
(1997) 07 AHC CK 0218
In the Allahabad High Court
Case No : C.M.W.P. No. 14106 of 1995

Om Prakash Singh

APPELLANT

Vs

Commissioner of Trade Tax and Others

RESPONDENT

Date of Decision : 16-07-1997

Acts Referred:

Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 4(1), 4(2), 4(3), 4(4), 7

Citation : (1997) AWC 395 Supp

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Amar Nath Tripathi, for the Appellant;

Judgement

D.K. Seth, J.—Petitioner alleges that he was selected through the regular selection process by District Selection Committee, Agra against regular and substantive vacancy and was given appointment on 6.7.1978 (Annexure 1 to the writ petition) and inadvertently the word "ad hoc" was inserted in the appointment letter. Subsequently, he was transferred and ultimately confirmed and promoted to the post of Senior Clerk from the post of Junior Clerk in which he was initially appointed. His name was also reflected in the seniority list of the Junior Clerk. After 8 years of the promotion to the post, the Petitioner was sought to be reversed on the ground that he having been appointed on ad hoc basis, he could not get the benefit of length of service till the date of his appointment on regular post which is made on 21.4.1986. Therefore, by reason of such seniority, he is not eligible for being promoted to the post of senior clerk. This order is dated 19.4.1995 (Annexure VII to the writ petition) which has since been challenged by means of this writ petition.

2. Learned Counsel for the Petitioner Shri A. N. Tripathi, contends that the ground on which the Petitioner was sought to be reverted that he was not selected in accordance with Rule 7(1) of U.P. Regulation of Ad Hoc Appointments (on Posts outside the Purview of the Public Service Commission) Rules, 1979

(hereinafter called as the 1979 Rules), cannot be applied in the case of the Petitioner since the said rule came into force on 14.5.1979 whereas the Petitioner was appointed on 6.7.1978 and was not covered by reason of paragraph 4 of the said 1979, Rules. Therefore, according to him, the impugned order is liable to be quashed.

3. Learned standing counsel Shri R. C. Yadav, on the other hand contends that the Petitioner cannot claim benefit of his ad hoc appointment. He can claim his seniority only when his service was regularised and not before. Therefore, the order passed is justified. Since the Petitioner's service has been regularised under the said 1979 Rules, therefore, he cannot claim exemption from the purview of the said rule. Therefore Rule 7(1) of 1979 Rules is very much applicable to the Petitioner's case and the Petitioner having not been selected duly, he cannot get the benefit of promotion to the post of senior clerk.

4. I have heard Shri A. N. Tripathi, learned Counsel for the Petitioner and Shri R. C. Yadav, learned standing counsel.

5. The fact remains that the Petitioner was appointed on 6.7.1978. The appointment order, Annexure 1 to the writ petition, incorporate several clauses which indicates that the said appointment was a temporary appointment and not an ad hoc appointment. As rightly contended by Shri Tripathi, learned Counsel for the Petitioner, the conditions mentioned could not have been included in an ad hoc appointment. Since ad hoc appointee is attached to a particular office, therefore, the very condition that he may be transferred some where else indicates his appointment is something more than ad hoc. By an order dated 28.6.1979, the Petitioner was transferred from Agra to Azamgarh as is apparent from Annexure 2 to the writ petition. From the order dated 21.4.1986, Annexure 3 to the writ petition, it appears that after having received the police verification report the Petitioner was given temporary appointment on the condition mentioned therein. No counter-affidavit has been filed despite sufficient time having been given to the Respondents. Learned standing counsel submits that despite addressing letters to the concerned authority, even by registered post, no one had turned up. Therefore, the allegation that the Petitioner was selected through due selection process is taken to be admitted.

6. Be that as it may. The very appointment on ad hoc basis is in fact an appointment on temporary basis subject to the police verification. Since police verification was made on the appointment of the Petitioner, it cannot be said that the said appointment was ad hoc. Police verification is required in respect of an appointment which is made against the substantive vacancy and aimed it to be substantive though may be temporary. Then again it appears that the Petitioner was confirmed with effect from 1.9.1985 whereas the order of appointment on temporary basis is dated 21.4.1986. A person appointed on temporary post on 21.4.1986 cannot be confirmed from a date prior to his appointment. Therefore, the ad hoc appointment is in fact a temporary appointment and it was so treated by Respondent by reason of inclusion of the Petitioner in the seniority list as well

as transferred of him from one place to another. The very confirmation with effect from 1.9.1985 indicates that the Respondents treated the Petitioner to have been appointed on 6.7.1978. By an order dated 23.7.1986, a seniority list was prepared in which the Petitioner's name finds place at S1. No. 111 wherein the date of regular appointment is mentioned as 7.7.1978. Shri Tripathi, learned Counsel for the Petitioner submits that this seniority list has not been cancelled. He further contends that even if it is corrected, the same cannot be done without an opportunity to the Petitioner. No material is produced to show that the said list is incorrect. Thereafter by an order dated 31.3.1987, the Petitioner was promoted to post of Senior Clerk. The said order is Annexure 6 to the writ petition. The Petitioner's name was shown at Sl. No. 104 in the said list of promotion. Clause 2 of the said order, contained in Annexure 6 to the writ petition, indicates that person who had been appointed on ad hoc basis prior to 21.7.1978 would also be subject to the condition mentioned in para 2. Therefore, with full awareness of the Petitioner's appointment on ad hoc basis, the promotion was given treating the same to be date of his entry in the service as has been reflected in the seniority list.

7. In the facts and circumstances of the case, it is very difficult on the part of Respondent to deny the contention of Mr. Tripathi or, in other words, the claim of the Petitioner. Then again, 1979 rules on which the impugned order contained as Annexure 7 to the writ petition was placed, reliance does not help the Respondents.

8. Rule 7 of 1979 Rules prescribes that a person appointed under these rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with these rules and shall in all cases, be placed below the persons appointed in accordance with the relevant service rules or as the case may be, the regular prescribed procedure, prior to the appointment of such person under these rules.

9. The 1979 Rules as enacted did not include the case of the Petitioner. Inasmuch as, persons appointed before January 1, 1977 on ad hoc basis were brought under the purview of the said Rules. In terms of Rule 4 (3) and (4) such appointment can be regularised only through selection as contemplated therein provided he satisfies the test laid down in Rule 4 (1) and (2). Services of all other persdn who do not come within the purview of the said Rules were to be terminated in terms of Rule 8. But the Petitioners service was not so terminated. The rule was amended by notification dated 22.3.1984 by means whereof Rule 9 was inserted. By reason of Rule 9, the said rules became applicable mutatis mutandis to persons appointed on or before 1.5.1983. Even if it is assumed that the Petitioner became eligible to be regularised in terms of the said Rules, even then he has to be regularised in the process provided in Rule 4 (3) and (4). But the order contained in Annexure 3 does not disclose that the Petitioner was being regularised under the provisions of the said Rules. On the other hand, it discloses, that on receipt of police verification he was being appointed

temporarily after having been appointed on ad hoc basis since 6.7.1978. Therefore, it cannot be said that the Petitioner's seniority is required to be fixed in terms of Rule 7. Inasmuch as the appointment of the Petitioner does not appear to have been treated as regularised under the said Rules by the Respondents themselves at any point of time prior to the passing of the impugned order on 19.4.1995. On the other hand, his service was confirmed with effect from 1.9.1985. Unless the service is regularised under Rule 4 (3) and (4) of the said Rules, the question of fixing of seniority under Rule 7(1) does not arise. If he is selected through due selection process, in that event, his service would not be terminated under Rule 8 nor his seniority can be fixed under Rule 7. Now after having allowed the Petitioner to continue till 1995, it is not open to Respondents to say that he was not duly selected and reopen the case once again. Then again the very conduct of the Respondents clearly indicate that the Petitioner was treated to have been in service from 7.7.1978. By reason of such conduct, the Respondents are estopped from taking some other ground as has been sought to be taken in Annexure 7. Be that as it may, the very fact that the Petitioner having not been treated to be covered by the said 1979 Rules on the basis whereof the said reversion order is passed, the said order cannot be sustained. Further, no opportunity was afforded to the Petitioner before passing the said order dated 19.4.1995. By reason of the said order, the Petitioner is entitled to an opportunity before such an order is passed. On that account also, the order suffers from infirmity.

10. In that view of the matter, the impugned order dated 19.4.1995 (Annexure 7 to the writ petition) cannot be sustained and is liable to be quashed. Accordingly, a writ of certiorari do issue.

11. In the facts and circumstances of the case, since the order impugned has been quashed, the Petitioner is entitled to the salary which he ought to have been paid in the post of Senior Clerk right from the date of his promotion till he continues as if the impugned order was not passed. Respondent shall pay all arrears to the Petitioner for the period during which the salary of the Petitioner on the post of Senior Clerk was refused and refund all such amount, if any, that has been recovered from the Petitioner pursuant to the impugned order as early as possible preferably within four months from the date a certified copy of this order is produced before the concerned Respondent. Accordingly a writ of mandamus do issue.

12. Let a certified copy of this order be supplied to the learned Counsel for the Petitioner on payment of usual charges within a week.