

(2000) 03 AHC CK 0033
In the Allahabad High Court
Case No : C.M.W.P. No. 52913 of 1999

Head Constable C.P. 28 Shiv Mohan Singh and others	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 08-03-2000

Acts Referred:

Constitution of India, 1950 — Article 309
Uttar Pradesh Government Servants (Criterion for Recruitment by Promotion) Rules, 1994 — Rule 4

Citation : (2000) 2 AWC 1544 : (2000) 85 FLR 403 : (2000) 2 UPLBEC 1522

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : C.B. Yadav, for the Appellant; S.C. and Sabha Jeet Yadav, for the Respondent

Judgement

V.M. Sahai, J.—The petitioners were initially appointed as constables under the U. P. Police Regulation read with Police Act, 1861. The petitioners have been promoted as Head Constables. The next promotion post of Head Constables is Sub-Inspector. The petitioners claim that a Government Order was issued on 6.8.1995 which provided that 50 per cent vacancies be filled by direct recruitment and the remaining 50 per cent were to be filled by promotion. Out of this 50 per cent which was reserved for rankers 25 per cent vacancies were to be filled in accordance with seniority subject to rejection of unfit and the remaining 25 per cent vacancies were to be filled by departmental examination. The respondents Issued an office memorandum dated 19.5.1998 which provided that 50 per cent vacancies will be filled from the constables and head constables through departmental examination. It is the validity of this order which is under challenge in this petition.

2. I have heard Sri C. B. Yadav, learned counsel for the petitioners and Sri Sabha Jeet Yadav, learned standing counsel appearing for the respondents.

3. Learned counsel for the petitioners has urged that in view of Rule 4 of U. P.

Government Servants (Criterion for Recruitment by Promotion) Rules, 1994 (in brief Rules 1994), the post of sub-inspector which is a promotional post of constables and head constables could only be filled in accordance with seniority subject to rejection of unfit. Learned counsel further urged that after these rules came into force in 1994, the respondents could not Issue any Government Order or office memorandum providing for making promotion or selection to the post of sub-inspectors by any method other than provided by the aforesaid rule. Learned counsel for the petitioner has placed reliance on a Division Bench decision of this Court in State of U.P. and others Vs. Smt. Shakuntala Shukla, S.I., Police,

4. On the other hand, the learned standing counsel has vehemently argued that the post of sub-inspector is not the promotional post of constables or head constables. He has urged that the post of sub-inspector is a selection post and, therefore, Rules 1994 shall not be applicable, therefore, the respondents were well within their rights to make appointment and selection on the post of Sub-Inspector in pursuance of office memorandum dated 19.5.1998.

5. The short question that arises for consideration of this Court is as to whether the post of sub-inspector is the promotional post of constable or head constable or is a selection post. The other question which arises for consideration is whether in view of the Rules, 1994, the respondents could issue Government Order dated 6.8.1995 and office memorandum dated 19.5,1998 and proceed to make promotion on the post of sub-Inspector.

6. There is no dispute that all the petitioners are head constables. There is also no dispute that 50 per cent of the post of sub-inspectors in the State is to be filled by promotion. There further appears no dispute that the field of eligibility for such promotions are from the constables or head constables. In paragraph 3 (a) of the counter-affidavit, it is admitted that recruitment to the post of sub-inspector Is not regulated by any statutory rules of recruitment framed under Police Act. It is claimed by the State that it is regulated by Government Order issued from time to time and by Government Order dated 19.5.1998 a policy decision was taken to fill 50 per cent vacancies of sub-inspector by direct recruitment and remaining 50 per cent by promotion of departmental candidates through competitive examinations. Since the Government itself treats 50 per cent post of sub-inspector as promotional, the argument of learned standing counsel that it is selection post cannot be accepted.

7. In 1994 the State Government framed U. P. Government Servants (Criterion for Recruitment by Promotion) Rules, 1994. Rule 4 of the rules lays down the criteria for promotion. It is extracted below :

"Criterion for recruitment by promotion.--Recruitment by promotion to the post of Head of Department, to a post just one rank below the Head of Department and to a post in any service carrying the pay scale, the maximum of which is Rs. 6,700 or above, shall be made on the basis of merit, and to rest of the posts in all services to be filled by promotion including a post where promotion is made

from non-gazetted post to a Gazetted post or from one service to another service shall be made on the basis of seniority subject to rejection of unfit."

8. This rule came up for consideration before a Division Bench of this Court in *Shakuntala Shukla (supra)* which after exhaustively dealing with its import in respect of promotion of sub-inspector to circle inspector where also there are no rules framed by the Government and the promotion is governed by Government Orders issued from time to time held :

"The rules apply to a recruitment by promotion to a post service for which no consultation with the Public Service Commission is required and "have effect notwithstanding anything to the contrary contained in any other service rules made by the Governor under the proviso to Article 309 of the Constitution, or orders for the time being in force." Concededly, the post of Inspector is not in respect of which consultation with P.S.C, is required and it will brook no dispute that if at all the Rules are held to be applicable, the criterion therein for selection of sub-inspectors for promotion to the rank of Inspector would be "seniority subject to rejection of unfit" and not "merit" as contemplated in the Government Order dated November 5, 1965. Therefore, the impugned selection which was made on the basis of the G. O. would be unsustainable being basically illegal."

9. This decision is also an authority for the proposition that Rules 1994 applies to police personnels. In this view of the matter, it appears unnecessary to deal with various decisions relied by learned standing counsel as they have been dealt by the Division Bench and I respectfully agree with it.

10. I may now deal with the Government Orders issued from 1986 onwards. On 15.7.1986, an order was issued by the Government that the posts of sub-inspectors shall be filled in the State by direct recruitment as well as by promotion in proportion of 50-50. Another order was issued on 6.8.1995 that out of 50 per cent vacancies to be filled by promotion, 25 per cent would be filled by seniority subject to rejection of unfit and the remaining 25 per cent were to be filled by departmental examination. Another order was issued on 19.5.1998 which provided that the 50 per cent to be filled by promotion shall be by departmental examination. The effect of this order was that the promotion on seniority subject to rejection of unfit has been replaced by promotion by departmental examination. This criteria for promotion is contrary to Rule 4 which has been extracted above. The Government Order or office memorandum being executive in nature cannot supersede or be contrary to the Rule 1994 framed under Article 309 which is legislative in character. The Government Orders/ office memorandum issued by the Government regulating promotion of sub-inspectors to the extent that they attempt to fetter with legislative power cannot exist. In *Shakuntala Shukla (supra)*, the argument that promotion on merits alone having been provided by the Government Order dated 5.11.1965 the field stood occupied and Rule 4 of the rules mentioned above could not affect it was rejected as executive order could not stand once the field was occupied by rules framed under Article 309 of the Constitution. Once the Government decided that 50 per

cent of sub-inspectors could be promoted from constable and head constable the criteria for promotion in absence of any other rule by Government governing promotion to the post of sub-inspector could only be as provided by Rule 4 of Rules 1994. The Government Orders issued after 1994 being contrary to the Rule 1994 cannot be given effect to.

11. In the result the writ petition succeeds and is allowed. The impugned selections made by the respondents for the post of sub-inspectors under the office memorandum dated 19.5.1998 stands quashed so far as it relates to 50 per cent of promotional quota. The respondents are directed to hold selections afresh in accordance with U. P. Government Servant (Criterion for Recruitment and Promotion) Rules, 1994. The Interim order is discharged.

12. The parties shall bear their own costs.