
(1987) 01 AHC CK 0034
In the Allahabad High Court
Case No : Writ Petition No. 7361 of 1986

Krishna Lal Saxena

APPELLANT

Vs

U.P.State Public Services Tribunal No.III, Lucknow and Others

RESPONDENT

Date of Decision : 06-01-1987

Acts Referred:

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4 Proviso

Citation : (1987) 01 AHC CK 0034

Hon'ble Judges : S.Saghir Ahmad, J

Final Decision : Disposed Of

Judgement

S. S. Ahmad, J.—This petition under Article 226 of the Constitution is directed against the judgment and order dated 17486 passed by the U.P. Public Services Tribunal by which the petitioner's claim petition was dismissed on the preliminary ground that the claim petition was filed without exhausting the departmental remedies.

2. The petitioner had filed the claim petition before the Tribunal in the year 1979 with the following reliefs :

?A. That the claimants may be declared as qualified and entitled for the post of Assistant Agriculture Engineer in the Agricultural Service Glass II Cadre.

B. That the claimants may be further declared to be entitled to get the promotion prior to the persons mentioned in Annexure 4 w. e. f. the date of order of the Annexure 4 alongwith all other service benefits.

C. That the claimants may be declared to be entitled to get the selection grade on their present post in the light of Annexure 6.

D. That the orders contained in Annexures 4, 5 and 6 may be declared as illegal and not operative in the eye of law.

E. That the costs of the claim may be awarded to the claimants. ?

3. This claim petition was registered as claim petition No. 221(F)/III/ 79. It was opposed by the opposite parties who had filed written statement contained in Annexure 3.

4. Sri P. K. Srivastava, learned counsel for the petitioner has stated that a statement was made on behalf of the petitioner before the Tribunal that the promotion orders referred to in relief (D) need not be quashed so that the petitioner was absolved of the requirement of impleading 12 persons who were promoted vide order contained in Annexures 4, 5 and 6 to the claim petition. Even here, when the case was taken up for hearing Sri P. K. Srivastava has stated that the promotion orders of the 12 persons referred to in the Tribunal's judgment are not challenged.

5. A perusal of the judgment passed by the Tribunal would show that the merits of the matter were not considered and the petition was dismissed on the ground that the departmental remedy had not been availed of by the petitioner before approaching the Tribunal.

6. The services of the petitioner are admittedly governed by the U.P. Agriculture Service (Class II) Rules which do not contain a provision that a person can file an appeal before the higher authority if he is not considered for promotion. These rules do not appear to have been looked into by the Tribunal who went by the Manual of Government orders in which there is a provision that it would be open to a Government employee to make a representation to higher authorities in the matter of service. The Tribunal, as we shall presently see, was not justified in relying upon the Manual of Government orders.

7. Proviso to Section 4 of the U.P. Public Services Tribunal Act, 1976 lays down as under :

“Provided that no reference shall ordinarily be entertained by the Tribunal until claimant has exhausted his departmental remedies under the rules applicable to him.”

8. The word “ordinarily” used in the Proviso does not mean “always.” It indicates flexibility in application rather than undeviating practice. The proviso, therefore, does not, and cannot be treated to act always as a bar to the entertainment of a claim petition by the Tribunal. By the use of the word “Ordinarily”, a discretion has been given to the Tribunal to entertain, in appropriate cases, a claim petition even though an employee has not exhausted his departmental remedies under the rules applicable to him.

9. “Rules applicable to him” is another important phrase in the proviso which requires consideration.

10. The Manual of Government orders is a compilation of various orders issued by the Government from time to time in exercise of its executive powers.

11. As observed by this Court in *Jai Prakash v. State of U.P. and others* 1983

Labour & Industrial Cases 341, the instructions contained in Manual of Government Orders requiring a government servant to exhaust departmental remedies before approaching the Court of law are not statutory and are administrative in nature.

12. The 'Rules' spoken of in the proviso refer to the service rule applicable to a Government servant under which recourse can be had to the departmental remedies as of Right. If, however, rules under Article 309 of the Constitution have not been made in respect of a particular service or department, the departmental remedies should have been indicated or prescribed in the instructions or orders issued by the appropriate authority or government in exercise of its executive powers in respect of the particular service or department. Every Government servant can file a memorial or representation before the Government and can seek redress of his grievances but this general remedy cannot be treated to be departmental remedy 'under the Rules' applicable to such government servant. Such general remedy would not operate as a bar to the institution of a claim petition before the Tribunal under Section 4 of the Act.

13. The Tribunal, therefore, ought to have first found out the service rules which were applicable to the petitioner and thereafter should have scanned those rules to find out whether there was any provision for a departmental appeal in a matter of promotion where an eligible person is overlooked and ignored and is not promoted at the appropriate time.

14. As observed earlier, U. P. Agriculture Service (Class II), Rules, 1964 do not contain a provision for any appeal being filed before any higher authority in a matter where a person is ignored and is not considered for promotion. It was, therefore, not open to the Tribunal to dismiss the claim petition on the preliminary ground referred to above.

15. In the instant case the claim petition was filed before the Tribunal in 1979 and it has been pending in the Tribunal for the last seven years. These circumstances should not have been ignored by the Tribunal which were set up to administer quick justice to the employees for whose benefit the Act itself was enacted by the State Legislature. In dismissing the claim petition after a lapse of seven years on the preliminary ground that the petitioner had not exhausted his departmental remedies which, as indicated above, were not available to the petitioner, the Tribunal, I am constrained to observe, has not acted fairly.

16. For the reasons stated above, the petition is allowed and the judgment and order dated 17486 contained in Annexure 4 is hereby quashed with the direction that the claim petition shall be tried afresh by the Tribunal and it shall be disposed of expeditiously. There will be no order as to costs.