

(1996) 04 AHC CK 0129
In the Allahabad High Court
Case No : Writ Petition No. 697 (S/B) of 1995

Amar Nath Srivastava

APPELLANT

Vs

Chief Justice, Allahabad High Court and Another

RESPONDENT

Date of Decision : 01-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 229(2), 309

Uttar Pradesh Government Servants (Seniority) Rules, 1991 — Rule 2, 20, 22, 3, 34

Citation : (1996) 3 UPLBEC 1676

Hon'ble Judges : K.L. Sharma, J;K.C. Bhargava, J

Bench : Division Bench

Advocate : O.P. Sriuastava, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

K.L. Sharma, J.—The Petitioner being an Assistant Registrar of the Allahabad High Court has filed this writ petition under Article 226 of the Constitution praying for issue of a writ of mandamus or direction in the nature of mandamus commanding Hon''ble the Chief Justice and the Registrar of the High Court, Allahabad, to consider and promote him to the post of Deputy Registrar in the ensuing selection and commanding the opposite Parties to determine the seniority of the Petitioner on the post of Assistant Registrar before making the selection for the post of Deputy Registrar.

2. The Petitioner has been promoted as the Assistant Registrar on 24.7.95 in the pay scale of Rs. 2,200-4,000. Prior to his promotion, he was functioning as the Bench Secretary Grade I since 1.6.88 and got the senior pay scale of Rs. 3,000-4,500 on 11.7.95. The grievance of the Petitioner is that the opposite parties are promoting Junior Officers working as Section Officers to the next higher post of Deputy Registrar without determining the inter se seniority of the officers in the two feeding cadres eligible for promotion to the post of Deputy Registrar. According to the Petitioner, no seniority list of the Assistant Registrar has been prepared and the opposite parties are going to make promotion to the

post of Deputy Registrars on the basis of eligibility List prepared by arranging the names of the candidates as placed in the order of promotion dated 24.7.95. The Petitioner claims that his seniority should be fixed according to Rule 7 of Uttar Pradesh Government Servants Seniority Rules, 1991 on the basis of his senior pay scale which he was getting as Bench Secretary Grade 1 (Rs. 3,000-4,500) before his promotion to the post of Assistant Registrar (Rs. 2,200-4,000) but he has been wrongly placed in the seniority list at much lower level than that of the officers working in lower pay scales and as such, he is being denied his legal claim for promotion to the post of Deputy Registrar. The Petitioner has made a representation on 22.8.95 but that representation has not yet been considered and decided.

3. In the counter-affidavit filed by the Officer on Special Duty (Litigation), High Court, Allahabad, it has been stated that the promotion to the post of Deputy Registrar can be made without determining the seniority of the Assistant Registrar, as the criteria for promotion is not the seniority but merit. It has been further stated that the promotion to the post of Deputy Registrar has already been made on the basis of merit-cum-seniority from the cadre of Assistant Registrars to the extent of 80 per cent and from the cadre of Private Secretaries to the extent of 20 per cent under the amended rule. It has been further stated that the placement of candidates in the list of promotion to the post of Deputy Registrar shall be main criteria to determine inter se seniority according to Rule 34. The Uttar Pradesh Government Servants Seniority Rules, 1991 are not applicable to the officers and staff of the High Court and, therefore, Rule 7 of the said Rules cannot be applied for determining the seniority of the officers in the category of the Assistant Registrars. The representation of the Petitioner was placed for consideration and orders before the Hon'ble Chief Justice before the promotions to the posts of Deputy Registrar were considered and decided. No relief through this writ petition can be granted to the Petitioner because the promotions to the vacant posts of Deputy Registrar have already been made and have become effective.

4. We have heard Sri O. P. Srivastava learned counsel for the Petitioner as well as Mr. Shafiq Mirza, chief standing counsel for the opposite parties and have perused the record and the relevant rules.

5. The admitted facts are that the Petitioner belonged to the category of Bench Secretary and under the amended Rules, he became eligible for promotion to the post of Assistant Registrar against 20 per cent quota vis-a-vis 80 per cent quota prescribed for the Section Officers and other officers, vide Notification dated 24.7.95 when he was already getting pay of Bench Secretary Grade I (Rs. 3,000-4,500) with effect from 11.7.1995. It is not disputed now that immediately after this promotion to the post of Assistant Registrar, promotions to the next higher post of Deputy Registrars were also made on 24.7.1995 and in the consequential vacancies of Assistant Registrars, he was promoted at Serial No. 2 of the list of five Assistant Registrars. In view of the fact that the promotions to

the post of Deputy Registrars have already been made, the prayer sought by the Petitioner cannot be granted. However, the Petitioner shall be considered for promotion in accordance with the amended Rule 22 of the Rules as and when the vacancies arise and when he becomes eligible for such promotion on the basis of the quota fixed for the two sources from which the promotion to the post of Deputy Registrar has been prescribed.

6. It has been contended on behalf of the Petitioner that the seniority of the Petitioner on the post of Assistant Registrar is to be determined under Rule 7 of U.P. Government Servants Seniority Rules, 1991 and not under the Rules made by the Hon"ble Chief Justice of the High Court. I am afraid that this contention does not have legal force. The Petitioner is admittedly an officer of the High Court. Under Article 229(2) of the Constitution of India, the Chief Justice of the High Court has been invested with the power to make Rules in respect of the conditions of service of officers and servants of a High Court subject to the provisions of any law made by the Legislature of the State. The rules made by the Chief Justice so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State. It is clear that the rules relating to the appointment and promotions of the Officers and servants of the High Court made by the Chief Justice do not require the approval of the Governor of the State. It is also clear that the Governor of the State has not been invested with the power to make rules to determine other conditions of service of the officers and servants of the High Court.

7. The Government Servants Seniority Rules, 1991 have been made by the Governor of the State in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India subject to the provisions of any law made by the Legislature of the State. The relevant provisions relating to the application of the Rules 2 and 3 of these Rules made by the Governor under proviso to Article 309 of the Constitution are reproduced below:

2. Application.--These rules shall apply to all Government Servants in respect of whose recruitment and conditions of service rules may be or have been made by the Governor under the proviso to Article 309 of the Constitution.

3. Overriding effect.--These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made heretobefore.

8. It is now clear that the rules made by the Chief Justice of the High Court in exercise of the powers conferred by Article 229(2) of the Constitution of India are not the rules made under the proviso to Article 309 of the Constitution and as such they stand intact and are applicable to the officers and staff of the High Court and the rules made by the Governor under the proviso to Article 309 of the Constitution in the name of U.P. Government Servants Seniority Rules, 1991 are not overriding the rules made by the Chief Justice and are not applicable to the officers and staff of the High Court. Therefore, the contention raised by the learned counsel for the Petitioner that the seniority of the Petitioner is to be

determined under Rule 7 of U.P. Government Servants Seniority Rules, 1991 is legally not correct and is rather misconceived.

9. Learned counsel for the Petitioner has contended that Rule 34 of the Rules made by the Chief Justice is bad inasmuch as it does not lay down any guidelines for determining the inter se seniority of the officers and the staff of the High Court if more than one person are appointed together by the same order. There is nothing to suggest how the names of more than one person are to be arranged in the order of appointment.

10. The learned chief standing counsel has submitted that the seniority of persons appointed by the same order will be according to arrangement or placement of their names in the order of appointment, keeping due regard to the quota and rota system prescribed by the Rules. He has pointed out that in the case of appointment to the post of Assistant Registrar, the officers of the two categories, namely, the Section Officers, and Public Relation Officer are allotted 80 per cent posts and the Bench Secretaries Grade I have been allotted 20 per cent posts and their names are arranged accordingly in this proportion. He has pointed out that the question of a Bench Secretary Grade I getting higher pay scale than that of the Section Officer would not be relevant because of the peculiar situation of the Section Officers having lower pay scales and the Bench Secretary Grade-I having a higher pay scale. The category of the post is relevant for the purpose of promotion as prescribed by the amended Rule 20 of the Rules. The contention of the Petitioner that he was working in a higher pay scale of Rs. 3,000-4,500 and as such, he should have been placed above the Section Officer working in the scale of Rs. 2,000-3,500 is not justified because the eligibility for promotion has been provided on the basis of the category of the post and not on the basis of the pay scale. The Chief Justice arranges the officers of the two categories who are fit for promotion on the basis of quota and rota system which is a reasonable one. It is true that the Rule 34 does not expressly provide for such arrangement of the names, yet it is Justified in view of the quota and rota system prescribed by the Rules 20 and 22 of the Rules. The Registrar prepares the list of eligible candidates for promotion to the higher post in accordance with the quota prescribed for each category of posts. The post of Deputy Registrar is also filled by promotion from amongst the Assistant Registrars to the extent of 80 per cent and from amongst the Private Secretaries including the Assistant Private Secretaries to the extent of 20 per cent and the eligible candidates are listed on the basis of their inter se seniority in the category of the officers to which they belong and not on the basis of the pay scales which they are getting but on the basis of the category to which they belong. Therefore, the contention raised by the Petitioner in the writ petition that his seniority should be determined in the category of the Assistant Registrars on the basis of the pay scales which the promotees were getting prior to their promotion is wholly devoid of substance and legal force. The rules applicable to the Petitioner do not at all warrant such an inference in any manner whatsoever. It is, of course, always open to the Chief Justice who has been invested with the rule-making power

under Article 229(2) of the Constitution to amend the rules on reasonable basis and make them more explicit. No vagueness or lack of guiding principle is noticeable inasmuch as the amended Rule 22 makes it clear as to how the Registrar shall prepare the list of candidates eligible for promotion. Rule 20 provides for quota of each category of posts for promotion to the next higher post. Rule 34 provides for seniority on the basis of arrangement of the persons appointed together by the same order. The arrangement of the officers on the basis of the quota and rota system is justified.

11. No other point was pressed before us.

12. For the aforesaid reasons, we do not find any merit in this writ petition and consequently this writ petition is hereby dismissed with no order as to costs.