
(2013) 02 AHC CK 0285
In the Allahabad High Court
Case No : C.M.W.P. No. 6382 of 2013

Islam	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Citation : (2013) 2 AWC 1721

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Puneet Kumar Pandey and Sunil Kumar Srivastava, for the Appellant; Anand Kumar Srivastava, for the Respondent

Final Decision : Partly Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned counsel for the petitioner and Sri Anand Kumar Srivastava for the respondent Nagar Palika Parishad, Basti. The petitioner is aggrieved by the rejection of his representation which he had moved for getting promoted as Safai Nayak under the Government order dated 15th of November, 1975. The representation has been rejected on two grounds that there is no evidence available with regard to the literacy of the petitioner on his personal file and the second ground is that at present there is no post available. The promotion of Khuda Bux has been upheld having been made in accordance with the rules.

2. The petitioner contends that the respondent No. 3 Khuda Bux is junior to the petitioner, inasmuch as. he was appointed in 1985 whereas the petitioner was appointed in the year 1982. The claim of the petitioner having been denied, the petitioner approached this Court in the year 2012 in writ petition No. 24329 of 2012 which was disposed of on 17th May, 2012 directing the Nagar Palika Parishad to dispose of the representation of the petitioner.

3. In the opinion of the Court the promotion of the respondent No. 3 that was made in the year 1998 could not have been challenged after fifteen years of his

promotion. The representation which was directed for being decided was to examine the claim of the petitioner as well for the purpose of promotion keeping in view the fact that he was eligible.

4. The finding recorded in the impugned order is that there is no relevant material on the personal file of the petitioner indicating his literacy. This finding in my opinion cannot be sustained keeping in view the fact that the appointment letter of the petitioner clearly describes the petitioner as literate. The aforesaid fact has not been disputed in the impugned order.

5. Even otherwise whether the petitioner was literate or not could have been examined by calling upon the petitioner to have attempted few lines in Hindi Devanagari before the Executive Officer to indicate his level of literacy. The respondents did not choose to examine the same and have simply assumed that the absence of an educational certificate makes him illiterate.

6. In my opinion, the said finding cannot be sustained. However, the non-availability of a post would certainly not compel the respondents to promote the petitioner. In view of this, the writ petition is partly allowed and the order dated 18.8.2012 in so far as it holds the petitioner to be illiterate is quashed. However, in the event any post is available in future in terms of the Government order of 1975 to the extent of 50% available, the case of the petitioner shall be considered for promotion in accordance with law.