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**(2010) 11 AHC CK 0379**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Review Application No. 295894 of 2009

Gopal Krishna Srivastava

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

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**Date of Decision :** 23-11-2010

**Acts Referred:**

**Citation :** (2010) 11 AHC CK 0379

**Hon'ble Judges :** Sudhir Agarwal, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Sudhir Agarwal, J.—This review application has been filed on behalf of Respondent No. 3 seeking review of my judgment dated 31.08.2009, whereby the petition was allowed and promotion of the Respondent No. 3 on the post of Sadar Munsarim and Senior Administrative Officer was quashed.

2. Shri Nirvikar Gupta, learned Counsel for the Respondent No. 3 stated that he could not put in appearance when the matter was heard by this Court since the case was transferred from Court No. 32 to court No. 24 and he could not get this information hence could not appear on 31.08.2009 as a result whereof the judgment has been passed without hearing him. In the circumstances I gave him full opportunity of hearing to point out the error in my judgment.

3. Learned Counsel for the Respondent No. 3 contended that he was never promoted as Stenographer. He was initially appointed as Clerk and thereafter was deputed as Stenographer whereagainst he objected too and the said deputment was revoked. Thereafter by a committee report, anenxure CA-2 to the counter affidavit, he was promoted as Sadar Munsarim from Clerical Cadre and not from the post of Stenographer. He submits that the judgment of this Court is contrary to the facts as this fact has not been noticed by this Court.

4. The submission is not only thoroughly misconceived but also contrary to what is evident from the pleadings. In para-6 of the counter affidavit the Respondent

No. 3 has said:

That in reply of the contents of paragraph No. 5 of the writ petition it is wrong, misconceived. Hence denied. It is further submitted that answering Respondent was initially appointed on the post of clerk, thereafter he was promoted to the post of stenographer on the recommendation of then Civil Judge, Deoria in absence of a suitable candidate.

5. In the entire counter affidavit there is no averment that the alleged promotion which the Respondent No. 3 had claimed in para 6 of his counter affidavit was ever cancelled or he was ever reposted or appointed as clerk. Though in para 16 he has tried to explain that he never opted the post of Stenographer but then he says that on the recommendation of the Civil Judge, Deoria he was posted as Stenographer. Thus there is no factual averment in the counter affidavit that the Respondent No. 3 was never appointed as Stenographer and salary was not paid to him, applicable to the post of Stenographer.

6. Now coming to the second part whether he was promoted to the post of Sadar Munsarim. A bare perusal of the counter affidavit shows that while working as Stenographer, the Petitioner was given pay scale of Rs. 5500-9000 which was equivalent to the pay scale of Sadar Munsarim. Other persons working on the post of Clerk were in the scale of Rs. 4500-7000/-. The committee consisting of S/Sri R.S. Yadav, the then Additional District Judge, Deoria and Shri V.K. Srivastava the then Additional District Judge, F.T.C. No. 1 Deoria found since the pay scale in which Respondent No. 3 was working was equivalent to the scale of "Sadar Munsarim, hence after retirement of the then incumbent working on the post of Sadar Munsarim on 31.7.2004, Respondent No. 3, already working in the equivalent pay scale, as admissible to the post of Sadar Munsarim, be adjusted as Sadar Munsarim. Since he was working in higher pay scale, therefore, his case was not considered along with other clerical staff working in the lower pay scale. It is this report which has been given effect. It is evident therefrom that the Petitioner was not given promotion to the post of Sadar Munsarim as a matter of fact after considering all eligible persons working in the cadre of clerk, but the committee taking note of the fact that Respondent No. 3 was already working in higher pay scale equivalent to that of Sadar Munsarim recommended his posting/adjustment as Sadar Munsarim. It cannot be said to be promotion. The averments made in para 16 of this review application therefore is contrary to record and is not infact as such as pleaded in counter affidavit.

7. Thereafter, for the post of Senior Administrative Officer, the District Judge proceeded on the basis that the Respondent No. already working as Sadar Munsarim in higher pay scale hence the question of considering other persons of the feeder cadre i.e. clerical cadre does not arise. Hence, the Respondent No. 3 was given consequential promotion to the post of Senior Administrative Officer.

8. These facts have already been noticed by this Court in its judgment dated 31.08.2009 based on the pleadings of Respondent No. 3 in the counter affidavit

which is not shown to incorrect.

9. Learned Counsel for the applicant/Respondent No. 3 however contended that even otherwise he was senior to the Petitioner in clerical cadre and therefore, as a matter of right entitled to be considered for promotion on the higher post, in preference to the Petitioner. In para 3 and 4 of the writ petition the Petitioner has stated as under:

3. That the Petitioner's academic qualification is B.sc. B.Ed. L.L.B. The petitioner is appointed as a clerk in copying section on 1.11.1974 and became confirm as copyist II Additional w.e.f 2.6.1976 vide order no.11/76 as Misc. Clerk in the Judge Court, Deoria by respondent no.2. He is (second clerk) in the office of District Judge, Deoria i.e. respondent no.2. The role and conduct of the petitioner are never called in question. He bears his satisfactory work in the office of the authority concerned.

4. That the Petitioner is senior most than Respondent No. 3. However, the Petitioner made a representation to be promoted as Sadar Munsarim, which is one of the promotional post and shall be filled up by promotion by clerical cadre of regular line on the basis of seniority cum suitability. The Petitioners with all corners is a suitable and fulfill the requisite requirement to be promoted on the post of Sadar Munsarim which is fall vacant since long."

10. The Respondent No. 3 in the counter affidavit while not disputing the averments made in para 3 of the writ petition has replied para 4 thereof in para 5 of his counter affidavit as under:

That the contents of paragraph No. 4 of the writ petition are wrong, misconceived hence denied. It is further submitted here that the Petitioner was never senior to the answering deponent and deponent always belong to a senior cadre.

11. From the text of the averments, it is evident that to claim seniority qua Petitioner, Respondent No. 3 has not made any submission or pleadings with respect to his date of appointment on the post of Clerk but what he says is that he always belong to a senior cadre, therefore, is senior to the Petitioner. In para 3 of the writ petition the Petitioner's date of appointment as a clerk in copying section is 1.11.1974 and he was confirmed w.e.f 2.6.1976. On both the occasions the Respondent No. 3 was not even in service. He was appointed as clerk only in 1978 as stated in para 5 of the writ petition. These dates stands confirmed from annexure CA-2 in which the Committee of two Additional District Judges has also given the date of appointment of Respondent No. 3 on the post of Clerk in 1978 and confirmation on 15.2.1982. Apparently, the Petitioner in clerical cadre was much senior to the Respondent No. 3. Nothing has been placed on record by Respondent No. 3, by way of either filing any seniority list or any order of the competent authority, to show that for some reasons or otherwise the competent authority ever declared the Respondent No. 3 senior to Petitioner in the cadre of clerk.

12. In the above background I find learned Counsel for the Respondent No. 3 has not been able to point out any factual error or otherwise in the judgment dated 31.08.2009 and on the contrary what he intends to argue by way of review application are certain facts which are contrary to what has been pleaded in his counter affidavit. This cannot be allowed at this stage. The Respondent No. 3 cannot be allowed to take a factual plea in the name of review application which is inconsistent to what has been stated in his counter affidavit.

13. In the circumstances, I find no reason to review my judgment dated 31.08.2009. Dismissed.