

(1991) 03 AHC CK 0117
In the Allahabad High Court
Case No : C.M.W.P. No. 15308 of 1990

Asharfi Lal Shami

APPELLANT

Vs

U.P. State Road Transport Corpn. and Others

RESPONDENT

Date of Decision : 04-03-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (1991) 62 FLR 917 : (1994) 3 LLJ 385 : (1991) 1 UPLBEC 673

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : Ram Nivas Singh and V.K. Chandel, for the Appellant;

Final Decision : Dismissed

Judgement

M.P. Sinha, J.—Heard learned counsel for the petitioner and Sri. D.K.S. Rathor appearing on behalf of the respondents.

2. The petitioner was appointed as a Junior clerk on 14.12.1965 in the U.P. Government Roadways Department. The services of the petitioner were transferred to the U.P. State Road Transport Corporation after its formation in the year 1972. Thereafter he was promoted to the post of senior clerk on 1.12.1985.

3. On 26.7.1988 the General Manager, U.P. State Road Transport Corporation, Agra, passed the following orders:

"The following senior clerks are hereby deputed to the places noted against their names to assist the S.S./S.S.I. to perform duties normally entrusted to the Station Incharge, they should be relieved and directed to report to their new place of posting at once".

4. The petitioner was also one of those head clerks who was deputed to assist the S.S./S.S.J.

5. Whether the said order is an order of promotion ?

6. For the reasons given below, I am of the view that it is not a promotion order but it only directed the petitioner to assist the S.S./S.S.I. in performance of their duties. The said order appears to have been passed on account of extra workload in the Depot.

7. The concept of promotion has an element of being raised to a position higher in rank. This basic requirement is wanting in the said order, dated 26.7.1988. The petitioner was only deputed to assist the S.S./S.S.I. There was no order that he was being promoted as Vehicle Allotment Incharge. Had it been a promotion order then the post to which he was promoted and the scale of higher grade was also required to be mentioned. Under no circumstances the said order can be interpreted as a promotion order.

8. By means of the impugned order the petitioner was directed to go back and work again as senior clerk. This order is being treated by the petitioner as an order of reversion. This submission is misconceived inasmuch as since there was no order of promotion. There is no question of treating the impugned order as an order of reversion.

9. In support of his contention that the order, dated 26.7.1988 was a promotion order he has relied upon a letter of appreciation said to have been issued by the General Manager, U.P. State Road transport Corporation on 4.5.1989 where the post of the petitioner was shown as Vahan Nirichhan Prabhari. Another letter, dated 4.7.1989 was issued where he has been shown as Kanishka Kendra Prabhari. The third certificate, dated, 9.1.1990 was issued showing him as Vahan Nirdharan Prabhari.

10. On the basis of these letters of appreciation the petitioner has claimed that the opposite parties have recognised his appointment as Vehicle Allotment Incharge, These letters will not change the nature of appointment even if they have been issued by some officer of the department.

11. The order, dated 26.7.1988 does not mention that the petitioner is being promoted to a higher post with higher pay scale. Moreover the petitioner himself has filed a representation on 4.12.1989 to the General Manager praying that he being a member of the Backward Class community may be regularised to the post of Kanishka Kendra Prabhari. Admittedly no orders have been passed on the said representation which is still pending. It is for the authority concerned to look into the representation and decide the controversy in accordance with the law at an early date.

12. The case of the petitioner is based on the ground that since he was posted on the post of Vehicle Allotment Incharge, he was entitled to get the same pay which a Junior Station Incharge was getting. According to him both the posts are of equal rank. Even if it is a fact that the two posts are equivalent the petitioner would not be entitled to any reliefs as he was never promoted to the post of Vehicle Allotment Incharge.

13. The next submission was that the order of reversion is bad inasmuch as it has been passed in violation to Articles 14, 16 and 21 of the Constitution of India. Except mentioning the point it has not been elaborated. I fail to understand how these provisions of the Constitution are attracted in the instant case.

14. He further contended that a direction may be issued by this Court for payment of the same amount of salary which a Junior Station Incharge was getting as he also was doing the similar work. In support of his contention he has relied upon me decisions of the Supreme Court reported in the cases of Bhirendra Chamoli and Anr. v. State of U.P. 1986 UPLBEC 254, Surinder Singh and Anr. v. The Engineer-in-Chief, C.P.W.D. and Ors. 1986 UPLBEC 260 and Bhagwan Das and Ors. v. State of Haryana and Ors. 1987 LIC 1662. In these cases the doctrine of equal pay for equal work has been made applicable.

15. There is no dispute so far this settled view of the law is concerned. The controversy in the instant case is entirely different. The petitioner was only deputed to assist the S.S./S.S.I. It cannot be said that he was doing the same work as other S.S./S.S.I. Thus the doctrine of equal pay for equal work is not applicable in the instant case.

16. Another point raised by the learned counsel for the petitioner was that the order of promotion was passed by the General Manager whereas the impugned order has been passed by the Regional Manager, Agra who is inferior in rank. The impugned order is without jurisdiction. Since I have already held that no order of promotion has been passed by the General Manager and it was only a departmental arrangement, the objection of the petitioner becomes wholly irrelevant. The submission is accordingly rejected.

17. The next submission raised was that the sanctioned strength of the Junior Station Incharge, which also includes the post of Vehicle Allotment Incharge is 37 and only 24 regular appointees are working on the said posts in the entire region. Thus there are still 13 clear vacancies. The petitioner had a right to be regularised against the existing vacancies. The submission has no force. For this purpose the petitioner will have to make a demand before the department and if it is refused only then he will have a right to invoke the jurisdiction of this Court praying for issuance of a writ of mandamus.

18. The next submission raised was that, before passing the impugned order, an opportunity should have been given to the petitioner. This submission has no force. Since there was no order of promotion, there was no obligation on the part of the opposite parties to give any show cause notice.

19. Another submission raised, was that the grade of senior clerk is Rs. 1025-25-1150-E.B. 30-1720/- whereas the grade of Junior Station Incharge is Rs. 1200-30-1560-E.B. 40-2040/-. He becomes entitled for the payment of difference in pay for the period for which he worked. In my opinion he was not entitled to any such difference as he was not working as Vehicle Allotment

Incharge which was equivalent to the post of Junior Station Incharge. He was only asked to assist the S.S./S.S.I. He continued to hold the post of senior clerk.

20. Next point raised by the learned counsel was that the sanctioned strength of the Junior Station Incharge, including Vehicle Allotment Incharge, in the State of U.P. was 556 and the reservation of the scheduled castes and scheduled tribes was about 100 posts. It has been stated that the posts of Junior Station Incharge which are reserved for the scheduled castes and scheduled tribes still remains unfilled. The petitioner is entitled for being appointed against such a vacancy. It has come in the counter affidavit that there is a departmental restriction for any further appointment to be made for time being. Therefore, no order has been passed. The moment such a restriction is lifted, it is expected that the Department will pass suitable orders for filling up the existing vacancies in accordance with law.

21. The learned counsel for the petitioner has further placed reliance on a decision reported in *Jacob M. Puthuparambil and Ors. v. Kerala Water Authority and Ors.* 1991 (2) LLJ 65 . In that case the question of regularisation of service was considered and certain directions were issued by the Supreme Court. In the instant case no such direction can be issued. The representation filed by the petitioner for regularisation is still pending. Unless the same is rejected, this Court will not be justified in entertaining the prayer for regularisation. This Court while exercising the power under Article 226 of the Constitution of India is not sitting as a Court of Appeal. Reference may be made to the cases reported in *Muni Lal and Others Vs. Prescribed Authority and Others*, and *Beant Singh Vs. Union of India (UOI) and Others*, This Court exercises only the supervisory jurisdiction.

22. The learned counsel for the petitioner has also placed reliance on a decision reported in *Bhullar Nath Yadav and Ors. v. Mayo Hall Sports Complex and Ors.* 1990 2 CLR 370. In that case the Court had issued directions to the authorities to regularise the service of such employees who had put in more than 10 years service or so. The position in the instant case is entirely different. Unless the petitioner is appointed as Vehicle Allotment Incharge, the question of regularisation does not arise.

23. After considering the points raised by the learned counsel for the petitioner, I am of the view that the writ petition lacks merit and it is accordingly rejected.

24. The learned counsel for the petitioner has orally prayed for grant of leave to file an appeal in the Hon"ble Supreme Court. The prayer so made is rejected. It is not a fit case for filing an appeal in the Supreme Court as it involves no substantial question of law of general importance. No interpretation of any Constitutional provision is even involved.