
(2004) 07 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition No. 4305 of 2001 (SS)

Girdhar Singh Rana and Another

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 30-07-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Uttar Pradesh Regularisation of Ad hoc Appointments (on post within the purview of the Public Service Commission) Amendment Rules, 1992 — Rule 12

Citation : (2005) 2 ESC 1478

Hon'ble Judges : Rajesh Tandon, J; M.M. Ghildiyal, J

Bench : Division Bench

Advocate : Rajendra Dobhal, for the Appellant; N.C. Gupta, S.C., for the Respondent

Judgement

Rajesh Tandon, J.—By the present writ petition the petitioner has prayed for a writ in the nature of mandamus commanding the respondents to promote the petitioners to the post of Assistant Engineer with effect from 30.6.1998, the date, when the persons, who have obtained the degree of AMIE (Civil Engineering Branch) subsequently to the petitioners, have been promoted by the respondent authorities.

2. Brief facts giving rise to the present writ petition are that the petitioner No. 1 obtained a diploma in Civil Engineering in the year 1983 and after obtaining the said diploma he passed the said examination i.e. Associate Member of Institute of Engineering in Civil Engineering Branch. A certificate to that effect has been enclosed as Annexure-1 to the writ petition.

3. Similarly petitioner No. 2 obtained diploma in Civil Engineering in 1983 and after obtaining the said diploma he passed AMIE in Civil Engineering. Certificate dated 17.5.1991 to this effect has been annexed with the writ petition.

4. The petitioners have submitted that AMIE is equivalent to the degree of Engineering and the candidate having such degree is fully qualified to be

promoted to the post of Assistant Engineer.

5. As will appear from the facts on record that on 15.2.1990, petitioners through Public Service Commission were selected to the post of Junior Engineer in P.W.D. and thereafter on 27.7.1990 they were appointed to the post of J.E. in P.W.D. as will appear from the appointment letters dated 27.7.1990. The petitioners have joined their duty on the post of Junior Engineer on 30.8.1990 and 27.11.1990 in P.W.D. in Kumaun region and thereafter their services were confirmed by the Chief Engineer vide order dated 10.9.1996 w.e.f. 29.8.1992 and 26.11.1992 respectively. The petitioners have submitted that the respondents are promoting the permanent Junior Engineers having qualification of Bachelor Degree/AMIE degree on the basis of their seniority in the cadre of Junior Engineer, without considering of the date of bachelor degree/AMIE and, as such, the criteria of promoting Junior Engineers on the basis of their seniority in the cadre is wholly illegal. The petitioners have further submitted that senior to the petitioner namely Jai Prakash Gupta, Shiv Kumar and Sushil Kumar who have obtained degree in year 1987, 1989 and 1992 respectively have been promoted in the year 1998 whereas the petitioners have obtained the degree in the year 1985 and 1990.

6. The Counsel for the petitioners has referred Rule 5 of Rules 1987 for the recruitment to the post of Assistant from the following sources :

"5. Recruitment to the post of Assistant. Engineer shall be made from the following sources :

(i) 66.2/3 per cent vacancies by direct recruitment on the basis of the competitive examination conducted by the Commission :

Provided that the officers appointed as Assistant Engineers by direct recruitment through the Commission and working in temporary or officiating vacancies in the Department, or the officers after regularisation under the Uttar Pradesh Regularisation of Ad hoc Appointments (on post within the purview of the Public Service Commission) Rules, 1979 shall be deemed to have been appointed against the quota of direct recruitment before any fresh appointment are made by direct recruitment.

(ii) 25 per cent vacancies by promotion through the Commission from amongst such permanent incumbents of the posts in the Public Works Department, Subordinate Engineering Service and Public Works Department Computer's Service as have put in at least seven years" continuous service on such post, in the proportion of respective permanent cadre strength.

(iii) 8.1/3 per cent vacancies by promotion through the Commission from amongst such permanent incumbents of the posts in the Public Works Department Subordinate Engineering Service and Public Works Department Computer's Service as possess bachelors degree in Engineering from a recognised institution or are Associate Members of the Institute of Engineers in

the proportion of respective permanent cadre strength :

Provided that, if persons possessing the qualifications mentioned in Clause (iii) are not available these vacancies shall also be filled from the source mentioned in Clause (ii)."

7. The Counsel for the State of Uttaranchal has submitted that the promotion quota has been quashed by the Allahabad High Court in Writ Petition No. 42726 of 2000. The Division Bench of Allahabad High Court has observed as under :

"The diploma holders junior engineers and the degree holder junior engineers and both eligible for promotion to the post of assistant engineer in the instant case and the promotion according to Rule 12 as it stands amended by 2nd amendment Rules 1992 provides for selection in consultation with the Public Service Commission in accordance with provisions of Public Service Commission (Procedure Rules), 1970 on the basis of seniority subject to rejection of unfit. The result of fixation of separate quota in favour of diploma holder junior engineers degree holder may lead to denial of promotion on the basis of seniority and this would lead to denial of equality clause of the Constitution in the matter of promotion. Fixation of separate quota for degree holder junior engineers and diploma holder Junior Engineer to outstand is discriminatory and violative of Articles 14 and 16 of the Constitution."

The aforesaid observation is not applicable to the facts of the present case inasmuch as a question involves in the present writ petition that the Junior Engineer who have obtained degree of AMIE and have been taken in the zone of consideration are entitled for promotion from the date of initial appointment of the Junior Engineer in the department or they are entitled for their promotion on the basis of degree obtained by them.

8. In the case of Suresh Nathan and Anr. v. Union of India and Ors. 1992 (1) SCC 584, the apex Court has held that the Junior Engineers possessing degree in civil engineering with three year's service in the grade are not entitled to count his service prior to obtaining the degree for computing the period of three years for the purpose of promotion. The apex Court has held as under :

"4. In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents diploma-holders that the practice followed in the department for a long time was that in the case of diploma-holder Junior Engineers who obtained the degree during service, the period of three years" service in the grade for eligibility for promotion as degree holders commenced from the date of obtaining the degree and the earlier period of service as diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents diploma holders in para 5 of their application made to the Tribunal at page 115 of the paper book. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pages 99-100 of the paper book in the counter-affidavit of respondents 1 to 3. The real question, therefore, is

whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined."

9. Petitioners have already submitted a representation in this regard claiming for promotion and the same has yet not been disposed of. However, liberty is given to the petitioners to approach the authorities who will decide the claim of the petitioners in the light of judgment in the case of N. Suresh Nathan and another (*supra*).

10. Subject to the aforesaid observations, the writ petition is disposed of.