

(2015) 09 AHC CK 0125

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 13004 of 2013

Banney Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Uttar Pradesh Industrial Area Development Act, 1976 — Section 19

Citation : (2015) 11 ADJ 560 : (2016) 1 AWC 247 : (2016) 1 UPLBEC 240

Hon'ble Judges : Arun Tandon and Shashi Kant, JJ.

Bench : Division Bench

Advocate : Ashok Khare, Shobhit Dubey, A.R. Dube, Ashish Kumar Singh, Randhir Jain and Ashish Jaiswal, for the Appellant; Rajesh Kumar Srivastava, Shashi Nandan, Shireesh Kumar and Shivam Yadav, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner before this Court seeks quashing of the order of the Public Services Tribunal dated 22.2.2013 passed in Claim Petition No. 1995 of 2012. The Public Services Tribunal under the order impugned has held that in view of the amended qualification prescribed for the post of Deputy Director (Horticulture) in Noida Development Authority and in view of the fact that the petitioner does not satisfy such requirement, there cannot be any order for promotion of the petitioner on the said post. It has also been recorded that the challenge made to the policy decision of prescribing the qualification for the post of Deputy Director (Horticulture) has no merits and that the Tribunal cannot enter into the realm of policy decision making by the authority concerned.

Challenging the order passed by the Tribunal, the petitioner before this Court contended that at the time of appointment, the qualification prescribed for the post of Horticulture Inspector was B.Sc. With Botany, he was eligible and was appointed accordingly. He was granted promotion to the post of Assistant Director of Horticulture with the same qualification on 7.1.1994. The next channel for promotion is the post of Deputy Director (Horticulture) under the

provisions of the New Okhla Industrial Development Authority Service Regulation, 1981, framed in exercise of powers under Section 19 of the U.P. Industrial Area Development Act, 1976 (hereinafter referred to as Act, 1976).

2. It is not in dispute that the power to lay down the minimum essential/desirable qualification for various posts is mentioned under the provisions of Regulation 9 of the 1981 Regulations. The appointing authority has been defined to mean the officer, who at the relevant time had the power to make appointment on the posts.

3. It is not in dispute that the NOIDA Authority has taken a decision to fix the minimum qualifications for the post of Deputy Director (Horticulture) as B.Sc. (Agriculture) with 12 years of experience as Assistant Director of Horticulture. For ready reference, copy of the qualification so proscribed shows in Annexure-5 to the present writ petition.

4. It is also not in dispute that the petitioner would complete the prescribed period of 12 years for being considered for the post of Deputy Director (Horticulture) only in the year 2006. The amendment in the qualification in exercise of powers under Clause 9 has been made in the year 2005.

5. The Tribunal has recorded that since the petitioner does not have the degree of B.Sc. in Agriculture, he is not qualified for the post and there is no reason to interfere with the policy decision of the NOIDA to fix such qualification for the post concerned.

6. Counsel for the petitioner submitted before us that the Tribunal has lost side of the fact that the petitioner was appointed in the year 1981 as Horticulture Inspector and thereafter promoted as Assistant Director, Horticulture in 1994, therefore, he had a legitimate expectation to be promoted on the post of Deputy Director (Horticulture) with 12 years of service in the year 2006 which legitimate expectation of the petitioner cannot be defeated by the policy decision to revise the qualifications in the year 2005. He submits that his claim for such promotion on the post of Deputy Director (Horticulture) must be considered having regard to the qualifications as were applicable on the date, he had entered into the service "of the authority.

7. We have heard counsel for the petitioner and have examined the records of the present writ petition.

8. In our opinion, the contention raised on behalf of the petitioner is misconceived. The power of the appointing authority under the Regulation 1981 to revise the essential qualifications from time to time flows from Regulation 9 of the said Regulation 1981, which reads as follows:

"9. Qualification--The Appointing Officer shall lay down the minimum essential qualifications, desirable qualifications and also specific experience required for the various posts." Further we find that the revision in qualifications had been affected in the year 2005 and B.Sc. Agriculture has been made as essential

academic qualification for the post of Deputy Director (Horticulture).

9. The petitioner would complete the requisite minimum experience of 12 years to be considered for the post of Deputy Director (Horticulture) only in the year 2006. Therefore, on the relevant date i.e. in 2006, the qualifications as prescribed under Regulation 9 would apply. The case of the petitioner that the amendment in the qualifications is being given retrospective effect so as to defeat the rights of petitioner, has no substance. The amended qualifications are not being given any retrospective effect. They are being enforced from the date the amendments have been affected. It is only that the case of the petitioner becomes due for consideration subsequent to the amendment in the qualification.

10. We may record that there is no right to an employee to claim that he should be considered for promotion on the basis of the qualifications which were existing on the date, he entered into the service. The right of the employee is only to be considered for promotion which must take place in accordance with the provisions as are applicable by the date the employee is to be considered for promotion in accordance with the provisions applicable.

11. So far as the policy decision of the authority to revise the qualifications is concerned, we hardly see any reason to interfere. Fixation of the qualifications is in the domain of the concerned authority, we see no arbitrariness in the fixation of qualifications. For all the reasons recorded above, we find that the petition has no merit and it is accordingly dismissed.