
(1999) 04 AHC CK 0114
In the Allahabad High Court
Case No : Writ Petition No. 1754 of 1989

Ajai Chand

APPELLANT

Vs

U.P.Public Services Tribunal II,Lucknow & Ors.

RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Uttar Pradesh Nagar Palika (Centralised) Service Rules, 1966 — Rule 3

Citation : (1999) 04 AHC CK 0114

Hon'ble Judges : R.H.Zaidi, J and R.P.Nigam, J

Final Decision : Dismissed

Judgement

1. By means of this petition, the petitioner prayed for issuance of a writ, order or direction in the nature of certiorari quashing order dated 20121988 passed by U.P. Public Services Tribunal No. II, Lucknow rejecting claim petition of the petitioner and for issuance of writ, order or direction in the nature of mandamus directing opposite parties Nos. 2 and 3 to promote the petitioner to one of the posts of Revenue Inspectors in Agra Nagar Mahapalika.

2. It appears that the petitioner was appointed as a Clerk Grade II in the year 1962. Since then he has been working on the said post. The petitioner happens to be a candidate belonging to Scheduled Caste. According to him several posts of Revenue Inspectors fell vacant and he was fully qualified to be promoted for the said post. He, therefore, made a representation for his promotion to the post of Revenue Inspector in the Nagar Mahapalika. The representation filed by the petitioner was considered but was rejected by Administrator of Nagar Mahapalika vide order dated 2531987. The petitioner, thereafter, approached U.P. Public Services Tribunal for ventilation of his grievances. The U.P. Public Services Tribunal came to the conclusion that next higher post to the post of Clerk Grade II was the post of Clerk Grade I, which carried the same pay scale as was admissible to the post of Revenue Inspector. The petitioner was promoted to the post of Clerk Grade I on 1912 1987 and on the said post, the petitioner has already joined. The petitioner was thus already promoted to the next higher

post. It has also been held that it was discretionary for Nagar Mahapalika to appoint the petitioner on the next higher post, either of Clerk Grade I or on the post of Revenue Inspector. It was further held that the post of Revenue Inspector was centralised post, the appointing authority of which was the State Government, therefore, contesting respondent has no right to make appointment on the said post. Having recorded the said findings claim petition of the petitioner was dismissed on 20121988, hence the present petition.

3. Learned counsel for the petitioner submitted that the petitioner was fully qualified to be appointed on the post of Revenue Inspector and despite having made representation for considering him for promotion, the petitioner was not appointed on the said post, therefore, first he approached Public Services Tribunal and thereafter filed the present petition. It was also urged that there were number of similarly situated persons who were promoted to the post of Revenue Inspector, therefore, petitioner was also liable to be promoted to the said post.

4. On the other hand, learned Counsel appearing for contesting respondent submitted that the post of Revenue Inspector was included in the posts under Rule 3 of U.R Palika (Centralised) Service Rules, 1966 and had been placed in the category of U.P. Palika Revenue (Subordinate) Services. The appointing authority of the said post is State Government. The contesting respondent has got no authority to make appointment on the said post. It was further submitted that the petitioner was already promoted to the next higher post i. e., the post of Clerk GradeI which carried same salary as is admissible to the post of Revenue Inspector therefore, present petition was liable to be rejected.

5. We have considered submissions made by learned counsel for the parties and also perused the record.

6. It is not disputed that the petitioner has been promoted to the post of Clerk GradeI from the post of Clerk GradeII post of Clerk Grade I is the next higher to which under the Rules, the petitioner was entitled to be promoted. After his promotion, the petitioner has joined the said post; but according to him under protest. After joining the said post the petitioner has been working on the said post. It is also not disputed that the post of Revenue Inspector is a centralised post, appointing authority of which is the State Government. The petitioner before filing the present petition has not applied to State Government for his appointment on the said post. Appointment on the posts covered under Rule 3 of U.P. Palika (Centralised) Services Rules are to be made after following the procedure prescribed under the said Rules.

7. Writs of certiorari and mandamus are writs of rights. A petitioner who claims issuance of the said writs, must have subsisting legal rights for the performance of legal duty. The duty must be cast by Constitution, a Statute, by common law, rules and orders having force of law. Reference in this regard may be made to the decisions of Apex Court in The Bihar Eastern Gangetic Fisherman Cooperative

Society Ltd. v. Sipahi Singh and others, AIR 1977 SC 2149 and Sunder Singh and others v. State of Punjab, AIR 1962 SC 1210. In the present case, neither the petitioner has got any legal right to be appointed on the post of Revenue Inspector, nor respondent Nos. 2 and 3 are under any legal obligation to appoint the petitioner. Actually said respondents have got no jurisdiction to make appointment on the said post, as the post is a centralised post. Therefore, there arises no question for issuing a direction to said respondents to appoint the petitioner, on the said post. Submission made by learned Counsel for the petitioner to the contrary, therefore, cannot be accepted. It is, however, observed that if the petitioner feels that he is qualified to be appointed on the aforesaid post, he can apply to competent authority for his appointment. In case any application is made by the petitioner, same shall be considered by the competent authority in accordance with law. We do not find any illegality or infirmity in the order passed by respondent No. 1. No case for interference under Article 226 of the Constitution of India, is made out.

8. Subject to what has been state above, the writ petition lacks merit, same fails and is dismissed, but without any order as to costs.