
(2006) 09 AHC CK 0199
In the Allahabad High Court

Prem Chandra Dubey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 AWC 810

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Shri H.C. Singh on behalf of the petitioner, Standing Counsel on behalf of the respondents.

2. These four writ petitions have been filed by employees who have been working as Draftsmen in the Irrigation Department of the State of U.P. as well as by their Association. All these writ petitions are directed against the orders issued vide letter of the Director, Adhishtan Punarikshan Bureau (Finance), U.P., Lucknow whereby after test checking it has been pointed out that payment of promotional pay scale as well as second promotional pay scale to the Draftsmen working in the Irrigation Department of the State of U.P. has wrongly been fixed accordingly consequential orders have been issued by the Engineer in Chief as well as by the other subordinate officers of the Irrigation Department for re-fixation of the same as well as for recovery of the excess amount paid to the petitioners.

3. For the purposes of the present writ petition the following facts may be recorded:

Petitioners have been admittedly working as Draftsmen in the Irrigation Department of the State of U.P. The service conditions applicable to the petitioners are regulated in accordance with the Uttar Pradesh Sinchai Vibhag Rekhanak Adhishtan Sewa Niyamavali, 1984. On the recommendations of the Pay Committee 1997-98 the Principal Secretary (Finance) issued a letter dated

2.12.2000 addressed to all the Secretaries and Head of the Departments of the State of U.P. which amongst other provided that on completing 14 years of service which would include six years of service after grant of selection grade the employee would become entitled to next higher promotional grade (termed as first Promotional pay scale). With reference to next promotional post available it is provided that in case where no promotional post is available, next higher pay scale applicable shall be granted on personal basis. Similarly on completing 24 years of service which would include five years of satisfactory service after grant of first promotional pay scale the candidate would be entitled to grant of second promotional pay scale. The mechanics for calculation of the grant of aforesaid promotional pay scale has been more specifically detailed in the government order dated 2.12.2000 which has been enclosed as Annexure -4 to the writ petition.

4. On the strength of the government order dated 2.12.2000 the petitioners were granted first promotional pay scale of Rs. 5000-8000 (pay scale applicable to the post of Computer) on their completing 14/16 years of satisfactory service. They were further granted second promotional pay scale of Rs. 8000-13,500 on their completing 24 years of satisfactory service.

5. By means of the impugned order issued in pursuance of the checking report of the Director, Punarishthan Bureau (Finance) U.P., Lucknow it has been directed that the petitioners would be entitled to the pay scale of Rs. 4500-7000 as the first promotional pay scale and Rs. 5000-8000 as the second promotional pay scale. Consequentially excess amount paid to the petitioner is to be recovered. It is against this order that the present writ petition has been filed.

6. It may be recorded that the aforesaid government order has been explained vide government order dated 20.8.2004 specifically paragraph six wherein it has been clarified that promotional pay scale with reference to the next post available for promotion under the government order dated 2.12.2004 would mean the next post available for promotion only on the basis of seniority and no other additional qualification is required to be possessed by the candidate concerned or any examination is required to be cleared for the grant of promotion to the said higher post.

7. The aforesaid explanation as contained in the government order dated 20.8.2004 is not under challenge in the present writ petition and, therefore, it has to be accepted as it is.

8. Under the service rules applicable to the petitioners it is no doubt true that the next higher post for promotion available to the Draftsmen is the post of Computer. Promotion on the post of Computer is regulated by Rule 5(3) read with Rule 17 of the aforesaid rules. For ready reference Rule 5(3) and 17 as quoted herein below:

(3) Sanlagnak Aise Nakshanaviso Mein Se Padonatti Dwara Jinhone:

(Ka) Nakshanavis Ke Roop Mein Vibhag Mein Kam Se Kam Panch Varsh Ki Nirantar Sewa Ki Ho,Aur

(Kha) Parishisht "Kha" Mein Di Gayi Prakriya Aur Pathyakram Ke Anusar Vibhag Dwara Sanchalit Aharkari Pariksha Uttirn Kar Li Ho, Ya

Nakshanavis Ke Pud Per Sidhi Bharti Ke Liye Niyam Mein Vihit Apekshit Ahartayen Rakhta Ho. Arakshan 6- Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Shreniyon Ke Abhyarthiyon Ke Liye Arakshan Bharti Ke Samay Pravrita Sarkari Aadeshon Ke Anusar Kiya Jayega.

9. From the aforesaid rules it is apparently clear that for being considered for promotion on the post of Computer it is necessary that the Draftsmen should (a) have competed more than five years of service in the department.

(b) had passed the departmental examination as per the details given in Schedule B to the rules. Schedule B in turn lays down the details of the examinations and the procedure to be followed. Relevant portion of Pasistha Kha is being quoted herein below:

Nakshanavis Ke Pud Se Sanlagnak Ke Pud Per Padonnati Ke Liye Aharkari Pariksha Ke Niyam Aur Pathya Vivran.

1. Niyukti Pradhikari Pariksha Lene Ke Liye Ek Samiti Namnirdisht Karega. Samiti Mein Ek Adhikshan Abhiyanta Aur Do Adhishasi Abhiyanta Honge.

2. Pariksha Mein Sammilit Hone Ke Liye Avedan Patra Adhishasi Abhiyantayon Dwara Ekatra Kiye Jayenge Aur Pariksha Samiti Ko Agrasarit Kiye Jayenge.

3. Pariksha Samiti Pariksha Prarambh Hone Ke Kam Se Kam Do Saptah Purva Nakshanavison Ko Adhishasi Abhiyantayon Adhikshan Abhiyantaon Ke Madhyam Se Ya Yathasthiti, Seedhe Unke Anukramank, Pariksha Ka Karyakarm Aur Sthal Ki Soochna Degi.

4. Pariksha Mein Sammilit Hone Ke Liye Nakshanavis Duty Per Samjhe Jayenge Kintu Unhe Koi Yatra Bhatta Anumanya Nahi Hoga.

5. Pariksha Nimnlikhit Vishyon Mein Hogi Aur Sabhi Vishay Anivarya Honge --

Vyaktigat Ank

1. Pratham Prashna Patra Rekhankan 75 2. Dwitiya Prashna Patra Chetramiti 75
3. Sakshatkar Samanya Gyan Aur Pud Ke Liye Upyuktata 50

10. In view of the aforesaid provisions of the Service Rules it cannot be disputed that promotion on the post of Computer from amongst the persons working as Draftsmen necessarily requires amongst other conditions passing of the departmental examination conducted by the department. Therefore, it cannot be said that the promotion on the post of Computer from amongst the persons working as Draftsmen is made only on the basis of seniority subject to rejection of unfit of inasmuch as senior candidate who could not qualify the departmental

examination as per the details given in Schedule "B" are ineligible to be considered for promotion. In light of the aforesaid legal situation read with government orders it has to be seen as to whether the petitioners could be held entitled to first promotional pay scale i.e. the pay scale admissible to the post of Computer as well as the second promotional pay scale with reference to the next higher scale applicable to the post of Computer in light of the government order or not.

11. The position in that regard has also been explained under the letter of the Director, Punarishthan Bureau (Finance) U.P., Lucknow dated 9.6.2005, relevant portion whereof reads as follows:

2 Sinchai Vibhag Uttar Pradesh Drawing Adhishthan Sewa Niyamawali, 1984 Ke Niyam-5 Ke Anusar Sanlagnak Ka Pud Aise Nakshanavis (Manchitrakar) Se Padonnati Dwara Bhara Jana Hai, Jinki 5 Varsha Ki Sewa Ho Evam Jinhone Vibhag Dwara Sanchalit Aharkari Pariksha Uttirna Kar Li Ho Athwa Nakshanavis (Manchitrakar) Ke Pud Per Sidhi Bharti Ke Liye Vihit Apekshit Ahartayen Rakhta Ho. Is Prakar Sanlagnak Ka Pud Nakshanavis (Manchitrakaron) Ki Padonnati Ka Pud To Hai Kintu Is Pad Per Padonnati Ki Vyavastha Matra Varisthta Evam Upyuktta Per Adharit Nahi Hai. Niyamawali Ke Upyukt Pravidhano Se Yah Spasht Hai Ki Yadi Koi Nakshanavis (Manchitrakar) Nirdharit 5 Varsha Ki Sewa Purna Kar Leta Hai Evam Vah Varishtta Evam Upyuktta Ke Aadhar Per Pronatti Ki Aharta Rakhta Hai Parantu Usne Vibhag Dwara Sanchalit Aharkari Pariksha Uttirna Nahi Kiya Hai Athwa Nakshanavis (Manchitrakar) Ke Pud Per Bharti Ke Liye Vihit Apekshit Ahartayen Nahi Hai To Anytha Patra Hote Hue Bhit Uski Padonnati Nahi Ho Sakegi. Is Prakar Nakshanavis (Manchitrakar) Ko Sanlagnak Ke Pud Ka Vetanman Samayman Vetanman Ki Vyavastha Mein Anumanya Nahi Hai. Jaisa Ki Shasanadesh Sankhya Ve.Aa.-2-257/Dus-2004-45(M)-99 dated 20th August, 2004 Ke Spashtikaran Ke Prastar-6 Mein Ullekh Kiya Jata Hai. Is Prakar Sinchai Vibhag Ke Nakshanavis (Manchitrakaron) Ko Rs. 1400-2300/4500-7000 Ka Pratham Pronnat Vetanmaan Evam Rs. 5000-8000 Ka Dwitiya Vetanmaan Vyaktik Roop Se De Hoga.

Kripya Uproktanuser Nakshanavis (Manchitrakaron) Ke Vetan Nirdharan Mein Sanshodhan Evam Kiya Gaye Adhik Bhugtan Ki Vasuli Sunishchit Ki Jaye.

12. In view of the aforesaid it cannot be disputed that the petitioners were not entitled for grant of first promotional pay scale of Rs. 5000-8000 on completing 14/16 years of service and second promotional pay scale of Rs. 8000-13,500 on completing of 24 years of satisfactory service inasmuch as the aforesaid pay scale are admissible to the post of Computer which as already recorded herein above cannot be said to be the next promotional post available for being filled on the criteria of seniority subject to rejection of unfit only.

13. The petitioners have, therefore been rightly held to be entitled for grant of first promotional pay scale of Rs. 4500-7000 and second promotional pay scale of Rs. 5000-8000 on completing 14/18 years of service and thereafter 24 years

of service respectively. Direction issued by the Director, Punarishthan Bureau (Finance) U.P., Lucknow as contained in the letter dated 9.6.2005 referred to herein above are based on correct and true appreciation of the government orders dated 2.12.2000 read with government order dated 20.8.2004. No interference with the direction so issued is warranted under Article 226 of the Constitution of India.

14. This leads us to the issue as to whether the respondents are justified in recovering the excess amount if any, paid to the petitioner because of wrongful fixation of their salary in the first promotional pay scale and the second promotional pay scale when there are no allegations of misrepresentation/fraud having been played by the petitioners.

15. The Hon"ble Supreme Court of India as well as Division Benches of this Court have repeatedly held that any amount paid in excess to the employee concerned because of wrongful fixation of salary where no misrepresentation/fraud is alleged against the employee cannot be recovered.

16. In view of the aforesaid settled legal position any excess amount paid to the petitioners because of the wrongful fixation of salary in the promotional pay scale cannot be recovered inasmuch as no fault can be attributed to the petitioners.

17. In view of the aforesaid the writ petition is dismissed to the extent it challenges the re-fixation of the salary of the petitioners in the first promotional pay scale as well as in the second promotional pay scale in accordance with the directions issued under the letter of the Director, Punarishthan Bureau (Finance) U.P., Lucknow dated 9.6.2005. However any salary already paid upto the date of the order i.e. 9.6.2005, in excess to what the petitioner was entitled, because of wrongful fixation of the salary as aforesaid cannot be recovered.

18. Future salary of the petitioners shall be paid only in accordance with the directions issued under the letter of the Director, Punarishthan Bureau (Finance) U.P., Lucknow dated 9.6.2005. Any amount paid in excess under the interim orders of this Court shall be recovered from the future salary of the petitioners.