

(2003) 11 AHC CK 0165
In the Allahabad High Court
Case No : C.M.W.P. No. 43374 of 1992

Ganga Dhar Pandey

APPELLANT

Vs

Inspector General of Registration and Others

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Citation : (2004) 1 AWC 327 : (2004) 1 UPLBEC 452

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : T.P. Singh, Siddharth Singh and Anupam Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Vineet Saran, J.—The petitioner was given appointment as Registration Clerk in the Registration Department under respondent No. 1 on which post he joined on 14.6.1990. As per rules, the petitioner claims that he was entitled for being confirmed after completion of two years probation. However, he was confirmed only in the year 1965, which the respondents claim was done in 1970. On 20.8.1962, he was transferred and posted as Assistant Chief Registration Clerk. Thereafter, the petitioner claims that he was also posted as officiating Sub-Registrar vide order dated 20.11.1990 but again posted back as Chief Registration Clerk, Deoria on 3.4.1991. The petitioner claims that he was entitled to be regularised on the post of Chief Registration Clerk and for that purpose he filed representations claiming that he was a seniormost confirmed Registration Clerk and was actually working on the post of Chief Registration Clerk. One such representation addressed to respondent No. 1 was filed on 12.12.1991. On a report having been called for by the Government, the District Registrar, Deoria on 16.2.1992 recommended for the confirmation of the petitioner as Chief Registration Clerk as he was senior-most available Registration Clerk. Thereafter, on 20.3.1992 the petitioner was again given charge of Sub-Registrar, Padrauna.

2. Since by order dated 1.7.1992 the petitioner was reverted and posted as

Registration Clerk, the petitioner filed Writ Petition No. 28743 of 1992 challenging the said order. The said writ petition was disposed of by this Court on 21.10.1992 with a direction to respondent No. 1 to decide the representation of the petitioner with regard to his promotion/confirmation on the post of Chief Registration Clerk as the petitioner claimed that persons junior to him had been confirmed on such post. In compliance of the aforesaid order passed in the writ petition, the respondent No. 1, vide order dated 31.10.1992, rejected the representation of the petitioner. Aggrieved by the aforesaid order dated 31.10.1992 passed by respondent No. 1 as well as the order dated 1.7.1992 reverting the posting the petitioner as Registration Clerk, the petitioner has filed this writ petition. Further prayer has also been made for issuing directions to the respondents to treat the petitioner as a permanent Chief Registration Clerk with effect from June, 1965 and also not to interfere in the functioning of the petitioner as Chief Registration Clerk.

3. I have heard Sri Siddharth Singh, holding brief of Sri T.P. Singh, learned counsel for the petitioner as well as learned standing counsel appearing for the respondents and have perused the materials on record.

4. It is admitted to the respondents that certain persons junior to the petitioner had been promoted on the post of Chief Registration Clerk ignoring the case of the petitioner. The only explanation given in the counter-affidavit filed by the respondents is that since under the rules the petitioner was never promoted as Chief Registration Clerk, he was not entitled to the same. It has neither been stated in the impugned order dated 31.10.1992 nor in the counter-affidavit that the case of the petitioner was ever considered by the Departmental Promotion Committee and thus he was not entitled to promotion under the rules. In the impugned order it has been admitted that 9 persons who were junior to the petitioner had been promoted, without the case of the petitioner having been considered, and since there was irregularity in giving promotion to those 9 persons, notices had been issued to them for being reverted back to the post of Registration Clerk. Nowhere in the counter-affidavit or even the supplementary counter-affidavits, filed in the year 1997, have the respondents stated as to whether actually arty of 9 persons have been reverted back or not. Some of them who had been issued notices, challenged the notices by filing writ petitions in which stay orders were granted and thus the respondents state that they were allowed to continue. But no explanation has been given in at least four such cases where persons junior to the petitioner, who had been promoted as Chief Registration Clerk, were allowed to continue even though no writ petitions had been filed by them. In a Division Bench decision of this Court rendered in Civil Misc. Writ Petition No. 694 of 2002, P.K. Singh v. Secretary, Minor Irrigation Department and Rural Engineering Services and others, this Court, while dealing with a case where a junior had been promoted ignoring the case of the petitioner therein held that such person was entitled to be promoted with effect from the date on which the person junior to him had been given promotion.

5. In the present case since admittedly the persons junior to the petitioner had been promoted without the case of the petitioner having been considered by the respondents and there being nothing on record to show that the petitioner was not suitable for such promotion, denial of promotion to the petitioner is totally illegal and unjust. The petitioner would thus be entitled to be promoted and regularised as Chief Registration Clerk with effect from the date those junior to the petitioner, as named in the impugned order, had been promoted. On the strength of the interim order granted by this Court in this writ petition, it is admitted that the petitioner had continued to work on the post of Chief Registration Clerk or officiating Sub-Registrar and he retired from such post on 31st January, 1998.

6. In such circumstances, it is directed that the petitioner shall be entitled to the difference of salary on the post of Registration Clerk which he was paid and that of Chief Registration Clerk to which he would be entitled to from the date when promotion had been granted to his juniors. He shall be treated as having retired from the post of Chief Registration Clerk and his pension and other retiral benefits would be calculated and paid to him accordingly. The arrears of difference of salary as well as the difference in the pension and other post retiral benefits shall be paid to the petitioner within six months from the date of filing a certified copy of this order before respondent No. 1.

7. In the result, this writ petition stands allowed. However, there shall be no order as to costs.