
(2009) 12 AHC CK 0365
In the Allahabad High Court
Case No : C.M.W.P. No. 66788 of 2009

K.K. Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Citation : (2010) 3 AWC 3226

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Ashok Khare and J.C. Sharma, for the Appellant; T.P. Singh and Narendra Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Ashok Khare, learned senior counsel assisted by Sri J.C. Sharma, advocate for the Petitioner, learned standing counsel for the Respondent Nos. 1, 3, 4, 6 and 7 and Sri T.P. Singh, learned senior counsel assisted by Sri Narendra Singh, advocate for the Respondent No. 8.

2. This dispute relates to the holding of charge as officiating Office Superintendent of a Post-graduate College, namely, Agra College, Agra which is being contested between the Petitioner and Respondent No. 8 on the ground of their respective seniority.

3. The claim of the Petitioner is that he is senior to Respondent No. 8 and, therefore, he ought to have been given charge which was ultimately done by the principal of the institution on 28.7.2009. It is further submitted that the said order has been reviewed without giving any notice or opportunity to the Petitioner pursuant to the order passed by the Regional Higher Education Officer and at the instance of the Commissioner of the Division, who is President of the Committee of Management, ex officio. It is submitted that the impugned orders are in violation of principles of natural justice and in the event the Petitioner would have been confronted with the report of the Regional Higher Education

Officer dated 22.10.2009, he would have explained the correct position to demonstrate that the Petitioner was senior to the Respondent.

4. Sri Khare further submits that the principal has submitted a report which is in favour of the Petitioner and which indicates that the initial appointment of the Petitioner as Enquiry Attendant was against a Class III post and therefore, the conclusion drawn in the impugned orders are erroneous in law. He further submits that the evidence which is on record clearly leads to the conclusion that the Petitioner was appointed as a Class III employee and his appointment being prior in point of time as against the Respondent No. 8, he is senior.

5. Sri T.P. Singh, learned senior counsel for Respondent No. 8 contends that the Petitioner was appointed as a Class IV employee and was subsequently promoted and accommodated as a Class III employee and was awarded a pay scale, much later than the appointment of Respondent No. 8. He submits that the Regional Higher Education Officer after calling for a report from the Principal of the institution has arrived at the conclusion that the initial appointment of the Petitioner was against a Class IV post and, therefore, he cannot claim seniority over and above the Respondent No. 8. It is further submitted that there is no violation of principles of natural justice inasmuch as the report of the Regional Higher Education Officer dated 22.10.2009 impugned herein also recites that the Petitioner and Respondent No. 8 were called upon to submit their respective claims where after the conclusions drawn have been indicated. He further submits that the consequential action taken by the Commissioner is in accordance with law and the same does not require any interference. He further submits that the Principal of the institution, in consonance with the decision arrived at by the higher authorities, handed over charge to Respondent No. 8 on 2.12.2009.

6. The first question to be addressed is as to whether the Petitioner was appointed initially in the year 1973 as a Class III employee or whether he was appointed against a Class IV post. Sri T.P. Singh has produced a copy of Civil Misc. Writ Petition No. 3591 of 1998 filed by the Petitioner and two others, which petition was ultimately dismissed as withdrawn. The Petitioner in the said writ petition had prayed for quashing of the order dated 17.1.1998 whereby an order of pay fixation had been passed and excess of salary received by the Petitioner was sought to be recovered. The averments contained in the said writ petition are that the Petitioner No. 1 therein, namely, K. K. Sharma was initially appointed as a litT.P.eon in the college on 13.3.1973. Paragraph 3 of the said writ petition further recites that he was subsequently promoted/appointed as an Enquiry Attendant on 23.11.1973. It is further stated in the said writ petition that vide order dated 10.6.1986 the Regional Deputy Director of Education, Agra passed orders accepting the promotion of the Petitioner as office clerk in the pay scale of Rs. 354-550 and as such in pursuance of the said order dated 10.6.1986, the Petitioners have been promoted on the post of office clerk. A copy of the order which is Annexure-6 to the said writ petition clearly recites that the

Petitioners who were working as Class IV employees were being promoted accordingly. The aforesaid facts have not even been mentioned in the writ petition for reasons best known to the Petitioner and, therefore, remain undisputed.

7. Sri Singh further contends that as a matter of fact the contesting Respondent was throughout from the date of his initial appointment in 1973 working as a Class III employee whereas the Petitioner alongwith two others were functioning as Class IV employees and were later on promoted. As such, from the records it is evident that later on a letter was issued from the Regional Higher Education Officer on 20.12.1996, a copy whereof is Annexure-3 to the writ petition which further demonstrates that with regard to the difference in the pay scale of the Petitioner certain orders were desirable and accordingly an order of "Samayojan" was issued. This letter also corroborates the fact that the Petitioner had not been initially appointed against a Class III post.

8. Learned Counsel for the Petitioner submitted that as a matter of fact the principal of the institution has certified that the Petitioner has been functioning as a Class III employee and that the post of Enquiry Attendant held by him is equal to that of a clerk, as is evident from the Railway Board Circular dated 9.10.2003. Sri Khare has invited the attention of the Court to Annexure-7A which is a letter written by the principal of the institution on 13.8.2009 in response to the query made by the Regional Higher Education Officer. Sri Khare has also produced a photocopy of the said circular dated 9.10.2003 and the same is in relation to Central Government Railway Employees where a post of Enquiry Attendant has been indicated.

9. In my opinion the circular issued by the Railway Board cannot be transplanted as a substitute provision to extend any benefit to the Petitioner as it is totally alien and foreign to the claim of the Petitioner. The certificate given by the principal on the strength of the said circular is, therefore, unwarranted and inadmissible in law.

10. On the aforesaid facts that have been brought on record and the undisputed position of the filing of Writ Petition No. 3591 of 1998 by the Petitioner and the averments contained therein it is evident that the Petitioner was initially appointed as a Class IV employee and was later on extended the benefit of promotion and adjustment as a Class III employee. The manner in which such benefits were extended is not the issue before this Court. The fact that the Petitioner was promoted or absorbed as a Class III employee much after the appointment of Respondent No. 8 remains unrebutted, rather admitted by the Petitioner in his averments in Writ Petition No. 3591 of 1998. The acceptance of promotion from Class IV to Class III Cadre by the Petitioner under the order dated 10.6.1986 and the subsequent order of "Samayojan" dated 20.12.1996 coupled with the averments in Writ Petition No. 3591 of 1998 can be safely presumed to be unrebutted admissions which are the best piece of evidence.

11. Accordingly, I do not find any error in the report submitted by the Regional Higher Education Officer dated 22.10.2009 and the consequential action by the Commissioner or the order of the Principal.

The writ petition lacks merit and is accordingly dismissed.