate a different position altogether. In the proviso it is said "...it shall be competent for the Administrator to revise their scales of pay from time to time so as to bring them at par with the scales of pay which may be sanctioned by the Govt. of Punjab...". That is to say, the Administrator would be competent to bring scale of pay at par from time to time with that of Punjab Services. The Administrator is supposed to do something positive as he is made competent to bring about the parity in scale of pay. But conspicuously, this provision is not there in the main provision which provides for other conditions of service of employees of Chandigarh Administration; which shall be the same as for the time being applicable to the members of the Punjab Services. It is not provided that it would be competent for the Administrator to apply the same conditions of service, as on the contrary provided in the proviso in respect of revision of scales of pay from time to time; but only the Administrator will be competent to do it. Whatever be the conditions of service for Punjab Services at the time they are to be applied, the same would, ipso facto, apply to Chandigarh Services without anything further to intervene for its applicability.

The intention of the appellant also does not appear to be to confine the meaning of the phrase "for the time being" to a single time which would be demonstrated by the fact that in the notification issued for recruitment, one of the conditions was that the candidate should have experience of two years at the Bar. This condition was introduced by amendment to Section 87A on 24.12.1991 that is to say the amendment in the rule regarding two years experience was included in the requirement of eligibility. A specific query was made from the learned counsel for the appellant on the point, namely, in what manner the amendment in the relevant provision regarding two years practice was given effect to in the notification for recruitment, the learned counsel answered that the said amendment had been made before the

issuance of the notification making the Punjab Rules applicable to the persons appointed in the service of Union Territory of Chandigarh. To be more specific the case of the appellant is that the provision of the Punjab Rules was amended on 24.12.1991 introducing the condition of two years practice at the Bar whereas the notification was issued by the Chandigarh Administration subsequently i.e. on 13.1.1992 therefore amended position of the Punjab Rules till that date namely 13.1.1992 was incorporated in the notification for recruitment. But it would be pertinent to point out that it was conveniently skipped by the appellant to notice that Punjab Rules were made applicable with effect from 1.4.1991 though the notification to that effect was issued on 13.1.1992. The consequence of giving effect to the notification dated 13.1.1992 w.e.f. 1.4.1991 would be that Punjab Rules as existing on 1.4.1991 would be applicable. If the argument of the appellant is accepted that the phrase "for the time being" was applicable for only one time and not for future amendments, Punjab Rules, as existed on 1.4.1991 alone would apply without taking note of the subsequent amendment in the rules i.e. as made on 24.12.91 regarding requirement of two years practice. But the appellant did not adhere to that position which is being canvassed now but in the notification for recruitment the position as brought about by amendment in the Punjab Rules as on 24.12.1991 was incorporated and given effect to. The appellant cannot have it both ways. Once having given effect to the notification dated 13.1.1992 with effect from 1.4.1991 it should have adhered to the rules as existed on 1.4.1991 if it wanted to say that the phrase "for the time being" was meant for a single time and not for future varying situation and amendments. Thus the stand taken by the appellant becomes self-contradictory to its own conduct in incorporating the rule as amended on 24.12.1991 i.e. subsequent to 1.4.1991 with effect from which date the Punjab Rules were made applicable to the services of the Union Territory of Chandigarh. The mere fact that notification was issued on 13.1.1992 will not change the position if it were to be interpreted that the phrase "for the time being" was for a single time. The appellant having itself given effect to the rules amended after 1.4.1991, cuts against its own argument to say that amendment subsequent to 1.4.1991 would not be applicable unless specifically adopted by the Union Territory of Chandigarh. It may not be open for the appellant to pick one amendment in the Punjab Rules and implement the same and refuse to apply the other amendment. It is clear that no adoption of the amended provision was necessary and by assigning the general meaning to the expression "for the time being" it would be applicable without being specifically adopted by the Chandigarh Administration. The general meaning of the phrase "for the time being" seems to be reasonable since the position as existing at the time the rule is applied that would be taken into account unless of course context may indicate otherwise. We find no such context by reason of which we may assign meaning to the phrase other than the meaning understood in general sense that such an expression is indefinite in time and refers to state of facts which may arise and exist at the time rule is applied which may vary at different times. The same meaning as generally understood has also the approval of the decision of this Court in Jivendra Nath Kaul (supra).

Learned counsel for the appellant informs and submits that on declaration of the result it was found that the merit of the respondent is low and he stands no chance for appointment looking to the number of vacancies available. In this connection the respondent submitted that he has already challenged the result of the selection on certain grounds which is subject matter of another case pending before the Tribunal. The fact that proceedings challenging the result is pending before the Tribunal is not denied, we therefore refrain from making any comment in that regard except that in case number of vacancies available was less than the position of the respondent in order of merit, in that event question of appointment may arise only in case of a favourable decision of the Tribunal on the petition of the respondent challenging the result of the selection and not otherwise.

In view of the discussion held above, we are of the view that no

interference is called for in the order passed by the Central Administrative Tribunal. The appeal lacks merit. It is accordingly dismissed. The stay order granted by this Court on 7.4.1997 at the time of granting leave is discharged.

Costs easy.

JUDIS