

(2014) 02 AHC CK 0208
In the Allahabad High Court
Case No : Service Single No. 790 of 2014

Mohammad Salman

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Citation : (2014) 3 ALJ 655

Hon'ble Judges : Ritu Raj Awasthi, J

Bench : Single Bench

Advocate : Yogendra Kumar Mishra, Advocate for the Appellant

Judgement

Ritu Raj Awasthi, J.—Notice on behalf of opposite parties has been accepted by the learned Chief Standing Counsel. Heard learned counsel for the parties.

2. The writ petition has been filed challenging the orders dated 01.02.2014 (contained as Annexure Nos. 1 & 2 to writ petition) whereby the petitioners have been asked to appear in the departmental examination fixed for granting regular promotion in class III.

3. Learned counsel for petitioners submits that the petitioners were initially appointed on class IV posts. Vide order dated 31.3.1993/10.6.1996, they were promoted on ad-hoc basis on the post of Junior Clerks. The petitioner No. 1 had earlier approached the Court by filing Writ Petition No. 7609 (SS) of 2006 (Mohd. Salman v. State of U.P. and others) wherein the Court vide order dated 23.8.2006 had disposed of the writ petition with direction to Regional Transport Officer, Lucknow to take a decision on the basis of recommendation dated 31.7.2006 and also considering Uttar Pradesh Regularization of Ad-hoc Promotions (On Posts Outside the Purview of the Public Service Commission) (First Amendment) Rules, 2001 (for short "Regularization Rules, 2001") and consider the regularization of petitioner in accordance with the Amended Rules, 2001. The claim of petitioner No. 1 for regularization, however, was rejected vide order dated 07.09.2006.

4. It is also submitted that the petitioner Nos. 1 & 2 had also filed Writ Petition No. 9336 (SS) of 1993 wherein the Court vide interim order dated 25.11.1993 had restrained the opposite parties from declaring the result of departmental examinations held for promotion in class III as the petitioners were deprived a chance to appear in the said examination. This writ petition was dismissed as having become infructuous in view of the fact that in the meantime the petitioners were given ad-hoc promotion vide order dated 10.6.1996.

5. Learned counsel for petitioners submits that under Uttar Pradesh Transport Department Ministerial Service Rules, 1980 (for short "Rules of 1980") the promotions of class III are to be made as per Rule 18, according to which the promotions are to be made on the basis of criteria of seniority subject to rejection of unfit by the selection committee on the basis of service record of the employees working in class IV. There is no procedure envisaged for holding departmental examination under the said Rule.

6. It is further submitted that since the petitioners have completed more than 18/21 years of service on promoted post on ad-hoc basis, as such, they are entitled to be considered for regularization under the Regularization Rules, 2001.

7. Learned Standing Counsel, on the other hand, submits that the petitioners were appointed on class IV posts. Their claim for promotion in class III is to be considered on the basis of promotion quota fixed in class III under Rule 5(2) of the Rules of 1980 read with relevant Governments Orders such as 31.8.1982 which have been now replaced by Uttar Pradesh Subordinate Offices Ministerial Group "C" Posts of the Lowest Grade (Recruitment by Promotion) Rules, 2001 (for short "Rules of 2001").

8. Submission is that quota of 20% in class III cadre is provided for promotion from class IV. As per the Rules of 2001, the criteria for promotion shall be merit on the basis of departmental examination. The employees working in class III who have educational qualification of High School and five years regular service shall be eligible to appear in the said departmental examination. The petitioners were given promotion vide office order dated 31.7.1993/10.6.1996 on purely ad-hoc basis. Office order dated 10.6.1996 clearly provides that for regular promotion petitioner would have to appear in the departmental examination/interview, etc. By the impugned orders, the petitioners have been given opportunity to appear in the departmental examination for getting regular promotion. There is no infirmity or illegality in the orders impugned.

9. Learned counsel for petitioners, on the other hand, tried to submit that vide promotion order dated 31.7.1993 the petitioner No. 3 was given promotion on ad-hoc basis, however, no condition to appear in the examination, etc. was mentioned.

10. I have considered the submissions made by the parties" counsel and gone through the records.

11. The admitted position is that the petitioners were initially appointed on class IV post. They have to be given regular promotion on class III post on the basis of quota provided for promotion in class III cadre from class IV. They were given promotion in class III purely on ad-hoc basis.

12. The Rules of 1980 deals with the recruitment and conditions of service of persons appointed to the Uttar Pradesh Transport Department Ministerial Service governing class III posts. Under Rule 5(2) of the Rules of 1980, 10% vacancies in Junior Clerk cadre are to be filled up from the employees working in class IV posts who have educational qualification of High School. The procedure for such promotion was initially governed by the Government Orders such as Government Order dated 31.8.1982 which has been subsequently replaced by the Rules of 2001. Rule 5 of the Rules of 2001 provides that class IV employees having required educational qualification and five years of regular service would be eligible to be considered for promotion in class III cadre. The Rules of 2001 also provide the criteria of merit for said promotions.

13. Rule 18 of the Rules of 1980 does not relate to the promotions from class IV to class III. It is with respect to the promotion on higher post/pay scale in the class III cadre such as from Junior Clerk to Senior Clerk, Senior Clerk to Head Clerk, etc.

14. By the impugned orders, petitioners have been asked to appear in the departmental examination for regular promotion which is as per the relevant procedure prescribed under the relevant rules, as such, in case the petitioners want regular promotion, they shall appear in the said examination.

15. So far as the claim of petitioner No. 1 for regularization on the promoted post is concerned, the claim of petitioner No. 1 has already been rejected by the opposite parties by passing order dated 07.09.2006 which is not under challenge in the present writ petition.

16. In any case, I am of the considered view that since the Rules of 1980 specifically deals with the recruitment and conditions of service of ministerial staff in the transport department, as such, that holds the field and the regular promotions of petitioners are to be made as per the provisions of the said Rules which are to be read along with relevant rules providing procedure for said promotion such as Uttar Pradesh Subordinate Offices Ministerial Group "C" Posts of the Lowest Grade (Recruitment by Promotion) Rules, 2001.

17. In this view of the matter, Uttar Pradesh Regularization of Ad-hoc Promotions (On Posts Outside the Purview of the Public Service Commission) (First Amendment) Rules, 2001 would not be applicable.

18. Even in case any employee such as Sharnim Ahmad was given benefit of the Regularization Rules, 2001 and was granted service benefits such as promotion on that basis that would not confer any right on the petitioners to seek parity in view of the fact that I have come to conclusion that the Rules of 1980 would hold

the filed in the present case and the regular promotions are to be given on the basis of said Rules. The writ petition being devoid of merit is dismissed.