
(2009) 03 AHC CK 0075
In the Allahabad High Court
Case No : Writ Petition No. 239 or 2009 (S.B.)

Onkar Singh Kadam

APPELLANT

Vs

State of U.P.and another

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Citation : (2009) 03 AHC CK 0075

Hon'ble Judges : U.K.Dhaon, J and Satish Chandra, J

Final Decision : Dismissed

Judgement

U.K. Dhaon and Dr. Satish Chandra, JJ.

1. Heard Sri P.K. Srivastava, learned Counsel for the petitioner, Sr, J.N. Mathur, learned Additional Advocate General, assisted by Sri D.K. Upadhyay, Chief Standing Counsel for opposite party No. 1, Sri S.K. Kalia, Senior Advocate, assisted by Sri Dhruv Mathur for opposite party No. 2.
2. The petitioner, being aggrieved by the order dated 12.1.2009 by which the extension of two years" service has been granted by the State Government to the opposite party No. 2, has filed the instant writ petition.
3. The petitioner has alleged that he was promoted on the post of Executive Engineer on 9.8.1993 and thereafter on the post of Superintending Engineer in August, 2000. The petitioner has also alleged that he was promoted on the post of Chief Engineer LevelII in November, 2002 and thereafter on the post of Chief Engineer LevelI in November, 2006. The petitioner has further alleged that he is eligible for promotion to the post of EngineerinChief as out of three posts of EngineerinChief two posts fell vacant and the charge of those two posts of EngineerinChief has also been given to the opposite party No. 2.
4. The learned Counsel for the petitioner submits that in compliance of the interim order dated 11.2.2009 the Departmental Promotional Committee considered the case of the petitioner and other eligible persons and promoted the

petitioner on the post of EngineerinChief by the order dated 27.2.2009. He further submits that the extension of two years' service, which has been granted by the State Government to the opposite party No. 2 is arbitrary and illegal.

5. Sri J.N. Mathur, learned Additional Advocate General assisted by Sri D.K. Upadhyay, Chief Standing Counsel on the basis of the averments made in the affidavit submits that in compliance of the interim order dated 11.2.2009 passed by this Hon'ble Court the State Government has considered the case of the petitioner along with one Sri Dharamveer Singh Sarawat for promotion to the post of EngineerinChief. By the order dated 27.2.2009 the petitioner and Sri Dharamveer Singh Sarawat have been promoted to the post of Engineerinchief and as such the writ petition has become infructuous. He further submits that since the petitioner has been promoted to the post of Engineerinchief the cause of action to pursue the instant writ petition no more survives and the grievance of the petitioner stands redressed and the writ petition deserves to be dismissed.

6. Sri S.K. Kalia, Senior Advocate assisted by Sri Dhruv Mathur, learned Counsel for the opposite party No. 2 submits that the order dated 12.1.2009 was challenged by the petitioner when he was not promoted on the post of Engineerinchief and as during the pendency of the writ petition the petitioner has been promoted on the post of Engineerinchief (Rural Roads) the writ petition has become infructuous and it deserves to be dismissed being infructuous.

7. We have considered the submissions made by the learned Counsel for the parties and gone through the record.

8. The petitioner has alleged that he was promoted on the post of Superintending Engineer in August, 2000 and on account of good work and conduct he was further promoted on the post of Chief Engineer LevelII in November, 2002. The petitioner has also alleged that in November, 2006, he was promoted on the post of Chief Engineer LevelI.

9. It is admitted case of the parties that there are three posts of Engineerinchief in the Public Works Department of the State Government. The opposite party No. 2 was holding the post of Engineerinchief (Head of the Department) and the charge of the posts of Engineerinchief (Rural Road) and Engineerinchief (Design and Planning) was also given to the opposite party No. 2, as alleged in the writ petition.

10. On the basis of the interim order passed by this Court, the case of the petitioner along with other eligible persons was considered for promotion to the post of Engineerinchief and by the order dated 27.2.2009 the petitioner has been promoted on the post of Engineerinchief along with Sri Dharamveer Singh Sarawat. The work relating to the post of Engineerinchief (Rural Roads) has been assigned to the petitioner by the order dated 27.2.2009.

11. A perusal of the impugned order dated 12.1.2009 reveals that the extension has been granted to the opposite party No. 2 in the interest of the work in the

department of P.W.D. in accordance with the Fundamental Rules 56 (a1) of the Financial Hand Book.

12. In relevant portion of the U.P. Fundamental Rules 56 (a1) is as follows:

"(a1) No Government servant shall be granted extension in service beyond the age of retirement of sixty years :

Provided that a Government servant dealing with budget work or working as a full time member of a committee which is to be wound up within a short period of time may be granted, by the Government, extension of service for a period not exceeding three months in public interest:

Provided further that a Government servant holding highly specialized technical job whose replacement has not been possible to be arranged before his retirement even after efforts made in this regard, may be granted extension of service up to the age of sixtytwo years, if such extension is unavoidable in public interest and the grounds for such extension are recorded in writing:

Provided also that the Government shall have the right to terminate the extension of service before the expiry of such extension by giving a notice in writing of not less than three months in the case of a permanent or, of one month in the case of a temporary Government servant, or pay an allowances in lieu of such notice."

13. At the time of filing the instant writ petition, the opposite party No. 2 was holding the charge of the other two posts of EngineerinChief. Since the petitioner has been promoted on the post of Engineerinchief along with Sri Dharamveer Singh Sarawat by the order dated 27.2.2009 as such no grievance to the petitioner regarding the extension granted to the opposite party No. 2 subsists. The relief for quashing the impugned order dated 12.1.2009 is not available to the petitioner subsequent to the order dated 27.2.2009 when promotion to the petitioner has been granted on the post of Engineerinchief.

14. The State Government while exercising the power under the second proviso to Rule 56 (a1) of the U.P. Fundamental Rules has granted the extension of service for a period of two years in public interest to the opposite party No. 2.

15. We are of the view that there is no illegality in the impugned order dated 12.1.2009 as the same has been passed by the State Government within its own domain.

16. The writ petition is devoid of merits. It is, accordingly, dismissed. The interim order, if any, is discharged.