
(2005) 10 AHC CK 0123

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23682 of 1997

Azizur Rahman

APPELLANT

Vs

Secretary, U.P. Higher Education Services
Commission, Allahabad & Ors.

RESPONDENT

Date of Decision : 07-10-2005

Acts Referred:

Citation : (2005) 10 AHC CK 0123

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Partly Allowed

Judgement

Sudhir Agarwal, J.—The petitioner has challenged the order dated 2241997 issued by U.P. Higher Education Services Commission, Allahabad whereby respondent No. 3 working as junior clerk has been attached with account section of the Commission.

2. The contention of the petitioner is that aforesaid order dated 2241997 is nothing but an order promoting the respondent No. 3 to the post of junior clerk and has been issued without holding any selection and without finalizing the seniority list of Class IV employees and that action of the respondent is in violation of this Court's order dated 2031991 passed in the writ petition No. 1409 of 1989, Rajendra Prasad Singh v. U.P. Higher Education Services Commission & Ors.

3. In brief the case of the petitioner is that he was appointed as Daftari in pay scale Rs. 170225 (revised to Rs. 315440 and Rs. 7751025) vide order dated 2081982, (Annexure 1 to the writ petition). The petitioner was appointed on ad hoc basis against a temporary post and it is mentioned in the order of appointment that the services of petitioner is liable to be terminated at any time without any prior notice. Subsequently vide order dated 941984 (Annexure 2 to the writ petition), the petitioner was regularized on the post of Daftari in the pay scale of Rs. 315440. The petitioner was also confirmed on the post of Daftari vide order dated 1181992 (Annexure 3 to the writ petition) w.e.f. 2371992. So far

as the respondent No. 3 is concerned, he was appointed as Orderly/Peon on 941984 (vide Annexure3 to the writ petition) and was regularized on the said post w.e.f. 2371992 vide order dated 1181992. Obviously the petitioner and the respondent No. 3 were working in different cadres, i.e., Daftari and Order/Peon. The petitioner alongwith some others approached this Court earlier vide writ petition No. 1409 of 1989 challenging order dated 2391989 whereby some persons arrayed as respondents 2 to 8 to the writ petition were promoted in ClassIII posts. The contention of those petitioners was that the promotion has been made without preparing any gradation list and the petitioners are senior to the aforesaid respondents but on account of nonpreparation of the seniority list, the petitioners have been ignored for promotion. When the writ petition No. 1409 of 1989 came up before the Court, the respondent No. 1 admitted this fact that the seniority list was not prepared, hence the aforesaid promotion order dated 2391989 was quashed by this Court vide judgment dated 2031991 and direction was issued to the Commission to prepare seniority list and thereafter consider the petitioner and other persons for promotion. It appears that thereafter, respondents prepared a seniority list vide order dated 2171995. This is apparent from Annexure6 to the writ petition which is a representation made by the petitioner to the Secretary of the Commission on 2641997 wherein he states that the seniority of classIV has been finally determined on 2171995 but so far as the petitioner's seniority is concerned his position in seniority list has not been communicated.

4. He, therefore, seeks communication of his position in seniority list at the earliest. Now the petitioner has approached this Court challenging the order dated 2241997 (Annexure5 to the writ petition) on the ground that the impugned promotion has been given to the respondent No. 3 without preparing any seniority list.

5. The petitioner further contends that without preparing any seniority list of ClassIV employees promotion to the post of junior clerk cannot be made and the impugned order dated 2241997 is bad and also in the teeth of this Court's order dated 2031991 in Writ Petition No. 1409 of 1989.

6. On the other hand the learned Counsel for the respondents submits that the petitioner and the respondent No. 3 belong to different cadres, namely, the petitioner was appointed as Daftari while the respondent No. 3 was appointed as Orderly/peon. There is no occasion for preparing a common seniority list of feeder cadre and therefore, the petitioner's contention to claim seniority qua respondent No. 3 is not correct. It is further submitted by the respondent that there is only one post of Daftari in the Officer of the Commission and since the petitioner holds the said post there is no question of preparing seniority list of Daftari as seniority is a comparative position and presupposes more than one person working in the cadre.

7. I have heard learned Counsel for the parties and perused the record.

8. The principal question to be decided in this case is whether the promotion on the post of junior clerk, a ClassIII post can be made without preparing any seniority list of ClassIV or the respondents are right in preparing a separate seniority list of Orderly/peon without preparing any combined seniority list of all ClassIV employees. It is not the case of the respondent that promotion to the post of ClassIII post is confined only to the persons working in ClassIV post belonging to a specified cadre, namely, Orderly/peon etc. On the other hand it is not disputed by the parties that ClassIV as a whole constitutes feeder cadre and all ClassIV employees are entitled to be considered for promotion to the post of junior clerk. Under the circumstances, without preparing a combined seniority list of all ClassIV employees it would not be correct on the part of the respondent to consider any person working in ClassIV for promotion to the post of junior clerk ignoring the claim of other ClassIV employees. Seniority by itself does not confer any right upon an employee for promotion but obviously in order to determine the zone of consideration and the field of eligibility seniority plays an important role. For example, if there is a vacancy in the higher post, a limited number of the feeder cadre may be entitled to be considered for promotion and in order to identify those persons, seniority plays a vital role. Nonpreparation of any combined seniority list of ClassIV on the part of the respondent is thus neither correct nor is in accordance with law. The respondents have not shown any Rule or Regulation, which empowers them to consider only one category of ClassIV employees for promotion. This is how the matter was considered on the earlier occasion also and on the admission of fact that such a seniority list has not been prepared the earlier promotion order was quashed vide judgment dated 2031991 (supra). The contention of the respondent is that there is only one post of Daftari and, therefore, the question of preparation of seniority list does not arise, shows an admission on the part of the respondents that combined seniority list of ClassIV employees has not been prepared. In para8 of the counteraffidavit the respondents have stated as hereunder:

?It is pertinent to mention here that the petitioner was initially appointed on the post of Daftari and the post of Daftari is a single post of the commission so as per rules there is no need to make a gradation list against the aforesaid post.?

9. Thus from the pleadings it is clear that the seniority list of the petitioner and other ClassIV employees inter se has not been determined and no combined seniority list of ClassIV employees has been prepared. Any promotion in ClassIII without preparation of such seniority list thus is neither valid nor correct.

10. However, the petitioner cannot be granted any relief to the extent he has challenged the appointment of respondent No. 3 for the reason that the order dated 2241997 which has been challenged by the petitioner in the present case and is claimed to be a promotion order of respondent No. 3, since it is not a promotion order at all. The relevant extract of the order dated 2241997 is reproduced hereunder:

?TATKALIK PRABHAV SE NIMNLIK HIT KARMCHARIYON KO UNKE SAMMUKH

VIBHAG SE SAMBADH KIYA JATA HAI.

(1) Sri Braj Bhushan Misra

Junior clerk

Lekhanubhag

(2) Sri Bhikhi Bhaskar

Junior Clerk

Niji Anubhag?

11. The order shows that respondent No. 3, Brij Bhushan Misra was holding the post of junior clerk and by the said order has been attached with the Accounts Section. Apparently this is not a promotion order of respondent No. 3. The order shows that respondent No. 3 was already holding post of junior clerk. Under the circumstances, there is no occasion to quash the promotion of respondent No. 3 since the promotion order of respondent No. 3 is not on record and the order which is challenged by the petitioner is only an order of posting or placement of respondent No. 3 from one Section to another. The Court do not find any reason to interfere with the order dated 2241997 since it is simply an order of transfer and posting of respondent No. 3 and not a promotion order.

12. A supplementary counteraffidavit has been filed by respondent No. 3 wherein it is stated that he was promoted to the post of junior clerk vide order dated 1541997. Admittedly, that promotion order dated 1541997 is not under challenge.

13. There is another aspect of the matter that the petitioner in his representation dated 2641997 (Annexure6 to the writ petition) himself has mentioned that seniority list of ClassIV employees was finalized on 2171995, but the said seniority list has also not been challenged by the petitioner.

14. In para16 of the writ petition, it has been stated by the petitioner that without an undisputed seniority list of ClassIV employees of the office of the Commission, no selection could be made. However, on a specific enquiry made by the Court, the learned Counsel for the petitioner admitted that there is no dispute of seniority pending before any Court after it is finalized on 2171995.

15. Be that as it may, from the pleadings of the parties it is clear that the inter se seniority of the petitioner with other ClassIV employees has not been determined so far.

16. In these circumstances, the writ petition partly succeeds. The prayer of the petitioner for quashing the order dated 2241997 is rejected and to that extent the writ petition fails. However, the respondents are directed to prepare a combined seniority list of all ClassIV employees after giving due opportunity, and communicate the same to all the concerned employees including the petitioner before making any further promotion to ClassIII posts where all ClassIV

employees constitute feeder cadre and are eligible for consideration for promotion. In case, the feeder cadre includes only one or more specific different posts, and the inter se seniority of such persons has already been prepared, the same shall be communicated to the petitioner and if not prepared then shall be finalized and be communicated to the petitioner accordingly. Further promotions to ClassIII posts shall be made as per rules only after seniority list as directed above is finalized and communicated to the petitioner. No order as to costs.