

(2009) 11 UK CK 0013
In the Uttarakhand High Court

Govind Singh Bisht and Another and Secretary/General
Manager, District Cooperative Bank

APPELLANT

Vs

Registrar Cooperative Societies and Others

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 11 UK CK 0013

Hon'ble Judges : Tarun Agarwala, Acting C.J.;Alok Singh, J

Bench : Division Bench

Judgement

Alok Singh, J.—Heard Mr. Anil Kumar Joshi and Mr. K.C. Tiwari, learned Counsel for the appellants, Mr. P.C. Bisht learned Brief Holder for the State of Uttarakhand and Mr. Manoj Tiwari Sr. Advocate assisted by Mr. Alok Mehra, learned Counsel for the private respondents.

2. In both the appeals, impugned order is dated 25.04.2006 passed by learned Single Judge in writ petition No. 234 of (SB) of 2003 (Naveen Chandra Joshi and Ors. v. Registrar Cooperative Societies and Ors.), consequently, both the appeals are being taken for hearing and decided by this judgment with the consent of the learned Counsels for the parties. Learned Single Judge allowed the writ petition holding that by applying Rule 26 U.P. Cooperative Societies Employees Service Regulations, 1975, (hereinafter referred to as "Regulations, 1975") the petitioners' names were found above the names of the private respondents in the Regularization Order dated 28.06.1993, hence, the petitioners are in fact senior to the private respondents. The learned Single Judge also directed that the writ petitioners would be treated as senior to the private respondents but shall be given promotion only when vacancies arises.

3. Brief facts of the present matter, in a nutshell, is that petitioners have filed writ petition challenging the promotion order of private respondents dated 04.01.2003 and further sought a mandamus commanding the respondent No. 2 to prepare the seniority list in respect of Group III employees serving in the Bank

in accordance with law. The main contention of the writ petitioners is that as per Rule 26 of the Regulations, 1975, persons whose names are above in the regularization order would be deemed senior to the persons whose names are below in that order. It is contended by the petitioners that since names of the petitioners are above the private respondents in the regularization order dated 28.06.1993, hence, petitioners are seniors to the private respondents. It was further contended by the petitioners that pursuant to the final seniority list which was published on 08.11.1995 showing petitioners as juniors to the private respondents, the petitioners have submitted a representation before U.P. Cooperative Institutional Service Board, Lucknow (hereinafter referred to as "Board") and that the Board vide order dated 27.07.1998 admitted that the seniority list was incorrect and that it would not be possible to fix the eligibility of the candidates for promotion.

4. Learned Counsel for the petitioners further contended that if seniority list was in dispute as admitted by the Board vide letter dated 27.07.1998, hence, without deciding the dispute, the promotion order dated 04.01.2003 was neither justified nor legal and was the result of an arbitrary exercise by the respondents.

5. Respondents refuted the contention of the petitioners by way of filing their respective counter affidavits. In reply, it was contended that regularization list was not prepared as per the seniority order. Hence, application of Rule 26 in the present matter would not be justified. It was further contended by the respondents that although petitioners as well as private respondents were regularized on the same date, however, private respondents joined their duties prior to the petitioners, hence, private respondents were rightly treated as senior in the final seniority list published on 08.11.1995. It was further contended that final seniority list was never challenged by the petitioners and now, after grant of promotion to the private respondents it cannot be challenged and, that too, after seven years.

6. We have heard learned Counsel for the parties and carefully perused the record.

7. As admitted by both the parties, the services of the petitioners and private respondents were regularized on 18.10.1995. It is further admitted by both the parties that final seniority list was prepared on 07.11.1995. It is also the admitted case of the parties that writ petitioners have preferred their representation which is pending before the Board. Both the parties admitted that Board had issued a letter dated 27.07.1998 (Annexure No. 6 to the writ petition) observing that since seniority list of Class III employee is in dispute, hence, promotions from that list is not possible. No material was produced before us to prove that representation of the petitioners was ever decided before the impugned order of promotion was passed on 04.01.2003. From the above, it is clear that the Board itself doubted the correctness of the final seniority list.

8. In view of the submission made by learned Counsel for the Bank that the

regularization order dated 28.06.1993 does not contain the names of the candidates regularized as per their seniority, we think Rule 26 of the Regulations 1975 cannot be pressed in service in the present matter at this juncture. We can understand that if regularization order contains names as per seniority, then person whose name is above would be deemed senior to the person whose name is below in the list. Moreover, for the fault of the Bank by not showing names as per seniority in the Regularization Order dated 28.06.1993, none of the party should be allowed to suffer adversely. As admitted by both the parties that the representation challenging the seniority list was never decided and the dispute remained pending on 04.01.2003 when the impugned promotion order was issued. Although learned Counsel for the appellant Mr. Anil Kumar Joshi tried to justify that since impugned order suggests that Registrar, enjoying the power of Board, issued the promotion order it should be deemed that all the dispute to the seniority list were settled prior to the issuance of the impugned promotion order dated 04.01.2003, we are afraid we cannot accept this argument of Mr. Joshi.

9. In our view, the question of seniority, on the basis of material available on record and objection raised by way of representation, ought to have been decided by the Board or by the Registrar enjoying the power of the Board, prior to issuance of the promotion order dated 04.01.2003. Moreover, the moment Bank says regularization order does not contain the names of the candidates regularized as per their seniority, it was not appropriate on the part of the learned Single Judge to observe that as per Rule 26 of the Regulations, 1975 petitioners are senior to the private respondents as per the serial order given in the Regularization Order dated 28.06.1993.

10. We are not inclined to enter into the question of seniority. While exercising the powers under Article 226 of the Constitution of India, this Court should not enter into the complicated question of fact. In our view, the question of seniority should be decided by the Competent Authority. The direction of the learned Single Judge would mean that although the petitioners are senior to the private respondents but they would work under private respondents till they get promotion when vacancies arise in the future. In our opinion, none can be compelled to work under his junior. This preposition/ direction cannot be said to be justified and legal as it would be against the service jurisprudence. Hence, we cannot uphold the judgment of the learned Single Judge.

11. In view of the above, we have no other option except to set aside the judgment and order dated 25.04.2006 passed by learned Single Judge. Both the Special Appeals and the writ petition No. 234 (SB) of 2003 are disposed of with the following directions:

- i. The order of promotion dated 04.01.2003 is quashed.
- ii. The Registrar Cooperative Societies shall decide and finalize the seniority list after giving full opportunity of being heard to both the parties within eight weeks from the date of production of the certified copy of this order placed before him.

iii. Persons found senior as per the seniority list, finalized by the Registrar, would be promoted with retrospective effect from 04.01.2003 on the said vacancies existing on that date.

iv. In the event the private respondents are not found to be senior to the petitioners in the writ petition, the benefit given to them pursuant to the promotion order will not be recovered.