

(2008) 01 AHC CK 0036
In the Allahabad High Court

B.C. Malviya and Others

APPELLANT

Vs

The State of U.P. and Hari Shanker Prasad

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Citation : (2008) 117 FLR 450 : (2008) 1 UPLBEC 660

Hon'ble Judges : B.S. Chauhan, J;Arun Tandon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.S. Chauhan and Arun Tandon, JJ.—This writ petition has been filed for quashing the impugned order dated 4th April, 2006 (Annexure-25) by which the respondent No. 4 has been granted seniority over and above the present petitioners.

2. The facts and circumstances giving rise to this case are that the petitioners as well as the respondent No. 4 had been working as Auditor. The respondent No. 4 was senior to the present petitioners as he had been appointed prior to them on the post of Auditor. The respondent No. 4 was promoted on ad-hoc basis as Senior Auditor but was reverted to the post of Auditor because of the adverse entries given to him. During regular selection for promotion to the post of Senior Auditor he was found unsuitable and therefore superseded. The present petitioners who were junior to the said respondent No. 4 in the feeding cadre were selected and appointed on 03-05-1983 on the post of Senior Auditor on the recommendation of the Departmental Promotion Committee on regular basis. The respondent No. 4 being aggrieved challenged the adverse entries by filing a claim petition before the UP Public Service Tribunal. However, the tribunal refused to quash the adverse entries vide its judgement and order dated 1st March, 1982. Being aggrieved he preferred the Writ Petition No. 2147 of 1982. The same was decided vide judgement and order dated 22-02-1989. While deciding the said case, High Court directed the respondents-State to consider his case for regular promotion from the date persons junior to him i.e. petitioners

were promoted within the stipulated period. In pursuance to the said judgement and order of this Court dated 22-02-1989, the case of the respondent No. 4 for promotion with back date was considered by the Departmental Promotion Committee on 06-08-1985. He was however granted promotion w.e.f. 6-8-1985 only. Being aggrieved the said respondent No. 4 filed Writ Petition No. 6074 of 1989 seeking promotion from back date. Petition was dismissed by this Court vide its judgement and order dated 23rd March, 1992. The said judgement and order was not challenged further and attained finality. It appears that the respondent No. 4 subsequently made some representation for determining his seniority as per the Uttar Pradesh (Local Fund) Audit Subordinate Rules, 1985 (hereinafter called the "Rules 1985") and not on the basis of Uttar Pradesh (Local Fund) Audit Subordinate Rules, 1969 (hereinafter called the "Rules 1969"). As the Rules 1985 provided that on being promoted on the post of Senior Auditor the inter se seniority of the officers shall be maintained as per their inter se seniority in the feeding cadre. This representation has been allowed vide impugned order hence this writ petition.

3. Sri Rajeev Mishra, learned Counsel for the petitioners has submitted that in view of the fact that the petitioners' writ petition seeking promotion from the back date had been rejected and it attained finality as the said judgement and order dated 23-03-1992 has not further been challenged, the Statutory Authorities were incompetent to give seniority to the respondent No. 4 from a date prior to date of his birth in the cadre of Senior Auditor. The petitioners had been promoted in substantive capacity in 1983 and the said respondent No. 4 had been promoted only in 1985. The question of disturbing the seniority could not arise as it would amount to promoting the respondent No. 4 w.e.f. 1983 for which he had lost his battle in the Court and thus the order impugned is liable to be quashed.

4. On the other hand, Sri B.D. Mandhyan, learned Senior Counsel and Standing Counsel appearing for the respondents tried to defend the impugned order on the ground of 1985 Rules which provide for fixation of seniority by making reference to the seniority of the feeding cadre qua the officers promoted under the Rules. As there had been great injustice to the said officer, the UP State Backward Commission intervened and passed orders to grant relief to him. The order impugned has been passed in confirmity thereof.

5. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

The Rules 1985 clearly provides that inter se seniority of persons appointed directly on the result of any one selection shall be the same as determined by the Commission. So far as the inter se seniority of the promotees is concerned, as per Rule 22(3) of the Rules 1985 it is to be fixed as referable to the seniority in the cadre from which they have been promoted. Provision of the said Rule require to be interpreted harmoniously in such a manner that they may not lead to absurd result or arbitrariness. The formula provided therein would apply

provided all the promotions are made in the same selection. At the moment, respondent No. 4 could claim the relief provided he was appointed with effect from the date petitioners had been appointed i.e. 03-05-1983. Respondent No. 4 was given promotion w.e.f. 06-08-1985.

6. The respondent No. 4 had filed writ petition seeking his promotion from 03-05-1983 i.e. the date from which the petitioners had been promoted claiming that petitioners were junior to him in the feeding cadre. The writ petition has been dismissed and relief prayed for had been denied by the Court for reasons recorded in the judgement. It is not open to the authority to nullify the said judgement and order by sitting in appeal over the same.

7. It is settled legal proposition that a person cannot be granted seniority from a date prior to his birth in the cadre. In *Dr. S.P. Kapoor Vs. State of Himachal Pradesh and Others*, and *Shitla Prasad Shukla Vs. State of U.P. and Others*, the Apex Court held that a person cannot claim seniority over and above the persons lawfully appointed in the mainstream prior to his joining in the said cadre.

8. In view of the above, whatever might be the interpretation of the Rules 1985, any order granting seniority to the said respondent No. 4 over and above the petitioners would amount to granting promotion from the date the petitioners had been so promoted (even if notionally) which as already recorded above would be contrary to the judgement of this Court dated 23-02-1992, and hence legally not permissible. An issue which has attained finality cannot be re-opened in collateral proceeding.

9. In view of the above, the petition succeeds and is allowed. The impugned order dated 04th April, 2006 is hereby quashed.

No order as to costs.