
(2004) 08 UK CK 0006

In the Uttarakhand High Court

Case No : Civil Writ Petition No. 1193 of 2001 (S/S)

Nagendra Kumar Jhildiyal and others

APPELLANT

Vs

Garhwal Mandal Vikas Nigam Ltd. and Others

RESPONDENT

Date of Decision : 07-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 UC 1560

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Mr. Ambarish Chatterji, instructed by Mr. V.K. Bist, for the Appellant;
Mr. Shobhit Saharia, instructed by Mr. U.K. Uniyal, for Respondent Nos. 1 to 3.,
for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble P.C. Pant, J.—This writ petition has been moved under Article 226 of the Constitution of India jointly by the six Petitioners who have sought writ of certiorari quashing the order dated 30.10.1999 whereby their representation for their promotion w.e.f. the date 01.03.1989 (when Respondent No. 4 was promoted) was rejected by the Respondent No. 2.

2. Brief facts of the case are that the Petitioners were engaged on daily wages by Respondent No. 1 namely, Garhwal Mandal Vikas Nigam Limited ("Nigam" for the sake of brevity) in the year 1986-87 on minimum pay of Rs. 425/- per month as Marketing Assist-ants. Later Respondent No. 4, namely Prem Kumar Joshi was also appointed as Marketing Representative (Jari Buti Marketing) w.e.f. 07.03.1987. The Petitioners were given consolidated pay of Rs. 1,100/- per month w.e.f. 01.07.1988 while the Respondent No. 4 was given Rs. 1,400/- per month for the same project. However, by order dated 24.08.1988 Petitioners were also given the consolidated pay of Rs. 1,400/- per month. Ignoring the seniority of the Petitioners, Respondent No. 4 was promoted to the pay scale of Rs. 515-865 w.e.f. 01.03.1989 (copy Annexure- 7 to the writ petition). Aggrieved

Petitioners claiming themselves as senior to Respondent No. 4 made a representation to the Respondent No. 2, the Managing Director of the Nigam, on which Respondent No. 4 was reverted to his original position but again on the representation of Respondent No. 4 order dated 24.07.1991 (copy Annexure- 12 to the writ petition) was passed placing Respondent No. 4 back on the pay scale of Rs. 515-865 (revised Rs. 1400-2300). Petitioners thereafter made several representations to the Respondent Nos. 1, 2 and but to no avail except that by order dated 24.05.1993 (copy Annexure- 16 to the writ petition) their services were regularized in the pay scale of Rs. 950-1500. The Petitioners have alleged that Respondent No. 4 has wrongly been given higher scale to the Petitioners, as he was junior to them. They knocked the doors of Allahabad High Court by filing writ petition No. 35866 of 1994. Meanwhile, Respondent No. 4 was further promoted to the post of Marketing officer in the pay scale of Rs. 1940-2900. The above mentioned writ petition was disposed of by the Allahabad High Court vide its order dated 23.04.1999 (copy Annexure- 20 to the writ petition) with liberty to Petitioners to make representation before the Respondent No. 2 i.e. Managing Director of the Nigam. Consequently, a representation dated 22.05.1999 (copy Annexure- 21 to the writ petition) was made by the Petitioners which was rejected vide order dated 30.10.1999 by Respondent No. 2. Aggrieved by which the present petition has been filed.

3. Respondent Nos. 1, 2 and 3 have filed their joint counter affidavit and contested the petition. In the counter affidavit the maintainability of the writ petition has been questioned on the ground that the Petitioners should have preferred the claim petition before the Labour Court under the Industrial Disputes Act, 1947. However, the factum as to engaging the Petitioners in the year 1986-87 on daily wages has not been denied by the Respondents. It is also not denied that Respondent No. 4 was given appointment in the year 1987 in the temporary capacity in Jari Buti Marketing Division of the Nigam In para 6 of the counter affidavit it is alleged that the Petitioner cannot claim parity with Respondent No. 4 as he was appointed as a temporary Marketing Representative against a sanctioned post unlike the Petitioners who were engaged on daily wages. As such the claim of seniority is false. On the pressure of the Petitioners, Respondent No. 4 was wrongly reverted after his pro-motion and that is why by order dated 24.07.1991 he was restored to his promoted position. The seniority list relied by the Petitioners was not a final seniority list as it only indicates the date on which the employees were engaged or appointed. The Nigam, sympathetically, considered the number of years put in by the Petitioners in service and sought sanction of certain posts so that their services may be regularized (copies of letters CA- 1(a), CA-1(b) and CA-1(c) to the writ petition). and services of Petitioners were regularized vide order 24.05.1993 after conducting screening against the available vacant posts for which they gave undertaking for not claiming arrears of pay from any previous date. However, they filed writ petition No. 35866 of 1994 before the Allahabad High Court claiming the seniority but did not claimed relief as against Respondent No. 4. The

representation of the Petitioners in compliance of the order passed in said writ petition after due consideration was rightly rejected by the Respondent No. 2. In the rejoinder affidavit the Petitioners have more or less repeated the averments made in the writ petition.

4. I heard Learned Counsel for the parties and perused the record.

5. The short question before this Court is that whether the Petitioners were wrongly denied the promotion due to them.

6. Admittedly, the Petitioners were engaged on daily wages in the year 1986-87 while the Respondent No. 4 was appointed in temporary capacity in the year 1987 as Marketing Representative. Copy of order of appointment of the Respondent No. 4 has been filed with the writ petition by the Petitioners themselves. There is no written order relating to the appointment of the Petitioners for the year 1986 or 1987 as they were engaged on daily wages. Learned Counsel for the Petitioners relied on the alleged seniority list (copy page 51 to the writ petition) and sub-mitted that the Petitioners are senior to Respondent No. 4. The list contained in page 51 to the writ petition nowhere says it to be a seniority list rather it is a simple list of the employees appointed on consolidated pay (minimum pay) including those engaged on daily wages, as such simply because some-one was engaged on daily wages prior to the person appointed on sanctioned post on temporary basis cannot be said to be senior to such appointee.

7. Mr. V.K. Bist, learned senior counsel for the Petitioners argued that the representation of the Petitioners have wrongly been rejected (copy Annexure- 1 to the writ petition) by the Respondent No. 2. Perusal of the impugned order dated 30.10.1999 shows that in compliance of the orders passed in writ petition No. 35866 of 1994 the representation of the Petitioners was considered and Petitioners were given consolidated pay of Rs. 1,100/- of Marketing Assistant w.e.f. 01.07.1988 which was later increased to Rs. 1,400/- vide order passed in July 1990. As to the case of Prem Kumar Joshi (respondent No. 4) in the impugned order it is mentioned that his appointment was temporary on the post of Marketing Representative w.e.f. 07.03.1987 and later given the senior scale of Rs. 515-865 w.e.f. 01.03.1989. It is further discussed in the impugned order that the Petitioners, at the time of their regularization in the year 1993 had given an undertaking that they will not claim any higher pay scale from previous date. As such the representation appears to have been rejected on the two grounds:

i) The case of Respondent No. 4 was on different footing as he was appointed as temporary Marketing Representative while the Petitioners were Marketing Assistants earlier on daily wages later on temporary basis, and

ii) The Petitioners at the time of their regularization have given undertaking not to claim higher pay scale from any previous date.

Assuming for a moment that the undertaking was given under compulsion by the

Petitioners to seek regularization, the another ground for rejection of the representation as mentioned above holds good. Period spent on daily wage engagement cannot be ac-counted for the purposes of seniority as against the person appointed against the substantive post. There was no vacancy available in substantive post for the Petitioners on the date when the Respondent No. 4 was appointed as Marketing Representative. The counter affidavits and annexure thereto clearly show that the Nigam was seeking sanction of posts from the Government so that the Petitioners may be regularized.

8. Lastly, on behalf of the Petitioners my attention was drawn on Rule 17 of General Service Rules (copy Annexure 21-A to the writ petition pg. 95-96) of Garhwal Mandan Vikas Nigam Limited which provides that promotion within various posts falling under Group "C" will be made 100% from amongst Corporation employees on the basis of seniority subject to rejection of unfit. It further says that the Group "C" posts at the lowest stage will be filled to the extent of 25% by pro-motion, from Group "D" provided suit-able candidates with requisite qualification are available from amongst Group "D" employees and 75% by open market recruitment. Copy of the appointment letter dated 07.03.1987 whereby Respondent No. 4 was appointed is Annexure- 4 to the writ petition which shows that the Respondent No. 4 was appointed as Marketing Representative. Learned senior counsel for the Petitioners failed to show me, if it was not the lowest post of the Group "C". That being so the Respondent No. 4 was eligible for promotion on his turn in the higher pay scale. At that stage the Petitioners were still on daily wages and their case could not have been considered for promotion with the Respondent No. 4 as the posts were still required to be sanctioned at the minimum pay scale for them.

9. In these circumstances, this Court is not inclined to interfere in the matter and writ petition is liable to be dismissed, which is accordingly dismissed. No order as to costs.