
(2007) 02 AHC CK 0116
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 21149 with 20473 of 1997

Parmatama Prasad Yadav; Krishna Kumar Tripathi APPELLANT
Vs

District Information & Public Relation RESPONDENT
Department, U.P. Lucknow & Ors. State of U.P. & Ors.

Date of Decision : 01-02-2007

Acts Referred:

Citation : (2007) 02 AHC CK 0116

Hon'ble Judges : Ashok Bhushan, J

Final Decision : Allowed

Judgement

Ashok Bhushan, J.—Both these writ petitions have been heard together and are being disposed of by this common judgment. Affidavits have been exchanged between the parties and with the consent of the parties the writ petitions are being finally disposed of.

2. By both the writ petitions petitioners have challenged the order passed by the Director, Information and Public Relation Department, U.P. Lucknow dated 461997 cancelling the promotion of the petitioners made to the post of caretaker from the post of helper. Both the petitioners were appointed in the department as helper. Parmatama Prasad Yadav having been appointed on 621986 and Krishan Kumar Tripathi having been appointed on 1281980. The District Magistrate vide order dated 1321992 promoted to Parmatama Prasad Yadav on the post of Caretaker. Krishan Kumar Tripathi was promoted on 15121993 on the post of Caretaker. Both the petitioners joined their promotional posts and were working on the promotional posts since then. The order dated 461997 was passed by the Director, cancelling the promotion observing that the appointments were made by the District Magistrate/Commissioners which is irregular hence the petitioners are reverted to their original posts. The order dated 461997 has been challenged in the writ petitions. This Court passed an order dated 1042006 asking the learned Standing Counsel to file counteraffidavit bringing on record the copy of notification dated 1221951 and other relevant papers with regard to

authority who can be said to be appointing authority of caretaker. By supplementary counteraffidavit the learned Standing Counsel has brought on record the copy of the rules namely, Uttar Pradesh Suchana Evam Jansampark Vibhag Gair Takniki (Arajpatrit) Sewa Niyamawali, 1998. Learned Standing Counsel has also brought on record certain papers to show that the Director has been making appointments on the post of Caretaker.

3. Learned Counsel for the petitioners challenging the impugned order contended that the order impugned is liable to be set aside on the ground that the same was passed cancelling the promotion without giving any notice and opportunity to the petitioners. He further contends that the respondents themselves have filed copy of the order dated 21121996 of Director by which order the District Magistrates were directed not to make any appointment/promotion in future on the post of Caretaker. Learned Counsel for the petitioners submits that this letter itself admits that prior to the said date the District Magistrates were making promotions and appointments on the posts in District Information Offices of the district. Learned Standing Counsel replying the submission contended that the appointing authority being Director the appointment could not have been made and no purpose would have been served in giving opportunity to the petitioners.

4. I have considered the submissions of Counsel for the parties and perused the record.

5. There is no dispute that by order of the District Magistrate petitioners were promoted on the post of caretaker and after their promotion they had joined the promotional posts and were working on the promotional post on the dates when the order was passed cancelling their promotion in the year 1997. Both the petitioners have been working for more than three years on the promoted posts and had drawn salary of the promoted post. The petitioners have made specific allegation in the writ petition stating that the order cancelling their promotion and reverting them to their original post, was passed without affording opportunity and giving notice which allegations have not even denied in the counteraffidavit. The petitioners were promoted and having been working for more than three years on the promoted posts, the said promotion could not have been cancelled without giving any notice or opportunity. The apex Court in AIR 1990 SC 309, Sridhar v. Nagar Palika Jaunpur & Ors., has laid down that the order of promotion cannot be cancelled without opportunity and notice. The submission of the learned Standing Counsel that nothing would have been turned in case opportunity would have been also needs consideration. From the letter brought on the record by the counteraffidavit of the Director dated 21121996 it is clear that by the said letter the District Magistrates were directed not to make any appointment/promotion in future. The letter also noticed the facts that the District Magistrates in various District Information Office had been making appointment/promotion. In view of these facts it cannot be said that hearing would have been meaningless or without any purpose. Passing of the order in breach of principles of natural justice itself is a prejudice to a person who had

been adversely effected by the action. The order impugned cancelling the promotion having been without any notice and opportunity to the petitioners the same are liable to be set aside on this ground alone. It is also relevant to note that on the strength of the interim order dated 9th July, 1997 passed by this Court staying the impugned order petitioners have been working on the posts of caretaker. Learned Counsel for the petitioners has also brought on record the copy of the seniority list of the caretakers in which the petitioners have been duly shown. Considering all these facts ends of justice will be served in setting aside the impugned orders.

6. In the result, both the writ petitions are allowed. The impugned orders dated 461997 and 761997 are set aside. Parties shall bear their own costs.