
(2000) 02 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 17727 of 1995

Bharat Bhushan Pandey

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 28-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 5A

Citation : (2000) 2 AWC 1337 : (2000) 2 UPLBEC 1097

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Prakash Padia and R.G. Padia, for the Appellant; Ajaya Kumar Dwivedi, S.C., for the Respondent

Judgement

M. Katju, J.—This writ petition has been filed with a prayer for a mandamus directing the respondents to promote the petitioner as Executive Engineer in the service of Varanasi Development Authority w.e.f. from the date his Juniors were promoted, i.e.. 18.3.1994 along with consequential benefits including arrears and seniority. It has been further prayed that the respondents be directed to include the name of the petitioner in the seniority list at its proper place according to actual date of service of the petitioner from 22.10.1982.

2. Heard learned counsel for the parties.

3. The petitioner was appointed by order dated 21.10.1982 as an Assistant Engineer on ad hoc basis vide Annexure-1 to the petition and since then he has been in continuous service. At that time the Vice Chairman of the Development Authority was the appointing authority. Subsequently by U. P. Act No. 21 of 1985 which was enforced on 22.10.1984 Sections 5A was added in U. P. Urban Planning and Development Act, 1973. According to the provisions of the said Act. a person serving on the post Included In the Centralised Service immediately before creation of such service, not being a person governed by the U. P. Palika (Centralised) Services Rules, 1966 or serving on deputation could be absorbed in

the service unless he opted otherwise. If he was confirmed on the post, he would be absorbed finally, and if he was holding officiating appointment, then he would be absorbed in a provisional capacity. The petitioner made several representation for absorption. True copy of the representation dated 10.3.1986 is Annexure-2 and copy of the representation dated 24.11.1987 is Annexure-3. His case was also recommended by the Vice-Chairman of the Development Authority by letter dated 11.3.1986 vide Annexure-4, and a copy of the telex message dated 1.6.1986 is Annexure-6. The petitioner has brought on record various service/experience certificates, copies of which are Annexures-7, 8, 9 and 10 to the petition.

4. In para 16 of the writ petition, it is stated that the Departmental Promotion Committee met in March, 1994 and a list of candidates who were selected for being promoted as Executive Engineer was published on 18.3.1994 vide Annexure-12. In para 27 of the petition, it is stated that the petitioner's name did not find place in the aforesaid list but various juniors were granted promotion. Thus, the persons at serial Nos. 8 to 21 are all juniors to the petitioner but they were promoted while the petitioner was not promoted. Thereafter the State Government by order dated 20.1.1995 promoted some more juniors vide Annexures-13 and 14. On 21.1.1995, seven more juniors were promoted as stated in para 19 of the petition. Aggrieved, the petitioner filed a representation to the respondent No. 1 on 21.3.1994 vide Annexure-15 but no action was taken. The petitioner then filed Writ Petition No. 945 of 1995 which was disposed of by order dated 11.1.1995 vide Annexure-16 to the petition. In the said order, the respondents were directed to dispose of the petitioners' representation within 6 weeks. However, the said representation was not decided. A seniority list was published on 18.5.1995 but the petitioner's name was not included. A true copy of the seniority list is Annexure-18. The petitioner made a representation against it but to no avail, hence this writ petition.

5. The petitioner has filed an amendment application stating that his representation was rejected by order dated 4.4.1998.

6. The respondents have filed a counter-affidavit. In para 5, it is stated that the petitioner was appointed on 21.10.1982 on ad hoc basis and this appointment was illegal because he was over age when he was appointed. It is also stated in para 6 of the counter-affidavit that the petitioner has an alternative remedy.

7. In our opinion, the objection of the respondents is not tenable. The initial appointment of the petitioner was in 1982 and after a long lapse of 16 years, the respondents are taking the objection that he was over age at the time of his initial appointment. In our opinion, if his appointment in 1982 was illegal, then his service should have been terminated within a reasonable period thereafter, but in the present case, this objection has been taken after a lapse of 16 years. Hence, in our opinion, the respondents have acted arbitrarily. It has been held by the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, that arbitrariness violates Article 14 of the Constitution.

8. In such circumstances, the writ petition is allowed. The order dated 4.4.1998 is quashed and a mandamus is Issued to the respondents to promote the petitioner from 18.3.1994 when his Juniors were promoted and to give him all consequential benefits including arrears of salary and seniority as Executive Engineer. The respondents shall also include the name of the petitioner in the seniority list treating his appointment on 22.10.1982 to be valid and to count his service from 22.10.1982. The arrears of salary shall be paid within three months of production of certified copy of this order before the authorities concerned.

9. Writ petition is allowed. No order as to costs.