

(2010) 12 AHC CK 0094
In the Allahabad High Court
Case No : Writ Petition No. 851 (SB) of 2010

Gajendra Nath Pandey and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Government Servants (Third Amendment) Seniority Rules 2007 — Rule 8A
Uttar Pradesh Services of Engineers (Irrigation Department) (Group — A) Rules, 1990
— Rule 5, 7, 8, 9

Citation : (2010) 12 AHC CK 0094

Hon'ble Judges : Uma Nath Singh, J;Devendra Kumar Arora, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Devendra Kumar Arora, J.—By means of present writ petition, the petitioners have prayed for a writ in the nature of mandamus commanding the opposite parties to consider the case of the petitioners for regular promotion to the vacant posts of Superintending Engineer (Mechanical) and further direct them to issue appropriate consequential orders with all consequential benefits within specified time as this Court deems fit and proper in the circumstances of the case.

2. Facts of the case, in brief, are that the petitioners are Executive Engineers working in Irrigation Department (Mechanical). The petitioners No. 1, 2, 4, 5 & 8 are also holding additional charge of the post of Superintending Engineer (Mechanical) without pecuniary benefits of the said post. Petitioners' services are governed with the Rules known as U. P. Services of Engineers (Irrigation Department) (Group-A) Rules, 1990 as amended from time to time (hereinafter referred to "Rules, 1990"). Rule 5 (ii) of the said Rules, as amended in the year 1997, provides that the post of Superintending Engineer (Mechanical) shall be filled by promotion from amongst the substantively appointed Executive Engineers who have completed 15 years of service (including at least 6 years' service as Executive Engineer), as on the first day of the year of recruitment.

Under Rule 5 (iii) it is provided that the post of Chief Engineer (Mechanical) Level-II shall be filled up by promotion from amongst the substantively appointed Superintending Engineers who have completed 25 years service (including at least one year service as Superintending Engineer) as on the first day of the year of recruitment.

3. As per Rule 7 of the Service Rules, the appointing authority is under an obligation to determine the number of vacancies to be filled up during the course of the year.

4. As per the provisions of the U. P. Government Servants Criteria for Recruitment by Promotion Rules, 1994, as amended in 1998, the criteria for promotion to the post of Superintending Engineer is seniority subject to rejection of unfit. Rule 8 of the Service Rules of 1990 provides that the recruitment is to be made through a selection committee. The Appointing Authority is required to prepare an eligibility list in accordance with the Uttar Pradesh Promotion by Selection (on posts outside the purview of the Public Service Commission) Eligibility List Rules, 1986 (hereinafter referred to as the Eligibility List Rules, 1986) and place the same before the Selection Committee along with their character rolls and other records, as may be considered proper. The eligibility list is prepared on the basis of seniority. Separate eligibility lists are required to be prepared for the General, Scheduled Castes and Scheduled Tribes. The Selection Committee is required to consider the cases of the candidates on the basis of records and prepare a list of selected candidates arranged in the order of seniority as it stood in the cadre from which they are to be promoted and is required to forward the same to the Appointing Authority.

5. Under Rule 9, the Appointing Authority is required to make appointments by taking the names of candidates in the order in which they stand in the list prepared under Rule 8.

6. Presently, the total sanctioned posts of Superintending Engineers are 42 out of which 09 are reserved for scheduled castes and 33 are unreserved. Out of 42 total sanctioned posts of Superintending Engineers, 31 are vacant and out of the 31 vacant posts 02 belong to the reserved category of scheduled castes. Thus only 11 posts are filled up out of which 04 are filled up by general category officers and 07 by reserved category officers.

7. Lastly, promotions to the post of Superintending Engineer (Mechanical) were made on 30.6.2009 on the basis of recommendations of the D.P.C. held on 26.6.2009 when out of 26 vacancies only 14 were filled up and 12 vacancies were left unfilled while petitioners No. 1, 2, 3 & 4 were within the zone of consideration for promotion but they were not considered for promotion. In the month of November, 2009 an eligibility list was prepared by the office of Engineer-in-Chief and was sent to the State Government in which names of petitioners were shown at serial No. 3, 2. 4. 15, 16, 20, 34 and 45 respectively and in February, 2010 relaxation was granted to some Executive Engineers

including petitioners No. 4 to 8 in the matter of requisite qualifying service for the post of Superintending Engineer (Mechanical). The promotions on the post of Chief Engineer Level -I and Chief Engineer Level II (Mechanical) have been made on the basis of existing seniority as recently on 30.1.2010 and 01.4.2010, it is evident that there is no problem in filling up the vacant post of Superintending Engineer (Mechanical) on the basis of the existing seniority. However, the opposite parties are delaying the matter of promotion to the post of Superintending Engineer depriving them from status and rank of the promotional post as also higher salary of the post.

8. The submission of the learned Counsel for the petitioners is that as per Rule-7 of the Service Rules read with Government Order dated 19.5.2001, the opposite parties/appointing authority are required to determine the number of vacancies to be filled during the course of year by convening a meeting of the Departmental Promotion Committee. Admittedly, in the present case no promotions were made during the recruitment year 2009-10, which ended on 30.6.2010, although there are 31 vacancies inclusive of two reserved vacancies.

9. It is also submitted that there is no legal impediment in filling up the vacancies in question on the basis of existing seniority list, which is in operation since prior to coming into force the Government Servants (Third Amendment) Seniority Rules 2007, and the same cannot be given effect to in view of the interim order operative in writ petition No. 1389(S/B) of 2009 and writ petition No. 543 (S/B) of 2009 and the same interim order has been upheld by the Hon'ble Apex Court while dismissing the SLP of the State Government and only requested this Court to decide the writ petitions at an early date vide order dated 10th September, 2009 passed in Civil Appeals No. 6187 of 2009 and 6188 of 2009.

10. The learned Counsel for the petitioners also submitted that the issue pertaining to filling up of vacant promotional posts during the pendency of the writ petition, relating to Rule 8-A has been considered by this Court in various cases and the directions have been issued for filling up the vacancies subject to final outcome of the said writ petitions. The learned Counsel for the petitioners placed before this Court one such judgment and order dated 25.2.2010 of this Bench passed in writ petition No. 1935 (S/B) of 2009 in respect of Public Works Department, by which directions were issued to the concerned opposite party to fill up 37 existing vacancies in the said department with the rider that such promotion will not confer any right in favour of petitioners to claim seniority from the date of promotion, which would be subject to the outcome of hearing of the writ petitions challenging the validity of Rule 8-A of the U.P. Government Servants Seniority (Third Amendment) Rule 2007.

11. It was also brought to the notice of this Court that said judgment and order dated 25.2.2010 was challenged by the State before the Hon'ble Apex Court by means of SLP (Civil) No. 16510 of 2010 and at the request of learned Counsel for the appellant the matter was adjourned for ten days to enable the State to hold

the meeting of Departmental Promotion Committee (D.P.C.) and in pursuance thereof the concerned opposite parties/appellant held D.P.C. on 10.6.2010 and thereafter promotion orders were also issued.

12. It has also been brought to the notice of this Court that the opposite parties themselves filled up the vacancies of Chief Engineer level-I (Mechanical) and Chief Engineer level-II (Mechanical) on the basis of the existing seniority list, as recently as on 30.1.2010 and 1.4.2010, subject to the result of the writ petitions pertaining to Rule 8-A and even in other departments hundreds of promotion have been made on the same terms, which goes to show that there is no legal impediment in filling up the posts.

13. Learned Counsel for the respondents admitted the fact of promotion on the post of Chief Engineer level-I (Mechanical) and Chief Engineer level-II (Mechanical) on the basis of the existing seniority list. It is also submitted that the promotions have been made in various departments only in compliance of the orders passed by this Court. However, it was insisted that hearing of the matter be deferred as hearing of the writ petition challenging the validity of Rule 8-A is under progress.

14. This Court in writ petitions No. 1389 (S/B) of 2009 and 543(S/B) of 2009, relating to Irrigation Department, by means of order dated 6.11.2007 and 6.4.2009 provided that the seniority of the petitioners and other promotees officer as was existing prior to the enforcement of U.P. Government Servants Seniority (Third Amendment Rules) 2007 shall not be disturbed in pursuance of the said Rules and no reversion shall be effected till the next date of listing and against the said order Civil Appeals No. 6187 of 2009 and 6188 of 2009 were preferred by the State Government and the same was dismissed vide judgment and order dated 10th September, 2009 with a request to the High Court to expedite the hearing of the matter. This very Bench in writ petition No. 1935(S/B) of 2009, Shekhar Garg v. State of U.P., relating to Public Works Department, after examining the issue, allowed the writ petition and directions were issued to the State Government to convene the meeting of Departmental Promotion Committee for promotions to the posts of Superintending Engineers within a period of two weeks with a rider that said promotion will not confer any right in favour of the petitioners to claim seniority from the date of promotion and the same shall be subject to the outcome of hearing of writ petitions challenging the validity of Rule 8-A of the U.P. Government Servants Seniority (Third Amendment) Rules 2007. The operative portion of the said order reads as under:

In view of all the aforesaid, we allow this writ petition to the limited extent by directing the respondents to hold meetings of Departmental Promotion Committee for promotions to the posts of Superintending

Engineers from the feeder cadre of Executive Engineers in the Public Works Department within a period of two weeks from the date of receiving a copy of this order and consider the names of petitioners and similarly situated other

candidates as per rules for promotion against 37 existing vacancies of Superintending Engineers. However, we make it clear that promotion to the posts of Superintending Engineers would not create any right in favour of the petitioners to claim seniority from the date of promotion which would be subject to the outcome of the hearing of writ petition challenging the validity of Section 8-A of the U.P. Govt. Servants Seniority (Third Amendment) Rules 2007.

This writ petition, thus, stands disposed of.

15. Against the said order, State preferred Special Leave to Appeal (Civil) No. 16510 of 2010 and the same was got adjourned on 8.6.2010 to enable the State to hold meeting of D.P.C. and thereafter meeting of D.P.C. was convened and the promotion orders were also issued.

16. It is admitted position that there are 31 vacancies of Superintending Engineer(Mechanical) and some of the petitioners are at the verge of retirement. All of them must have legitimate expectations to be considered for promotion to higher post. We are inclined to issue similar direction, which has been issued in, Shekhar Garg v. State of U.P. and Ors. writ petition No. 1935(S/B) of 2009

17. In view of above, we allow this writ petition to the limited extent by directing the respondents to hold meeting of D.P.C. for promotion to the posts of Superintending Engineers (Mechanical) from the feeder cadre of Executive Engineers in the Irrigation Department within a period of two weeks from the date of receiving a copy of this order and consider the names of petitioners and similarly situated other candidates as per rules for promotion against existing vacancies of Superintending Engineers (Mechanical).

18. However, we make it clear that promotion to the posts of Superintending Engineers would not create any right in favour of the petitioners to claim seniority from the date of promotion which would be subject to the outcome of the hearing of writ petition challenging the validity of Section 8A of the U.P. Govt. Servants Seniority (Third Amendment) Rules 2007.

19. This writ petition, thus, stands disposed of.