
(1999) 01 AHC CK 0018
In the Allahabad High Court
Case No : C.M.W.P. No. 37090 of 1991

Ashfaq Ahmad Ansari

APPELLANT

Vs

Director of Higher Education, Allahabad and others

RESPONDENT

Date of Decision : 27-01-1999

Acts Referred:

Citation : (1999) 2 AWC 1154 : (1999) 3 UPLBEC 2275

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : M.A. Qadeer, for the Appellant; S.C., Lalji Sinha and J. Nagar, for the Respondent

Judgement

D.K. Seth, J.—The petitioner claims that he was appointed on 4.5.1967 as a Stenographer in Allahabad Agricultural Institute, Naini, Allahabad. He alleges that respondent No. 3 was appointed in the Society on 10.12.1973. It is also alleged that the petitioner was born on 1.7.1936 whereas respondent No. 3 was born on 4.2.1943. Ignoring the claim of the petitioner for being promoted to the post of Office Superintendent on account of resultant vacancy due to retirement of Ms. Namita Khannavis from the post of Office Superintendent, the respondent No. 3 was adjusted in the said vacancy by an order dated 10.12.1991. This order has since been challenged by the petitioner.

2. Shri M. A. Qadeer, learned counsel for the petitioner contends that society and the institute are two different organisations. The respondent No. 3 is an employee of the society and the salary of respondent No. 3 is being paid by the society. Whereas the petitioner is an employee of the Institute and his salary is being paid under the Payment of Salaries Act. Then again the petitioner being senior in service, he was eligible for being promoted and his case could not have been ignored by adjusting the respondent No. 3 in the said post. According to him, the post being a promotional post and there being eligible candidate available, the same should have been filled up by promotion after considering the case of the petitioner. According to him, the petitioner is eligible and qualified for

promotion. He also contends further that even if respondent No. 3 appears to be eligible and qualified, still then by virtue of seniority, the petitioner is entitled for the said promotion unless he is declared unfit. He relies on the provisions of the First Statute of the Allahabad University as well as Section 60A of the State Universities Act in support of his contention.

3. Respondent No. 2, the Allahabad Agricultural Institute, is represented by Shri J. Nagar. He contends that the respondent No. 3 is more qualified and, therefore, he was given the appointment on the basis that both were equal in rank on the question of seniority since both of them were absorbed under the Payment of Salaries Act on one and the same date.

4. Mr. K. R. Singh, learned counsel for the University on the other hand contends that the petitioner is not eligible for being considered for promotion on account of absence of eligibility and qualification inasmuch as according to him, in order to get promotion to the post of Office Superintendent one must possess 10 years as Head Clerk which is lacking in the case of the petitioner. He also supports the contention of learned counsel for respondent No. 2 Shri J. Nagar to the extent that respondent No. 3 is eligible and qualified and therefore, there was no infirmity in the appointment.

5. Shri Lalji Sinha, learned counsel for respondent No. 3 adopts the submission made by Shri J. Nagar, learned counsel for respondent No. 2. However, he contends that under the Statute a Stenographer is not eligible for promotion to the post of Office Superintendent. He refers to Statute 28.01 of the First Statute of the Allahabad University in support of his contention.

6. Mr. Qadeer, learned counsel for the petitioner disputes that respondent No. 3 was absorbed under the Payment of Salaries Act on the same date or that respondent No. 3 was more qualified and that petitioner did not possess the requisite qualification.

7. I have heard all the learned counsel at length.

8. Mr. Qadeer refers to the provisions of Statute 30.01 of the First Statute of the University to point out that Agricultural Institute, Naini, Allahabad, is an Associated College of the Allahabad University and as such is governed by the provisions of the First Statute whereas respondent No. 3 being an employee of the society which runs the institute is a distinct and separate organisation which cannot be brought within purview of Associated Colleges as provided in Chapter XIII.

9. Admittedly the society is a distinct and separate organisation and legal entity or person other than Allahabad Agricultural Institute. The society may run the Institute but still then, it is a society which is different legal entity from the Institute. But in the absence of sufficient material, it is not possible to come to a definite conclusion in view of the fact that respondent No. 3 claims to have been absorbed in the service of the institute under the Payment of Salaries Act. Thus,

this being a disputed question, it is not possible to enter into such disputed question, unless it is distinctly shown that respondent No. 3 is an employee of the society and not an employee of the Agricultural Institute. Though Mr. Qadeer has disputed that respondent No. 3 was absorbed under the Payment of Salaries Act but he has not shown anything to point out that the respondent No. 3 was not an employee of the Agricultural Institute but an employee of the Society. Therefore, this question is left open for being considered by the appropriate authority at appropriate time.

10. Mr. Qadeer has also not pointed out from the pleadings as to on which date respondent was absorbed under the Payment of Salaries Act. Mr. Qadeer neither shows anything from the pleading as to whether he has pleaded that the respondent No. 3 was never absorbed under the Payment of Salaries Act. Whether all the persons who are absorbed under the Payment of Salaries Act, on a particular date would acquire the same seniority despite having been appointed on different dates or not is a question which is to be dealt with on the basis of the appropriate provisions of the relevant Act. The question for promotion to the post of Office Superintendent is dependent on the qualification of the person as prescribed under Statute 28.01 (iv) which provides atleast 10 years working experience in the post of Head Clerk or Accountant in a College affiliated or associated with the University. The petitioner has not pleaded that he has acquired 10 years working experience either as Head Clerk or as Accountant or in any of the two categories jointly. In the absence of any specific pleading that he had the eligibility, he cannot claim promotion to the said post simply on the averment made in para 9 of the writ petition that the earlier Office Superintendent was a Stenographer and the petitioner also being seniormost stenographer. Admittedly the post of Office Superintendent is a promotional post as provided in Statute 25.03 which is to be filled up on the recommendation of the Selection Committee in the manner provided under Statute 25.06. In paragraph 10 of the counter-affidavit filed by respondent No. 3, it has been asserted that he was working as an Accountant having the requisite qualification on the post of Accountant since 1973. In reply to the said statement, in para 7 of the rejoinder-affidavit filed by the petitioner. It has been pointed out that respondent No. 3 is not an employee within the meaning of Section 60A of the State Universities Act but in the said paragraph, the assertion made by respondent No. 3 that he was an Accountant since 1973 having requisite qualification has not been denied or dealt with. On the other hand, the petitioner has asserted that he is the seniormost employee in the category and is alone eligible for the promotion. The petitioner is post graduate and has got 24 years commendable service record and experience in the institute and is head amongst all clerks. As stated above, there is no post of Stenographer provided in the Statute but the respondents had designated the petitioner as such although he had been holding the clerical post and is seniormost and head of all the clerks". Thus. It shows on his assertion that the petitioner has not claimed he was holding the post of Head Clerk or Accountant. On the other hand, he has claimed

that he was head amongst alt clerks. He has never asserted that he was the Head Clerk or Accountant.

11. In the counter-affidavit filed by respondent No. 2, it has been pointed out that respondent No. 3 was an Accountant and was eligible for promotion on the post of Office Superintendent. It has been asserted in paragraph 10 of the counter-affidavit filed by respondent No. 2 that "since respondent No. 3 was the only eligible and qualified Accountant having a degree in Commerce and an experience of more than 18 years as Accountant his placement or promotion cannot be denied. According to Statute 28.01 (5) of the First Statute of the Allahabad University, is the minimum qualification for an Accountant, a person with Commerce Degree from a recognised University with atleast 10 years experience as Account Clerk. Thus, the respondent No. 3, who was working as an Accountant in the Institute for the last 18 years, was entitled to placement to the post of Office Superintendent, which was long due. The placement of Sri S.P.G. Lal to the post of Office Superintendent, is in compliance with the order of this Hon"ble Court dated 24.3.1998". This statement has been dealt in the rejoinder-affidavit filed by the petitioner. In paragraph 8 of the said rejoinder-affidavit, it has been Stated by the petitioner that the contents of paragraph 10 of the counter-affidavit need no reply.

12. Thus, the petitioner has not denied that the respondent No. 3 was an Accountant and had 18 years experience. On the other hand, the petitioner had claimed himself to be the Head of all the Clerks and that he was designated as Stenographer though there was no such post. But from his own document filed as Annexure-1 to the writ petition being certificate granted by the Principal of the Institute certifying that the petitioner had joined in the Institute as Stenographer and was still continuing on the post. The said certificate was issued on 20.8.1991. In the said certificate, nowhere it has been mentioned that the petitioner was holding the post Head Clerk or Accountant. The certificate has certified that his work included taking dictation, transcribing, stencil cutting, filing and maintaining office records which he discharged to the satisfaction of all the Officers concerned. Thus, this certificate does not specify he had ever worked as Head Clerk or Accountant even on 26.8.1991. In the absence of specific qualification that he had experience as Head Clerk or Accountant for 10 years, he is not eligible for the said post of Office Superintendent.

13. Unless the petitioner makes out a case that he had the requisite qualification for being eligible for being considered for promotion, he cannot be said to have any cause of action on account of his case being ignored for the promotion to the said post. Unless he has the legal right to be considered for being promoted, he cannot challenge the promotion of another even if the other may not have his qualification. Invoking of writ jurisdiction is dependent on the discretion of the Court. Such a discretion can be exercised by the Court provided if a person is aggrieved on account of such-non-consideration provided he is eligible for being so considered. In the absence of any specific qualification, the petitioner cannot

claim any right. Then again he having not denied the qualification of the respondent No. 3 as has been sought to be asserted in the two counter-affidavits supported by the State and the specific statements having not been denied, it is no more open to this Court to enter into the said question that respondent No. 3 did not have the requisite qualification.

14. In these circumstances, the writ petition falls and is accordingly dismissed.