

(2015) 09 AHC CK 0158

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 50782, 52660 of 2014, 2504 of 2015, 50602, 50604, 52496, 60686 of 2014, 5921, 5922 and 13464 of 2015

Mahaveer Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Constitution of India, 1950 — Article 166

Citation : (2015) 8 ADJ 546 : (2016) 2 ALJ 144 : (2015) 5 AWC 5154 : (2015) 3 UPLBEC 2526

Hon'ble Judges : M.C. Tripathi, J.

Bench : Single Bench

Advocate : Rohit Upadhyay, Ashok Khare, Umesh Kumar Singh, N.C. Tripathi and Satya Srivastava, for the Appellant

Final Decision : Disposed Off

Judgement

M.C. Tripathi, J.—Heard Shri Ashok Khare, Sr. Advocate assisted by Shri Rohit Upadhyay as well as Shri N.C. Tripathi and Shri Satya Srivastava, learned counsel for the petitioners. Learned Standing Counsel appears for the respondents. As the similar controversy is involved in all the writ petitions, they are being decided by this common judgment.

2. By means of present writ petitions, the petitioners have prayed for quashing the Government Order dated 7.6.2014 issued by the State Government; or alternatively to declare the same as a prospective operation alone not affecting pending proceeding based upon incidents and recommendations of date prior to 7.6.2014 and further prayed for direction to the respondents to consider and decide the recommendations for grant of out of turn promotion to the petitioners pending on 7.6.2014 in accordance with the office order and ignoring the Government Order dated 7.6.2014 within specified period.

3. The petitioners were initially appointed as constables/Sub Inspectors in civil police of the State on different dates. Each of the petitioner is in continuous

service from the date of their initial appointment. The work and conduct of each of the petitioner is fully satisfactory and there exist no complaint with regard to the working or conduct of the petitioners.

4. The services of the petitioners have been appreciated and appreciation letters were issued to them from time to time. Some of the petitioners have been awarded the gallantry award by the President and issued appreciation letters from time to time. Based upon the exemplary services some of the petitioners have been granted out of turn promotion.

5. It is averred that there exist an Office Order dated 3.2.1994 issued by the State Government under which provision has been made for grant of out of turn promotion to constables and Sub Inspectors/Platoon Commander in case of such members of the police personnel, who have demonstrated exemplary courage.

6. Based upon the aforesaid Office Order each of the petitioners has been recommended for grant of out of turn promotion on the basis of incidents in which the petitioners have demonstrated exemplary courage by the department. It is averred that all the petitioners were recommended for out of turn promotion on the basis of the incident prior to the issuance of Government Order dated 7.6.2014. The recommendation so made in favour of the petitioners continues to remain pending and till the date of issuance of Government Order dated 7.6.2014 no final decision has been taken either for granting out of turn promotion or by rejecting the same. It is submitted that there exists no justification for keeping the recommendations pending without taking any final decision thereon. There exists inordinate delay in according consideration for grant of such out of turn promotion as recommended in favour of the petitioners.

7. It is submitted that the similar controversy has been raised in Writ Petition No. 16879 of 2010 and Writ Petition No. 60687 of 2013, which was turned down by learned Single Judge. The aforesaid judgment was however set aside by a Division Bench of this Court by judgment dated 3.2.2014 passed in Special Appeal No. 117 of 2014, the relevant portion of which is reproduced as under:

"The issue as to whether out of turn promotions can legitimately be granted in accordance with law after the enforcement of the Rules is appropriately kept open so that the State Government may, in the first instance, take a considered decision thereon in accordance with law keeping in mind the provisions of Rule 26 of the two Rules of 2008 referred to above. This also raises an issue of policy, because even assuming that such promotions for acts of courage and bravery on the part of police officers is not permissible under the existing Rules, a considered view would have to be taken by the State as to whether any steps are required to be taken. We are not inclined to express any view, one way or the other, on that aspect of the matter.

In the circumstances, we direct that, in the first instance, the Principal Secretary (Home) shall, after eliciting the views of the Director General of Police, take a considered decision within a period of three months from today on the

administrative circulars for the grant of out of turn promotions and make a determination as to whether they would continue to remain in force after the enforcement of the 2008 Rules.

Based on the aforesaid decisions, the State Government may take an appropriate decision in respect of the case of the appellant which has been recommended by the superior officers of the Police Force, expeditiously and in accordance with law.

In the circumstances, we are also inclined to set aside the directions which have been given by the learned Single Judge to the State in the impugned judgment to recall all the out of turn promotions that may have been granted after the enforcement of the Rules. We do not find any basis or justification for the Court to pass such a generalized order in a petition which was one inter se between an officer of the Police Force and the State pertaining to his claim for the grant of an out of turn promotion. Accordingly, we allow the Special Appeal and set aside the impugned judgment of the learned Single Judge which shall, in consequence, stand substituted by the directions which have been given hereinabove."

8. It is stated that since no decision was taken by the State Government in this regard, the appellant in the aforesaid appeal has filed Contempt Application (Civil) No. 3407 of 2014 [Kandwa Kumar Mishra (S.I. in Civil Police) v. Anil Gupta, Principal Secretary, Home and others], which was disposed of on 28.5.2014 with following observations:

"Heard Sri Sanjay Kumar, learned counsel for the applicant.

This contempt application has been filed for punishing the opposite party for willful disobedience of the judgment and order dated 3.2.2014 passed by this Court in Special Appeal No. 117 of 2014 (Kandwa Kumar Mishra v. State of U.P. and others) by which this Court has passed the following order:

"In the circumstances, we direct that, in the first instance, the Principal Secretary (Home) shall, after eliciting the views of the Director General of Police, take a considered decision within a period of three months from today on the administrative circulars for the grant of out of turn promotions and make a determination as to whether they would continue to remain in force after the enforcement of the 2008 Rules.

Based on the aforesaid decisions, the State Government may take an appropriate decision in respect of the case of the appellant which has been recommended by the superior officers of the Police Force, expeditiously and in accordance with law."

It is stated in the affidavit filed in support of the contempt application that the applicant has served the certified copy of the judgment and order dated 3.2.2014 passed by this Court in Special Appeal No. 117 of 2014 on 14.2.2014, but no decision has yet been taken.

Prima facie, a case has been made out for willful disobedience of the judgment

and order dated 3.2.2014 passed by this Court in Special Appeal No. 117 of 2014. However, no notice is issued at this stage and the opposite party is granted three months further time to comply with the order dated 3.2.2014 passed by this Court in Special Appeal No. 117 of 2014 from the date of receipt of certified copy of the order of this Court.

In case the opposite party does not comply with the judgment and order dated 3.2.2014 passed by this Court in Special Appeal No. 117 of 2014 and the order of the date passed in the present application within the aforesaid period, it will be open for the applicant to approach this Court again.

With the aforesaid observations, this application is finally disposed of at this stage."

9. The applicant before the aforesaid contempt application namely Kandwa Kumar Misra is also before me in Writ Petition No. 52660 of 2014, whose claim for out of turn promotion has been rejected vide order dated 19.6.2014 relying on the Government Order dated 7.6.2014. It is submitted that the Director General of Police on being asked regarding continuance of the beneficial clause of legislation, two office memorandums dated 3.2.1994 were decided to be cancelled without any justifiable reason and accordingly a letter dated 7.6.2014 was issued by the Secretary, Government of U.P. to the Director General of Police, Lucknow whereby the aforesaid two letters/Office Memorandums dated 3.2.1994 were cancelled with immediate effect.

10. On 7.6.2014 the State Government has proceeded to issue a Government Order purporting to revoke the provision for grant of out of turn promotion as contained in the Office Order dated 3.2.1994 and instead to make provision for awarding cash reward/medal in case of exemplary courage demonstrated by members of the police department. Based upon the aforesaid Government Order dated 7.6.2014 no consideration is being accorded in the case of the petitioners pending prior to 7.6.2014 for grant of out of turn promotion to the petitioners.

11. It is averred that the provision for out of turn promotion has continued to exist since 3.2.1994 and on the basis thereof a large number of out of turn promotion has been granted on the basis of incident involving exemplary courage to the police personnel. The Government Order dated 7.6.2014 fails to indicate any rational reason for revocation of such a provision which is existing for the last 20 years. It is submitted that in any view of the matter the Government Order dated 7.6.2014 can at least have prospective effect and cannot have retrospective effect. There exist nothing in the Government Order dated 7.6.2014 which may indicate that on account of such Government Order all pending proceedings based upon earlier recommendations stand rejected/nullified. It is also submitted that the Government Order dated 7.6.2014 cannot be treated as a decision of the State Government on account of non-compliance of the provision of Article 166 of the Constitution of India.

12. Learned counsel for the petitioner has placed reliance on a judgment dated

11.8.2014 passed in Service Single No. 3968 of 2014 (Shiv Murti Mishra v. State of U.P. and another), the operative portion of which is reproduced as under:

"In the light of aforesaid observations of the Division Bench, learned counsel for the petitioner submits that since the petitioner's matter of giving out of turn promotion had been approved by the State Government prior to issuance of the Government Order dated 7.6.2014, there is no occasion for the respondents to restrain them from issuing a formal order. As the Government Order dated 7.6.2014 has been made applicable with immediate effect, he further submits that since the State Government has already approved the petitioner's out of turn promotion, therefore, it cannot be said that the Government Order dated 7.6.2014 comes in the way of his promotion.

On the other hand, learned Additional Chief Standing Counsel submits that admittedly till date no order of promotion has been issued and since the Government now has abolished the system of giving out of turn promotion, it would not be appropriate to issue order of promotion to the petitioner.

After considering the rival submissions of learned counsel for the parties, I find that it is not in dispute that the petitioner's effort in the incident reported above has been applauded by the superior authority and more so the Director General of Police took a decision to give him out of turn promotion. The State Government approved the same prior to issuance of aforesaid Government Order and further the Government Order dated 7.6.2014 has been given effect to the retrospective date, I am of the view that there is no hurdle for issuance of formal order to the petitioner for giving out of turn promotion. Therefore, I hereby issue direction to the respondents to issue appropriate formal order to the petitioner permitting him on the post of Inspector within one month from the date of production of a certified copy of this order. This direction is issued as consideration of the petitioner's matter for giving him out of turn promotion has been over and the State Government has already taken a final decision to give him out of turn promotion.

With the aforesaid observations and directions, the writ petition stands allowed."

13. Shri Ashok Khare, Sr. Advocate has also placed reliance on a Larger Bench judgment in Santosh Kumar Singh v. State of U.P. and others [Special Appeal (Defective) No. 215 of 2015] decided on 22.7.2015 in which the following questions have been referred to be decided by the Larger Bench:

"(a) Whether even after the rescission of Removal of Difficulties Orders under Section 33-E of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (U.P. Act No. 5 of 1982), with effect from 25 January 1999, the Committee of Management retains the power to make ad-hoc appointment against short term vacancies only because it had published an advertisement for the purpose prior to 25 January 1999;

(b) Whether on enforcement of Section 33-E of the Act rescinding the Removal of

Difficulties Orders issued earlier, the Committee of Management has lost all powers to make ad-hoc appointment against short term vacancies;"

14. Hon"ble the Larger Bench has answered the aforesaid questions in following terms:

"(a) Despite the rescission of the Removal of Difficulties Orders by Section 33-E of U.P. Act No. 13 of 1999 with effect from 25 January 1999, the power of the Committee of Management to make appointments against short term vacancies, where the process of appointment had been initiated prior to 25 January 1999 by the publication of an advertisement, would continue to be preserved;

(b) On the enforcement of the provisions of Section 33-E, the power of a Committee of Management to make ad hoc appointments against short term vacancies would not stand abrogated in a case where the process of selection had been initiated prior to 25 January 1999;"

15. Relying on the aforesaid judgment given by the Larger Bench, Shri Ashok Khare, Senior Counsel submits that the same analogy may also be applied in this case also.

16. Per contra learned Standing Counsel submits that the present matter relates to the out of turn promotion and the State Government in exercise of power under Section 2 of the Police Act has issued a Government Order on 7.6.2014 and cancelled the out of turn promotion system as mentioned under the Government Order dated 3.2.1994. In place of out of turn promotion the Government has taken a decision to award the police personnel by cash as well as medal. Therefore, after introducing the new system by the State Government, the petitioners have no right to claim out of turn promotion and the writ petition is liable to be dismissed with cost.

17. Learned counsel for the petitioner has averred in the rejoinder-affidavit that by order dated 10.2.2015 similarly situate persons have been granted out of turn promotion on the next higher post. The aforesaid order has been passed by the Director General of Police in pursuance of the directions issued by the State Public Service Tribunal, Lucknow in Claim Petition No. 334 of 2014 (Jitendra Singh Kalra v. State of U.P. and others).

18. Heard rival submissions, perused the record and respectfully considered the judgments cited at the Bar.

19. Just to appreciate the present controversy it would be appropriate to reproduce the relevant facts of Kandwa Kumar Misra and others v. State of U.P. and others (Writ Petition No. 52660 of 2014). The petitioner No. 1 (Kandwa Kumar Misra) (in short the petitioner") alongwith other petitioners were posted in District Chitrakoot and were given the task to arrest the harden criminal group of dacoit Shanker Kol @ Vinod Kol, P.S. Bargarh, Distt. Chitrakoot and while performing their duties with exemplary extraordinary courage they were successful in killing the dreaded criminal and therefore out of turn promotion in

ex-cadre was recommended by the Superintendent of Police. Various other awards, which were given to the petitioners have also been brought on record. The recommendation was pending consideration for long time and the petitioner was compelled to file Writ Petition No. 60687 of 2013 in which detailed counter-affidavit had been filed by which it had been intimated that the process for grant of out of turn promotion of the petitioner has already commenced and there was every hope to take positive decision for grant of out of turn promotion to the petitioner. The said writ petition was got connected with another pending Writ Petition No. 16879 of 2010 and vide order dated 13.1.2014 all the writ petitions were dismissed by learned Single Judge. The same was assailed by means of Special Appeal No. 117 of 2014, which was allowed by Hon'ble Division Bench vide order dated 3.2.2014 and the order dated 13.1.2014 was set aside.

20. As per the observations made by the appellate Court, no illegality was found in the Government Order dated 3.2.1994 and as such the State Government was held fully competent to grant such out of turn promotion and since in the counter-affidavit filed by the respondents the recommendations made in favour of the petitioners were found to be true and the issue was very much seized with the respondent authorities but because of the fact that the matter being of policy decision the issue was left to be open for the State Government to further issue order under Rule 26 of the Rules 2008 as the Rules 1994 was prior to Rule 2008. The direction issued by the appellate Court had not been complied by the State Government within reasonable time. The petitioner was compelled to approach to this Court by means of Contempt Petition (Civil) No. 3407 of 2014 and the said contempt petition was finally disposed of vide order dated 28.5.2014.

21. Learned counsel for the petitioner submits that the recommendations were made much prior to the issuance of the present Government Order and the matter was ceased before the competent authority. If they had taken decision within reasonable time even after the order passed by the appellate Court then the present order would not come in the way of their out of turn promotion. The petitioners were recommended for their respective act of bravery and courage for the incident on 21.2.2008, 7.2.2008, 25.5.2010 and 21.11.2012 and the recommendations were made for out of turn promotion by competent authority in pursuance to the office memorandum dated 3.2.1994. It is also averred in the writ petition that in the U.P. Sub Inspector and Inspector (Civil Police) Services (6th Amendment) Rules, 2013 the provisions of Sub-Rule (2) and Rule 5 are amended and under the amended provisions it had been clarified that the Inspectors (Civil Police) promoted on ex-cadre post meeting the requirement for promotion to the post of Inspector would also be eligible for promotion under sub-rule (a) of Rule 5, which gives an impression that out of turn promotion in ex-cadre is not a promotion on a permanent post and as such it is not discriminated to other police personnel working on the post of Sub Inspector but the same is beneficial clause providing the reward for extraordinary and courageous performance of duties by police officers and as such the same cannot be withdrawn and cancelled without any justifiable reason particularly the matter for

grant of out of turn promotion was pending before the respondent authorities and while others in the later period of incident were granted the said benefit of out of turn promotion. Exemplars have also been brought on record.

22. This Court is not testing the correctness of the Government Order dated 7.6.2014 but at the same time it is relevant to indicate that in all the matters the recommendations were made much prior to the issuance of the present Government Order.

23. The arguments advanced by Shri Ashok Khare, learned Senior Counsel to the extent that the analogy, which has been given by the Larger Bench in Santosh Kumar Singh (Supra) is also liable to be considered in the present facts and circumstances, wherein while responding to question (a) the Larger Bench had answered that despite the rescission of the Removal of Difficulties Orders by Section 33-E of UP Act No. 13 of 1999 w.e.f. 25 January 1999, the power of the Committee of Management to make appointments against short term vacancies, where the process of appointment had been initiated prior 25 January 1999 by the publication of an advertisement, would continue to be preserved.

24. It is also relevant to indicate that in compliance of the order dated 9.9.2014 passed by the State Public Services Tribunal, Lucknow in Claim Petition No. 334 of 2014 (Jitendra Singh Kalra v. State of U.P. and others), similarly situate persons namely Sub Inspector Jitendra Singh Kalra, Sub Inspector Rashid Ali, Head Constable Satyendra Kumar Rai, Constable Dhoom Singh and Constable Satyendra Singh have been granted out of turn promotion on the next higher grade vide order dated 10.2.2015 passed by the Director General of Police U.P. Lucknow, which is admittedly after issuance of the Government Order dated 7.6.2014.

25. All the petitioners have performed their duties with utmost dedication and courage and at the relevant point of time they had also legitimate expectation that if they perform their duty courageously, they would be benefited under the order dated 3.2.1994 but unfortunately no final orders had been passed in their favour inspite of the recommendations made by the competent authorities.

26. In the present matter it is also admitted situation that much earlier to the issuance of Government Order dated 7.6.2014 all the petitioners were recommended by a competent authority for out of turn promotion but the same has not culminated in the final order, therefore, in the interest of justice, this Court is of the view that the process for out of turn promotion had been initiated in the case of the petitioners in the light of the Office Order dated 3.2.1994. It is expected that the competent authority would decide the claim of the petitioners for out of turn promotion strictly in accordance with the procedure laid down prior to the issuance of present Government Order dated 7.6.2014 expeditiously and preferably within three months from the date of production of certified copy of this order. All the writ petitions are disposed of accordingly.