
(2002) 07 AHC CK 0005
In the Allahabad High Court
Case No : C.M.W.P. No. 26108 of 1994

Jai Narain Dubey

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Class IV Government Employees Service Rules, 1975 — Rule 22, 23(3)

Citation : (2002) 5 AWC 3705

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Uma Kant, R.K. Porwal and Anand Prakash Pandey, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. By means of this writ petition, the Petitioners have challenged the validity and correctness of the order dated 22.6.1994 passed by the District Inspector of Schools by which their claims for promotion to Class III employee have been rejected.

3. The brief facts of the case are that the Petitioners are Class IV employees posted at different places under the jurisdiction of Deputy Director Education, Kanpur. Petitioner Nos. 1, 2, 3 and 4 were appointed on 9.9.1976, 20.11.1973, 5.8.1975 and 10.12.1976 respectively.

4. Their terms and conditions of service are governed by Class IV Government Employees Services Rules, 1975 (hereinafter referred as the Service Rules). Rule 22 of the Service Rules, 1975 lays down criteria for promotion, which is seniority subject to rejection of unfit.

5. A select list for promotion of Class IV employees was prepared and the same was published on 27.1.1983 in accordance with the Rule 22 of the Service Rules, 1975. It is alleged that except the Petitioners, even the persons who were juniors

to them have been promoted. In this regard Petitioner has relied upon Annexures-2 and 3 to the writ petition. In Annexure-2 Manohar Lal, Sakhi Chandra and Jagjiwan are shown at Sl. Nos. 15, 16 and 19 in the seniority list and they have been given promotion vide order dated 9.10.1991. It is submitted by the counsel for the Petitioners that from Annexure-2 it is established that Petitioner No. 1 is senior to Manohar Lal, Sakhi Chandra and Jagjiwan as he is at Sl. No. 5 in the seniority list. It is alleged that not only the persons much junior to the Petitioners but even those who were not in the select list namely, Hari Narain, Som Nath, Malik Mohammad, Rakesh Pandey and Gopi Ram have also been given promotion to the post of Junior Clerks vide order dated 13.12.1993 which is in contravention of Rule 23 (3) of the Service Rules, 1975. It is alleged that until and unless the select list is exhausted, no outsider can be promoted and vacancies for the post of Assistant Clerk are still existing on which the Petitioners can be given promotion as they are fully qualified for the post of Assistant Clerk.

6. It is alleged by the Petitioners that they have made representations dated 11.3.1992 and 5.11.1993 but when those representations evoked no response the Petitioners filed Writ Petition No. Nil of 1994 claiming promotion as Class III employees. The petition was disposed of vide judgment and order dated 29.1.1994 directing Respondent No. 2 to decide the representation of the Petitioner.

7. In pursuance of the directions dated 29.1.1994 given by this Court Respondent No. 2 decided the representation and rejected the claim of the Petitioners vide impugned order dated 22.6.1994 on the following grounds:

(i) Kanpur Mandal was created vide order dated 16.12.1989 and started functioning w.e.f. January, 1990, as such the earlier order of Regional Deputy Director of Education, Allahabad Mandal regarding fixation of seniority should not be taken into account for promoting the Petitioners.

(ii) The Regional Deputy Director Education, Allahabad Mandal vide his letter dated 16.6.1993 informed the Respondent No. 2 that seniority list prepared in the year 1983 was not in accordance with Government order dated 31.8.1982.

(iii) According to Government order dated 31.8.1982 the merit was the only criteria for promotion and not the seniority hence Petitioners could not be given promotion and the seniority list so prepared in the year 1983 was not valid.

(iv) It will be against the principle of natural justice to give promotion to the Petitioners in the year 1993 on the basis of seniority list prepared in the year 1982-83.

(v) A fresh examination had taken place in the office of Respondent No. 2 on 26.9.1993 in which Petitioners did not participate.

8. The Petitioners have assailed the impugned order on the ground that it is wholly baseless and without application of mind for the following reasons:

(i) In so far as criteria for promotion in Kanpur Mandal on 16.12.1989 is concerned it will not make any difference in calculating the seniority of Petitioners as the service period which they rendered in Regional Deputy Director, Allahabad Mandal has to be taken into account.

(ii) The criteria of promotion to the next higher post is seniority subject to rejection of unfit according to Class IV Government Employees Service Rules, 1975 and in this connection Rule 22 lays down the criteria of promotion by departmental promotion committee and therefore, Government order dated 31.8.1982 is meaningless.

(iii) All the candidates of the select list and seniority list contained in Annexures-I and II of the writ petition have been given promotion except the Petitioners and in the year 1991 vide order dated 9.10.1991 Sri Manohar Lal, Sakhi Chand and Jagjeevan who were juniors to the Petitioners were given promotion amongst the seniority list of 1992-93.

(iv) Even persons who were not in select list namely, Hari Narain, Som Nath, Malik Mohd., Rakesh Pandey and Gopi Ram and were outsiders were promoted as Junior Clerks vide order dated 13.12.1993 as such question of not participation by the Petitioners in the examination held on 26.9.1993 becomes irrelevant.

(v) In any case since Petitioners had already passed their examination for promotion and the persons being promoted from the seniority list of 1983 till 1992 the Petitioners could not participate in the examination.

(vi) The Government order dated 31.8.1982 is meaningless in face of the statutory rule. The seniority list of 1983 was prepared in accordance with U.P. Government Employees Service Rules, 1975 and not in accordance with Government order dated 31.8.1982.

9. No counter-affidavit has been filed by the Director of Education U.P. Camp Office, Lucknow or by the Deputy Director of Education, Kanpur Mandal, Kanpur.

10. In the short counter-affidavit filed by Deputy Director of Education IV Region, Allahabad, it has been stated that she is replying to the only paragraphs of the writ petition with which she is concerned. In paras 4 and 5, the Respondent has stated as follows:

4. That, however, it is submitted that for the promotion on the post of Junior Clerk, Class III an interview had been held in the year 1983 and a list of successful candidates has been issued which is Annexure-1 to the writ petition, and before the establishment of Kanpur Region the persons of the said list have been given promotion according to their merit. In the year 1989 the Kanpur Region has been established and list of the successful candidates who were working in the Kanpur Region has been sent to the Deputy Director, Kanpur Region, Kanpur and the persons of the Allahabad Region who were in the aforesaid list have been given promotion in the year 1991.

5. That the Petitioners are working in the Kanpur Region and the promotion has to be done from the Class IV to Class III in the Kanpur Region and as such the Allahabad Region has no relevance in the present case and as such need no comment from the Respondent No. 3.

11. The positions of seniority of the Petitioners in the seniority list is not denied in the counter-affidavit and the standing counsel could not support the impugned order.

12. From perusal of the impugned order and the material on record of the writ petition, it is firmly established that the Petitioners are seniors in the seniority list dated 27.1.1983 prepared under Rule 22 of the Service Rules, 1975, for promotion from Class IV to Class III post. The candidates in the select list along with them have already been promoted in the year 1991. The Petitioners have been discriminated and have been illegally deprived of the promotions without any fault on their part and have been placed to work on a lower post. Establishment of Kanpur Region has no relevancy in the facts and circumstances of this case. Even otherwise, also the seniority of the Petitioners could not have been disturbed and they would be senior on the basis of their length of service in the combined seniority list or even otherwise, as well as in the select list. The Petitioners are entitled to the benefit of the principle of placement in accordance with the principle of next below rule and are liable to be placed above those persons who were juniors to them.

13. No other point has been argued before me.

14. In view of the reasons stated above, the writ petition is allowed. Respondent Nos. 1 and 2 are directed to correct the seniority list by giving notional promotion to the Petitioners on the post of Junior Clerk within a period of two months from the date of production of a certified copy of this order. The Petitioners shall be entitled to all consequential benefits of the post of Junior Clerk from the date their juniors in seniority list dated 17.1.1983 have been promoted, if they have already not been promoted. If the Petitioners have been promoted to the post of Junior Clerk, they shall be entitled to the benefits of the post of Junior Clerk on the basis of next below rule till the date of their promotion.

15. No order as to costs.