
(2006) 04 UK CK 0051

In the Uttarakhand High Court

Case No : Writ Petition No. 234 of 2003 (S/B)

Navin Chandra Joshi and Others

APPELLANT

Vs

Registrar Co-operative Societies and Others

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975 — Rule 26

Citation : (2006) 3 AWC 2795

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Manoj Tiwari, for the Appellant; Kailash Tiwari and Anil Kumar Joshi, for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means of this petition, moved under Article 226 of the Constitution of India, writ of certioran has been sought challenging the promotion order of respondents No. 3 and 4, who are alleged to be junior employees to the petitioners. Also, mandamus has been sought to prepare the seniority list of Group-III employees of the District Co-operative Bank, Almora.

2. Brief facts of the case, as narrated in the writ petition, are that the petitioners were appointed on the post of clerk-cum-cashier in the District Co-operative Bank between 1979 to 1983. Initially their appointments were made on daily wage basis (prior to respondents No. 3 and 4 who were also engaged in the same manner) and later considering their work and conduct they were given ad hoc appointments to the post and started getting regular pay scale. It is stated in the writ petition that service of the petitioners and respondents No. 3 and 4 were regularized by respondent No. 2 vide order dated 28.6.1993 (copy Annexure-2 to the writ petition) and the names of the petitioners figured at serial Nos. 18 to 24 while that of respondent Nos. 3 and 4, figured at serial Nos. 25 and 27, i.e., below the petitioners. It is alleged that Rule 26 of U.P. Co-operative Societies

Employees Service Regulations, 1975, provides that the seniority of the employees shall be determined on the basis of date of order of their substantive appointments in the category they are appointed and where two or more persons are appointed on the same date, in the order in which their names appear in the order of appointment. In the year 1995, a tentative seniority list was prepared and circulated by the bank in which the petitioner No. 7 (who was at serial No. 18, in the order by which his services were regularized), was placed at serial No. 32 while Sri Govind Singh Bisht (respondent No. 3, who was placed at serial No. 20 at the time of regularisation), was placed at serial No. 27 in the seniority list, i.e., above the petitioners. The petitioners filed objections against the tentative seniority list. It is alleged by the petitioners in the writ petition that without considering their objections, the respondent No. 2 settled the seniority of Group C employees illegally against which the petitioners made a representation dated 1.12.1995 (copy Annexure-5 to the writ petition). U.P. Co-operative Institutional Service Board, Lucknow, vide its order dated 27.7.1998, informed the bank that in view of the dispute regarding the seniority, the promotions proposed on the basis of the seniority list cannot be approved. Alleging that now respondent No. 2, has promoted 14 persons from Group III to Group II by means of an order passed in January, 2003, and included the names of respondents No. 3 and 4 in the promotion list who were junior to the petitioners. Meanwhile, on 6.2.2003, an advertisement has also been made for 12 vacancies of Group II post for direct recruitment, further affecting the petitioners as against respondents No. 3 and 4. Hence this writ petition.

3. Respondent No. 1 has filed the counter-affidavit in which it has been admitted that the petitioners were appointed on daily wage basis on the post of clerk-cum-cashier in the Co-operative Bank, Almora. It is stated in this counter-affidavit that in the year 1986, petitioner Navin Chandra Joshi and others, filed a Writ Petition No. 11538 of 1986, before the Allahabad High Court in which on 26.9.1986, following order was passed :

Heard learned Counsel for the parties. Respondents are restrained from interfering with the functioning of petitioners as clerk-cum-cashier in the various branches of District Co-operative Bank Ltd., Almora, and retain them on their respective post.

In compliance of said order, the petitioners were appointed on the post of clerk-cum-cashier on ad hoc basis on 14.10.1986. The respondents No. 3 and 4, joined their duties on the next day, i.e., 15.10.1986, while the petitioners joined thereafter. It is admitted that the services of the petitioners and respondents No. 3 and 4 were regularized vide order dated 18.10.1995. It is also admitted that the tentative seniority list of Group III employees was circulated by the bank. Only petitioners No. 2, 4, 5, 6 and 7 made representation against the tentative seniority list and after considering their objections, a final seniority list was published on 8.11.1995. It is alleged in the counter-affidavit of respondent No. 1 that the petitioners have not challenged the final seniority list, published on

8.11.1995, and now after seven years they have no right to challenge the promotion based on said seniority list.

4. Respondent No. 2, Secretary-cum-General Manager of District Cooperative Bank, Almora, has filed separate counter-affidavit in which also it has been admitted that the petitioners were appointed on daily wage basis as clerk-cum-cashier by the Bank between 1979 to 1983. Apprehending their disengagement, they filed Writ Petition No. 11538 of 1986, before the Allahabad High Court and in compliance of order dated 26.9.1986, passed by the Allahabad High Court, answering respondent gave ad hoc appointment to the petitioners on 14.10.1986 on the post of clerk-cum-cashier. Fresh joining was required to be given in pursuance of said order and petitioners gave their joining on different dates. Ad hoc appointments of the petitioners and respondents No. 3 and 4 are admitted to have been regularized vide order dated 28.6.1993. It is stated by respondent No. 2 also that on 18.10.1995, a tentative list of Group III employees was circulated and objections were invited. It is stated that only petitioners No. 2, 4, 5, 6 and 7 filed their objections and after considering the same final seniority list was published on 8.11.1995. The impugned promotions are said to have been made on the basis of said final seniority list.

5. A separate counter-affidavit has been filed on behalf of respondents No. 3 and 4, by respondent No. 3, in which it has been admitted that petitioners as well as the answering respondents were appointed on ad hoc basis vide order dated 14.10.1986, in compliance of the interim order dated 26.9.1986, passed in Writ Petition No. 11538 of 1986. It is further stated that respondents No. 3 and 4, joined their duties on 15.10.1986, while the petitioners joined on 16.10.1986 and thereafter. It is admitted that regularization of the petitioners and respondents No. 3 and 4 was made vide order dated 28.6.1993. It is alleged by these respondents also that the seniority list was finalized on 8.11.1995 and the petitioners did not challenge the same. It is stated by the answering respondents that the regularization order dated 28.6.1993, did not contain the names in order of seniority. And merely on the basis of order of names mentioned in the regularization order, the petitioners cannot be said to be senior to the answering respondents.

6. Heard learned Counsel for the parties and perused the record.

7. Admittedly, the petitioners as well as respondents No. 3 and 4, were appointed initially on daily wage basis with the District Co-operative Bank, Almora, on the post of clerk-cum-cashier. It is also not disputed that all of them were appointed on ad hoc basis vide order dated 14.10.1986 in compliance of order dated 26.9.1986, passed by Allahabad High Court in Writ Petition No. 11538 of 1986. The dispute relates to the seniority and consequently whether the promotion order in favour of respondents No. 3 and 4 are against the Rules or not?

8. Rule 26 of U.P. Co-operative Societies Employees Service Regulations, 1975, reads as under :

26. Seniority. Seniority in any grade or category of posts in a service under a Co-operative Society shall be determined by the date of order of substantive appointment of the employees in that grade or category, and where two or more persons are appointed on same date by the order in which their names appear in the order of appointment :

Provided that :

(a) the inter se seniority of persons appointed directly to any grade or category of posts shall be the same as has been determined by the Board at the time of selection ;

(b) the inter se seniority of persons appointed by promotion to any grade or category of posts, shall be determined by their seniority in the post held by them substantively prior to their promotion ;

(c) where appointment to any grade or category of posts is made partly by direct recruitment and partly by promotion from a lower grade or post, the inter se seniority of persons appointed from the two sources shall be determined by taking candidates alternately from the seniority lists drawn up under the foregoing provisions, the names of the employees on the list drawn under proviso (b) getting precedence over the names of employees included in the seniority list drawn under proviso (a).

Rule 26 provides that seniority in any grade or category is required to be determined by the date of order of substantive appointment of an employee in the grade or category he is appointed or where two or more persons are appointed on the same date by the order in which their names appear in the order of appointment. The appointment of petitioners as well as that of respondents No. 3 and 4 on daily wage basis cannot be said to be substantive appointment. Similarly, the appointment made on ad hoc basis also cannot be said to be substantive appointment it is only the regularized appointment, which can be said to be substantive appointment in the present case. The petitioners as well as respondents No. 3 and 4 were regularized vide order dated 28.6.1993. There were as many as 29 employees who were regularized through said order in the pay scale of Rs. 1,135 to 2,735. The names of the persons regularized as it is mentioned in the regularization order, are reproduced below :

1. Shri Sarvjeet Singh Rautela
2. Shri Diwani Ram Arya
3. Shri Deepchand
4. Shri Gajendra Singh Jeena
5. Shri Vijay Rawat
6. Shri Ramesh Chandra Kandpal
7. Shri Akhil Mohan Bhatt

8. Shri Rajendra Singh Bora
9. Shri Ganesh Datt Belwal
10. Shri Jagat Singh Dev
11. Shri Kunwar Singh Bhoj
12. Shri Jai Datt Kholiya
13. Shri Rajendra Lal Sah
14. Shri Balwant Singh Rawat
15. Shri Rajendra Singh Suyal
16. Shri Maheshwar Singh Chiral
17. Shri Thakur Singh Bisht
18. Shri Soban Singh Khani (petitioner)
19. Shri Bhawan Chandra Joshi (petitioner)
20. Shri Umesh Chandra Joshi (petitioner No. 3)
21. Shri Jeewan Singh Bisht (petitioner No. 2)
22. Shri Navin Chandra Joshi (petitioner No. 1)
23. Shri Govind Singh Bisht-I (petitioner No. 5)
24. Shri Vijay Kumar Sah (petitioner No. 4)
25. Shri Dinesh Chandra Pande (respondent No. 4)
26. Shri Hem Chandra Pant
27. Shri Govind Singh Bisht-II (respondent No. 3)
28. Shri Mohan Singh Bhoj
29. Shri Nirmal Kumar Tamta.

The regularization order dated 28.6.1993, which can be said to be substantive appointment of the petitioners does not say that the petitioners will be required to join afresh nor does it say that their seniority would be counted from the date they Joined their duties. In fact they were already in service on ad hoc basis. That being so, under Rule 26 quoted above, the seniority was to be given in order of the list mentioned in the regularization order. Therefore, the petitioners were senior as mentioned above to the respondents No. 3 and 4.

9. The ad hoc appointment order dated 14.10.1986, which is annexed as Annexure-2 to the writ petition and also Annexure-CA 2 to the counter-affidavit of respondents No. 3 and 4, clearly shows that the ad hoc appointments were made in compliance of the order passed in Writ Petition No. 11538 of 1986, filed

by the petitioners as well as the respondents No. 3 and 4. It is nobody's case that the said order contains the list of appointees in order of seniority of their joining on daily wage basis. Name of Naveen Chandra Joshi (petitioner), appearing first (in said writ petition), shows that the order in which the names are mentioned in ad hoc appointment letter is the order in which their names figure in the Writ Petition No. 11358 of 1986. That cannot be the basis of seniority.

10. As far as the contention of the respondents that respondents No. 3 and 4 joined their duties on ad hoc appointment on 15.10.1986, prior to the petitioners is concerned, it is clear from these documents that they were posted in the Head Office. Almora and Nanda Devi, Local Branch there. As such, their Joining on 15.10.1986, prior to the other appointees cannot make difference in the inter se seniority as all were appointed by the same order.

11. On behalf of the learned Counsel for the respondents No. 3 and 4, my attention was drawn to the principle of law laid down in State of Haryana v. Balwant Singh (1997) 1 U 459 LBEC. wherein it has been held that the date of joining is the relevant date in determining the seniority. However, said observation does not apply to the present case as unlike in said case, in the present case, rule relating to seniority (provided in U.P. Co-operative Societies Employees Service Regulations, 1975), is applicable and the respondents are bound to adhere to the same.

12. On behalf of the respondents, my attention was also drawn to the principle of law given in K.R. Mudgal and Others Vs. R.P. Singh and Others, , and it is argued that the promotion should not be disturbed after a long lapse of time. However, the said case law does not help the respondents in this case for the reason that in the case of K.R. Mudgal (supra), after 18 years of lapse, seniority list was challenged, questioning the appointment made 22 years ago. That is not the case here. Impugned promotions of the year 2003 are challenged in the same year.

13. For the reasons, as discussed above, the writ petition deserves to be allowed. The writ petition is allowed with the following directions :

(1) The petitioners shall be treated senior to the respondents No. 3 and 4 in grade III and they shall be given promotions as per the rules subject to their service record if the vacancies are available.

(2) Impugned promotions made in January. 2003 of respondents No. 3 and 4 shall not make them senior as against petitioners in grade II after they or any of them are promoted.

14. No order as to costs.