
(2010) 04 UK CK 0077
In the Uttarakhand High Court

Mohan Nath Goswami and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Citation : (2010) 04 UK CK 0077

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, C.J.—Respondent Nos. 4 to 10 approached this Court by filing Writ Petition (S/S) No. 1479 of 2006, so as to impugn an order dated 18.10.2006. By the aforesaid order the authorities had decided to consider the claim of the aforesaid respondents for determining seniority in the cadre of Village Development Officers with reference to 24.11.1992. Respondent Nos. 4 to 10 accordingly approached this Court to assail the aforesaid determination rendered by the authorities. A learned Single Judge allowed the aforesaid writ petition by an order dated 29.12.2007. The impugned order dated 18.10.2006, furnished to the said respondents through a covering letter dated 01.11.2006, was quashed.

2. The order rendered by the learned Single Judge dated 29.12.2007 rendered in Writ Petition (S/S) No. 1479 of 2006 has been assailed through the instant special appeal by 18 appellants. The 18 appellants in the instant special appeal were inducted into the service of the Rural Development Department as Village Development Officers in 1982. The grievance of the appellants herein was, that the learned Single Judge, vide his order dated 29.12.2007 had passed an order, whereby respondent Nos. 4 to 10 were to be assigned the date 07.01.1981 for purposes of seniority in the cadre of Village Development Officers, and as such, the order rendered by the learned Single Judge had the effect of making respondent Nos. 4 to 10 senior to the appellants herein. It is pointed out that in the writ petitions filed by respondent Nos. 4 to 10, none of the appellants herein had been impleaded, even though the acceptance of the aforesaid petitions,

would have resulted in adverse consequential effects to the appellants herein, as has been the case.

3. During the course of the hearing of the instant special appeal, this Court allowed the appellants herein to pursue the instant special appeal, so as to impugn the order passed by the learned Single Judge on 29.12.2007, disposing of Writ Petition (S/S) No. 1479 of 2006.

4. In order to appreciate the controversy raised at the hands of the learned Counsel for the appellants, it is necessary to delineate certain relevant facts. First and foremost it is not a matter of dispute, that the appellants herein were inducted by direct recruitment as Village Development Officers in 1982. As against the aforesaid, respondent Nos. 4 to 10 were inducted into the service of the Rural Development Department, as Village Panchayat Officers prior to 1977. During the years 1977 to 1981, they were promoted as Village Development Officers. The order of their promotion from the post of Village Panchayat Officer to the post of Village Development Officer would have a strong bearing to the eventual determination of the present controversy. It is, therefore, necessary to notice herein, certain observations contained in their promotion order (from the posts of Village Panchayat Officer to the posts of Village Development Officer). The said order of promotion was appended to the writ petition filed by respondent Nos. 4 to 10 as Annexure-2. A perusal of Annexure-2 reveals, that the respondents were promoted, on temporary officiating basis, as a stopgap arrangement, against the post of Village Development Officers. It is this promotion order, which is sought to be made the basis of claiming seniority, by respondent Nos. 4 to 10.

5. The solitary contention advanced by the learned Counsel for the respondents is, that the order of promotion of respondent Nos. 4 to 10, on temporary officiating basis, as a stopgap arrangement, cannot vest in the respondents the right to determine seniority. In so far as the instant issue is concerned, learned Counsel for the appellants, in the first instance, invited our attention to the Subordinate Development Service Rules, 1972 (hereinafter referred to as the 1972 Rules). Rule 5 of the aforesaid Rules delineates the sources of recruitment. The same is being extracted hereunder:

5. Source of recruitment.-(1) Recruitment of the post Gram Sewak in the service shall be districtwise from the following sources-

(i) by direct recruitment, and

(ii) by selection from amongst the permanent employees of the Vikas Sangthan who offer themselves for such selection, in the manner indicated in Part V of these rules.

(2) Recruitment to the post of Vyayamshala Prashikshak, Keshettra Sangthan Karta and Panchayat Sewak shall be made district-wise by direct recruitment under Part V of these rules.

A perusal of Rule 5 reveals, that for promotion from amongst "permanent employees" of the department, the procedure envisaged has been provided for in Part-V of the 1972 Rules. Accordingly, it is also imperative to make a reference to Part-V of the 1972 Rules. Part V of the 1972 Rules bears the heading "Procedure for Recruitment". In so far as the present controversy is concerned, Rule 14 contained in Part-V of 1972 Rules is relevant. The same is, therefore being extracted hereunder:

14. Procedure of selection and list of candidates selected:

(1) The selection of candidates for all the categories of the service shall be made at the headquarters of each district of the State by a selection committee consisting of:

- (1) The District Magistrate or his nominee,
- (2) The Adhyaksh of Zila Panchayat,
- (3) The District Planning Officer,

The Chairman of the Committee shall be the District Magistrate himself. In his absence, the Adhyaksh, Zila Panchayat shall preside.

After the applications received by the District Planning Officer have been scrutinized by him, the Committee shall require such candidates as, on the scrutiny done by the District Planning Officer, are found qualified for appointment to the service under these rules, to appear at a written test. The candidates for direct recruitment under Rule 5, Sub-rule (1) (i) and Rule 5 Sub-rule (2) will be required to undergo a physical test also as prescribed in Appendix-D. The committee shall then call such number of the candidates for interview as may be ten times the number of vacancies to be filled in that year of the total number of candidates whichever is less. In assessing the merits of the candidates the committee shall have regard primarily for his having a rural background, his physique and general suitability for appointment to the service as well as other points indicated in Appendix "E". The marks allotted in the physical test and interview will be added to the marks obtained in the written examination.

(2) The Committee shall then draw up a common list of the candidates selected for direct recruitment under Rule 5, Sub-rule (1) (f) and Sub-rule (2) both for the general and Scheduled Caste candidates for Gram Sewak and Panchayat Sewak and arrange their names in order of their proficiency as disclosed by the aggregate marks finally awarded to each candidate. Appointment to the posts of Gram Sewak and Panchayat Sewak will be made according to the option of the candidate and his position in the merit list subject to the number of vacancies available.

A perusal of Rule 14 of the 1972 Rules reveals, that for promotion inter alia from the posts of Village Panchayat Officer to the posts of Village Development Officer, a candidate will have to participate in a process of selection, which includes the

participation in a written test, as also the determination of physical proficiency. The aforesaid selection process is to be conducted by a selection committee, comprising of the District Magistrate or his nominee, the Adhyaksh of Zila Panchayat and the District Planning Officer. In sum and substance, it is imperative to conclude from the provisions of 1972 Rules, that for promotion to the post of Village Panchayat Officer to the post of Village Development Officer, a candidate must be screened by a selection committee on the basis of a stipulated process of selection.

6. It is the submission of the learned Counsel for the appellants herein, that at the time of the promotion of respondent Nos. 4 to 10 from the posts of Village Panchayat Officer to the posts of Village Development Officer, none of them, were screened by the committee postulated under Rule 14 (contained in Part V of the 1972 Rules), or in the manner stipulated therein.

7. It is not a matter of dispute, that promotion from the posts of Village Panchayat Officer to the posts of Village Development Officer came to be regulated by the Uttar Pradesh Rural Development (Gram Sewak) Service Rules, 1980 (hereinafter referred to as the 1980 Rules) with effect from 07.10.1980 when the aforesaid Rules were published in the U.P. Gazette, extraordinary. Seniority under the 1980 Rules was liable to be determined under Rule 20. Rule 20 of the 1980 Rules is accordingly being reproduced hereunder:

20. Seniority.- (1) Except as hereinafter provided the seniority of persons in any category of post shall be determined from the date of the order of substantive appointment and if two or more persons are appointed together, by the order in which their names are arranged in the appointment order:

Provided that if the appointment order specified a particular back date with effect from which a person is substantively appointed, that date, will be deemed to be the date of order of substantive appointment and, in other case it will mean the date of issue of the order:

Provided further that, if more than one order of appointment are issued in respect of any one selection the seniority shall be as mentioned in the combined order of appointment issued under Sub-rule (2) of Rule 17.

(2) The Seniority inter se of persons appointed directly on the result of any one selection, shall be the same as determined by Selection Committee:

Provided that a candidate recruited directly may lose his seniority if he fails to join without valid reasons when vacancy is offered to him. The decision of the appointing authority as to the validity of reason shall be final.

A perusal of Sub-rule (1) of Rule 20 reveals, that seniority would be determined from the date "of the order of substantive appointment". The term "substantive appointment" has been defined in Rule 3 (i) of the 1980 Rules as under:

3. Definitions.- In these rules, unless there is anything repugnant in the subject

or context-

(i) "substantive appointment" means an appointment, not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the rules and, if there are no rules, in accordance with the procedure prescribed for the time being by executive instructions, issued by the Government; and

8. Since the rule of seniority postulates the determination of seniority only of those substantively appointed, it is apparent from the rule itself that the rule would not be applicable to determine seniority of persons promoted on ad hoc basis. Admittedly, the promotion granted to respondent Nos. 4 to 10 was not an ad hoc promotion. The order of promotion of respondent Nos. 4 to 10 issued in January 1981 described the same as, on temporary officiating basis, as a stopgap arrangement. But then Rule 3(i) of the 1980 Rules expressly clarifies, that the appointment which is to be treated as substantive appointment must be one, which has been...made after selection in accordance with the rules.... Under the 1980 Rules, the mode of recruitment has been expressed in Rule 5. Rule 5 of the 1980 Rules is also being reproduced hereunder:

5. Sources of recruitment.- Recruitment to the post of Gram Sewak shall be made by direct recruitment on the result of a competitive examination and the prescribed training if any.

Reserved for being filled on the basis of the said competitive examination from amongst selected candidates provided that upto 25 per cent vacancies may be reserved for being filled, from amongst the permanent Panchayat Sewak on the basis of the said competitive examination.

A perusal of Rule 5 of the 1980 Rules reveals, that promotion upto 25 per cent of the total vacancies can be made on the basis of a competitive examination. It is the submission of the learned Counsel for the appellants herein, that respondent Nos. 4 to 10 never participated in any competitive examination, and as such, their appointment in January 1981 cannot be termed as substantive appointment within the meaning of 1980 Rules.

9. Having examined the order of promotion of respondent Nos. 4 to 10 dated January 1981, we are satisfied that the same was not based on a process of selection as has been envisaged under the 1972 Rules, The committee envisaged under Rule 14 of the 1972 Rules was not constituted to consider the claim of respondent Nos. 4 to 10 for promotion to the post of Village Development Officer. The appointment of the said respondents as Village Development Officers is also not based on a competitive examination envisaged in Rule 5 of the 1980 Rules. As such, the appointment of respondent Nos. 4 to 10 as Village Development Officers can not be accepted as a substantive appointment within the meaning of Rule 3(i) of the 1980 Rules. Thus viewed, respondent Nos. 4 to 10 could not be allowed to take into consideration the date of their promotion as Village Development Officers, in January 1981, to determine their seniority in

consonance with Rule 20 of the 1980 Rules.

10. Despite our determination hereinabove, it would be unfair to the learned Counsel for respondent Nos. 4 to 10, unless we expressly delineate the submission advanced by him, so as to demonstrate that the promotion of respondent Nos. 4 to 10 was on a regular basis. In this behalf, reliance was placed on Annexure-3, appended to the Writ Petition (S/S) No. 1479 of 2006. Vide Annexure-3, respondent Nos. 4 to 10, on completing 10 years satisfactory service, were granted one increment with effect from 07.01.1981. Additionally, learned Counsel for the respondents placed reliance on Annexure-4 appended to the aforesaid writ petition. Vide the aforesaid Annexure dated 09.05.1997, respondent Nos. 4 to 10 were granted the first promotional pay scale on having completed 14 years of service with effect from 07.01.1995. In so far as the instant order is concerned, learned Counsel for the respondents emphatically invited our attention to the exact narration recorded therein, namely, that the respondents having rendered 4 years regular continuous service, after having been granted one increment (on completion of 10 years" service) were ordered to be released the first promotional pay scale (on completion of 14 years" service). It is, therefore, the submission of the learned Counsel for respondent Nos. 4 to 10, that for all intents and purposes, the authorities were treating the respondent Nos. 4 to 10 as having been promoted on regular basis in January 1981. Besides the aforesaid, learned Counsel for the respondent Nos. 4 to 10 also placed reliance on an order dated 01.09.2001, which was appended to the writ petition as Annexure-5. A perusal of the aforesaid order reveals, that the respondent Nos. 4 to 10, on having completed 19 years of regular satisfactory service on 07.03.2000, were granted one special increment. Thereafter, by an order dated 16.03.2005-Annexure 6 with the writ petition, respondent Nos. 4 to 10 were placed in the second promotional pay scale of Rs. 5000-8000 on having completed 24 years" regular satisfactory service. Herein again learned Counsel for respondent Nos. 4 to 10 emphasizes on the expression "regular satisfactory service", so as to demonstrate that the authorities for all intents and purposes had treated the employment of respondent Nos. 4 to 10, as regular with effect from 07.01.1981.

11. We have considered the aforesaid submissions advanced by the learned Counsel for respondent Nos. 4 to 10. We are, however, of the view that the authorities erroneously treated the promotion of respondent Nos. 4 to 10 from the posts of Village Panchayat Officer to the posts of Village Development Officer, as regular. The statutory rules, extracted hereinabove, envisaged a selection process/ competitive examination before such regular promotion/appointment could have been made under the relevant rules. It has not been shown to us, that respondent Nos. 4 to 10 ever participated in any such selection process/ competitive examination before the promotion order was issued in January 1981. In any case, the promotion order itself expressly notices, that the promotion of respondent Nos. 4 to 10 was, on a temporary officiating basis, as a stop-gap arrangement. No subsequent order has been brought to our notice, whereby the

promotion order issued in January 1981 was made regular, with effect from January 1981.

12. Having failed to demonstrate, that respondent Nos. 4 to 10 were promoted on regular basis in January 1981, from the posts of Village Panchayat Officer to the posts of Village Development Officer, they cannot claim seniority with reference to January 1981. The determination rendered by the learned Single Judge to the contrary, is therefore, liable to be set aside. The same is accordingly hereby set aside.