

(2003) 01 AHC CK 0092
In the Allahabad High Court
Case No : C.M.W.P. No. 36911 of 2001

Prakash Chandra Purwar

APPELLANT

Vs

Secretary (Agriculture) and Another

RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 1 AWC 544 : (2003) 96 FLR 646

Hon'ble Judges : Prakash Krishna, J; M. Katju, J

Bench : Division Bench

Advocate : S.K. Srivastava, A.K. Srivastava and T.P. Singh, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J. 1. This writ petition has been filed against the impugned order dated 26.9.2001, Annexure-1 to the writ petition and for a mandamus directing the respondents to promote the petitioner to the post of Deputy Director of Agriculture.

2. Heard learned counsel for the parties.

3. The petitioner was selected and appointed as Assistant Agriculture Engineer on 26.6.1972 vide appointment order dated 1.8.1972, Annexure-2 to the writ petition. It is alleged in Para 4 of the writ petition that the work and conduct of the petitioner since the date of his appointment has always been appreciated by his superiors and no adverse entry was ever awarded to him. The petitioner completed over 29 years as class II employee in the department. In para 6 of the writ petition it is stated that the petitioner was the senior-most person in his cadre as would be evident from the tentative seniority list prepared by the department on 22.5.2001 wherein the name of petitioner finds place at serial No. 1. It is stated that the Director, Agriculture proposed to the State Government, that the petitioner be promoted to the rank of Deputy Director, as would be evident from the letter dated 24.6.2001, Annexure-4 to the writ petition in which

the name of the petitioner finds place at serial No. 6. His name is also mentioned in the seniority list Annexures-4A and 4B to the writ petition.

4. In para 8 it is stated that the several persons whose names are mentioned therein have been provisionally promoted but the petitioner has not been promoted. The petitioner made a representation for the redressal of his grievance vide Annexure-11 but to no avail. Hence, the petitioner filed Civil Misc. Writ Petition No. 26537 of 2001, in this Court which was disposed of by a Division Bench with a direction that his representation be considered by the Director of Agriculture. Since the direction was not complied with, the petitioner filed a contempt of court petition and it is alleged that this annoyed the respondents who rejected his representation by order dated 26.9.2001, Annexure-1 to the writ petition.

5. It is alleged in para 9 of the writ petition that the petitioner is entitled for promotion as Deputy Director on the basis of seniority-cum-suitability according to the relevant rules vide Annexure-13. The petitioner was granted selection grade w.e.f. 1.1.1986 vide order dated 13.2.1998. Hence, he filed this writ petition.

6. A counter-affidavit has been filed. In para 5 it is stated that a recovery of Rs. 2,614.15 has been issued against the petitioner and there were complaints during his work at Banda in which he was prima facie found guilty and disciplinary proceeding were initiated against him. In paras 8 and 9 of the counter-affidavit it is stated that the petitioner was not promoted as Deputy Director because of the enquiry against him regarding financial irregularities.

7. A supplementary counter-affidavit has also been filed and we have perused the same.

8. In para 5 of the rejoinder-affidavit, it has been stated that recovery of Rs. 2,614.15 as stated in para 5 of the counter-affidavit relates to district Lalitpur where the petitioner was posted 17 years ago in the year 1986-87 while the recovery order was issued in the year 1998-1999, i.e., after about 12 years. Petitioner even deposited that amount. As regard the Technical Audit Cell report Annexure R.A. 1 the petitioner made an objection against it before the Deputy Director, who found no irregularities vide Annexure-R.A. 1. It is further stated that no charge-sheet has been served on the petitioner nor any disciplinary enquiry is pending against him. In para 6, it is stated that the petitioner is at serial No. 55 of the seniority list Annexure-S.A. 1, while persons shown in the list have been promoted.

9. In our opinion, since the Deputy Director has found that there is no substance in the allegation against the petitioner vide Annexure R.A. 1 and since there is no charge-sheet or disciplinary proceeding against him, there was no occasion for denying him for provisional promotion when others juniors to him have been granted provisional promotion.

10. It is not necessary for us to go into the allegations of the mala fide levelled by the petitioner since no one has been impleaded by name as a respondent. However, we feel that the petitioner has been treated arbitrarily, and has been discriminated against. We, therefore, allow the writ petition and quash the impugned order Annexure-1 to the writ petition and direct that he be given provisional promotion as Deputy Director forthwith. However, regular promotion will be subject to any adverse finding in the disciplinary proceeding which may be Initiated against him.