

(2004) 10 UK CK 0008
In the Uttarakhand High Court
Case No : C.W.P. No. 1140 of 2003 (S/S)

Hem Chandra Bhatt and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 15-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Forest Corporation Service Regulations, 1985 — Regulation 13

Citation : (2005) 1 AWC 80 : (2005) 1 UC 246 : (2004) 2 UD 723 : (2005) 1 UPLBEC 15

Hon'ble Judges : P.C. Pant, J

Bench : Single Bench

Advocate : Alok Singh and Gopal Narain, for the Appellant; S.N. Babulkar and P.S. Danu, for the Respondent

Final Decision : Allowed

Judgement

P.C. Pant, J.—By means of this writ petition, moved under Article 226 of the Constitution of India, the Petitioners have sought mandamus directing the Respondents to give time scale to the Petitioners as per Regulation 13 relating to Group "C" posts of U.P. Forest Corporation General Services Regulations w.e.f. 1.8.1996.

2. Brief facts of the case, as narrated in the writ petition, are that the Petitioners were initially appointed as daily wagers on the posts of Assistant Grade-II in Forest Development Corporation. A Selection Committee was constituted by the Corporation for giving temporary appointment against said posts and said Committee selected seven persons including the five Petitioners for their appointment against the posts of Assistant Grade-III. In pursuance of said recommendation, the Petitioners along with other two persons got appointment letters dated 31.7.1986 (copy Annexure-1 to the writ petition) and joined their duties. However, vide letter dated 13.1.1987 (copy Annexure-2 to the writ petition), Regional Manager (West) Ram agar cancelled the appointments made

vide letter dated 31.7.1986 under orders of the Managing Director of the Corporation. Aggrieved by the said order a Writ Petition No. 5681 of 1987 was filed before the High Court of Judicature at Allahabad by the Petitioners. However, on being given assurance by "Karamchari Sangh", the writ petition was withdrawn on 5.5.1987 (copy Annexure-3 to the writ petition). Thereafter on 31.10.1987 fresh appointment letters were issued to all the seven persons including the Petitioners, a copy of which is filed as Annexure-4 to the writ petition. On representation of the Petitioners seniority was given to them w.e.f. 31st July, 1986, by the General Manager of the Corporation vide his letter dated 5.12.2000 (copy Annexure-5 to the writ petition). As such the Petitioners are continuously working without break, and are covered under definition of "employee" given under Regulation 3 (XV) of U.P. Forest Corporation General Services Regulations. It is further alleged in the writ petition that in view of the length of the service of the Petitioners they are entitled to time scale and promotion to Assistant Grade-II. It is also submitted in the writ petition that two persons namely, Jag Mohan Singh Negi and J. P. Bahukhandi, on completion of ten years of their service as Assistant Grade-III, were given the promotion but the Petitioners were left out without any reason. Claiming the time scale since 1996, this writ petition has been filed.

3. A counter-affidavit has been filed on behalf of Respondent Nos. 3 and 4 in which it has been stated that the writ petition is not maintainable as the Petitioners have allegedly concealed the fact that their appointments are not made in accordance with rules as the same was not approved by the Managing Director of the Forest Development Corporation. To substantiate this objection copies of letters dated 3.11.1987 (copy Annexure-C.A. 1) and letter dated 21.6.2003 (copy Annexure-C.A. 2) are filed with the counter-affidavit. Apart from preliminary objections, it is stated in the counter-affidavit that since the appointment letters given to the Petitioners are not according to law, hence these do not confer any right on them. It is further stated in the counter-affidavit that Petitioners being still daily wagers have no right to regularization on the post of Assistant Grade-III nor of the time scale. It is also denied if they are covered under definition of "employee" under the regulations applicable to Assistant Grade-III and Assistant Grade-II. In para 14 of the counter-affidavit it has been stated that Jag Mohan Singh Negi and J. P. Bahukhandi were given the pay scales as their initial appointment was against the substantive post of Assistant Grade-III and they had completed ten years of satisfactory services.

4. I heard learned Counsel for the parties and perused the affidavit, counter-affidavit and rejoinder-affidavit along with the annexure annexed thereto.

5. The short question for consideration before this Court is whether, the Petitioners are wrongly denied time scale after they completed ten years of service in the posts of Assistant Grade-III, and promotion to Assistant Grade-II with the Forest Development Corporation, as alleged by them?

6. The Petitioners have relied on their appointment letter dated 31.7.1986 (copy

Annexure-1 to the writ petition), by which Regional Manager of the Corporation has appointed the seven persons including the Petitioners in the pay scale of Rs. 360-550 as temporary Assistant Grade-III on ad hoc basis, against the vacancies existing in Assistant Grade-II. These appointments were set aside by Managing Director of the Corporation vide letter dated 13.1.1987. Consequently again vide order dated 31.10.1987 the same persons were appointed this time against the posts of Assistant Grade-III on the same scale. Learned senior counsel on behalf of the Respondents has argued that these appointments were not approved by the Managing Director as is clear from the letter dated 3.11.1987, as such the appointments given to the Petitioners are not in accordance with law. It is further submitted on behalf of the Respondents that the writ petition be dismissed on this ground alone that the Petitioners being still technically daily wagers cannot claim time scale or promotion under the Rules. This Court has to examine how far the contention is true. As far as the promotion given to Jag Mohan Singh Negi and J. P. Bahukhandi is concerned, this Court feels that Petitioners cannot claim parity with them as they were not appointees with the Petitioners nor is it shown by the Petitioners if there was any illegality in their appointment as Assistant Grade-III.

7. Now this Court has to see if the Petitioners who were appointed as Assistant Grade-III have any right to the time scale claimed by them. Learned senior counsel on behalf of the Petitioners in this regard drew attention of this Court to the definitions of "regular employee" and that of the "employee other than regular employee" contained in the Regulations applicable to the Forest Corporation, which reads as under:

"Regular employee" means an employee whose employment by the terms of his engagement is terminable by three months notice in writing, or on payment of three months pay in lieu of the notice.

"Employee other than regular employee" means an employee whose appointment is for a specific period not exceeding one year and whose appointment in accordance with the letter of his engagement is made terminable by one month notice in writing on either side or on payment of one month pay in lieu thereof.

From the above definitions though there is no condition expressly imposed that the appointment should be made according to rules but it can very well be interpreted that whenever the word "appointment" is used in the Rules it certainly refers to the appointment made according to the Rules. Perusal of the record shows that there was some examination held in the year 1985 in which 13 persons were selected as Assistant Grade-III and 7 persons including the Petitioners were in the waiting list as is clear from the contents of the letter dated 16.11.1987 (copy Annexure-R.A. 1 to the rejoinder-affidavit) written by the Regional Manager, Nainital to the Managing Director of the Forest Development Corporation. This letter also explains that in view of requirement of more employees, 7 persons including the Petitioners were issued appointment letters. It is true that the Managing Director did not approve appointment letters

issued to Petitioners appointing them in Assistant Grade-III post in pay scale of Rs. 360-550, in the year 1986 on the ground they were taken against posts of Assistant Grade-II but from Annexure-4 to the writ petition it appears that thereafter these 7 persons were again appointed (this time not against post of Assistant Grade-II) as Assistant Grade-III on 31.10.1987 (copy Annexure-2 to the writ petition) on the same scale of 360-550. These appointment letters are still not cancelled nor the services of the Petitioners since 1987 are terminated. Not only this, the seniority list issued from the office of the Managing Director of the Corporation, a copy of which is filed as Annexure-R.A. 5 to the rejoinder-affidavit, shows that the present 5 Petitioners' names are included in the seniority list of Assistant Grade-III and the date of their appointment is shown to be 1986. In the circumstances from the record as discussed above, the Petitioners cannot be said to be "employees" recruited de hors rules. Therefore, this Court feels that in view of note contained in Chapter III, Rule 16, Item No. 13 of U.P. Forest Corporation General Service Regulations relating to Assistant Grade-III, these employees are entitled after ten years of service to promotion to Assistant Grade-II provided they have a meritorious service record. Schedule-C, Item No. 13 of Group "C" of aforesaid Regulations also contains the similar note regarding promotion to post of Assistant Grade-II.

8. Learned senior counsel on behalf of the Respondents drew my attention to the principle of law laid down in State of Himachal Pradesh Vs. Suresh Kumar Verma and another, and submitted that the Petitioners have no right whatsoever as their appointments are de hors rules. I am unable to be in agreement with learned senior counsel for the Respondents for the reason that as discussed above, the Petitioners' appointments cannot be said to be de hors rules as they have appeared in an examination and have been selected through a Selection Committee and their names were in the waiting list before they were appointed as Assistant Grade-III. In the referred case of Suresh Kumar Verma (supra), the appointment was de hors recruitment rules and the services of the concerned person were terminated which is not a case here.

9. In the circumstances and in view of the discussion as above, this Court feels that in view of the continuous length of the services of the Petitioners on the post of Assistant Grade-III their cases for time scale or promotion to Assistant Grade-II may be considered by the Respondents under Rules provided they have a meritorious service record as required under the Rules. Therefore, accordingly the writ petition is allowed with the direction that the Respondents shall consider the cases of the Petitioners for time scale/promotion to Assistant Grade-II in view of the length of their service according to Rules, provided they have a meritorious service record. No order as to costs.