

(2011) 12 AHC CK 0109

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5835 (S/S) of 2005

Pyare Lal Vishwakarma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 11 ADJ 853 : (2012) 132 FLR 976

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Anil Kumar, J.—Heard Sri R.B.Tiwari, learned counsel for petitioner, Sri Manjit Shukla, learned Standing Counsel and perused the record.

2. By means of the present writ petition, the petitioner has prayed for direction to promote the petitioner from Class-IV category to Class-III category in the Public Works Department, State of U.P.

3. Shri R.B.Tiwari, learned counsel for petitioner in order to press the above said relief submits that the petitioner was initially appointed on the post of Waterman in the Public Works Department (hereinafter referred to as P.W.D.), thereafter seniority list in respect of persons working in the P.W.D. Department was issued by the Executive Engineer, Construction Division-2, P.W.D. Pratapgarh in which the name of the petitioner finds place at serial No. 2.

4. He further submits that on 28.4.2000 (Annexure No. 2) Chief Engineer, Allahabad Range, P.W.D., Allahabad issued a letter/order by which 3 posts were sanctioned to be filled up by way of promotion amongst the persons working as Class-IV employee and accordingly a direction has been issued to the Executive Engineer, Construction Division-2, P.W.D., Pratapgarh to fill up the said post.

5. In response to the same, the Superintending Engineer, Pratapgarh/Fatehpur

Circle, Public Works Department, Pratapgarh issued a circular/letter inviting application for promotion from the post of Class-IV category to Class-III category.

6. Learned counsel for petitioner further submits that the petitioner, who is eligible in the said exercise for promotion to Class-IV category, submitted an application, thereafter a letter has been issued by the Assistant Engineer, Provincial Division, P.W.D. Pratapgarh dated 1.10.2004 (Annexure 3) thereby calling the petitioner and other eligible candidates to appear in the promotional exercise scheduled to take place on 8.10.2004, the petitioner and other candidates were directed to appear in the written examination for the purpose of promotion to the Class-III post but his case has not been considered

7. In view of the abovesaid facts, the petitioner submitted a representation to the Superintending Engineer, Pratapgarh/Fatehpur Circle, Public Works Department, Pratapgarh/ opposite party No. 3 inter alia stating therein that the action on the part of the department to hold the examination for the purpose of promotion to the post of Class-III employee is illegal and arbitrary in nature as the promotion is to be done under 15% quota by way of seniority.

8. Shri R.B.Tiwari, learned counsel for petitioner further submits that the case of the petitioner has also been recommended to the Executive Engineer, Construction Division-2, P.W.D. Pratapgarh for promotion on the ground that he is fully eligible in pursuance to the requisite qualification and belongs to reserve category and nothing has been done in the matter in question and the case of the petitioner has not been considered for promotion inspite of repeated request and reminder made in this regard. Inspite of the fact that he is the senior most employee working as Class-IV employee in the Provincial Division in question, his case ought be considered for promotion to the next higher post of Class-III category under promotional quota but one Shri Raja Ram Pal who is junior to the petitioner in Class-IV category in Construction Division-II, P.W.D., Pratapgarh has been promoted to Class-IV category whereas he has been denied the promotion, hence the said action on the part of the official respondent is arbitrary in nature and thus violative of Article 14 of the Constitution of India. Hence the present writ petition has been filed.

9. Shri Manjit Shukla, learned Standing Counsel submits that the for promotion from Class-IV category to Class-III category in P.W.D. an employee/candidate who is working in Class-IV category has to appear in an examination which is to be conducted by the authority of the P.W.D. as per the procedure provided for promotion from Class-IV post to Class-III post. In the instant case direction was given by the Chief Engineer, Allahabad, P.W.D. by his letter dated 28.4.2000 for conducting the promotional exercise and accordingly examination was held on 9.10.2004 in which the petitioner and the other candidates including Shri Raja Ram Pal appeared and the petitioner was unsuccessful whereas Shri Raja Ram Pal had passed the said examination thereafter by order dated 19.11.2004 to class-III category in the division.

10. In this regard learned counsel for respondent has relied on the averments made in paragraphs 13 and 14 of the counter-affidavit which on reproduction reads as under :

That in reply to paragraphs 13 and 14 of the writ petition it is submitted that the petitioner was invited to appear in the examination held for the promotion from the Class-IV post to the Class-III post and he had appeared in the examination but as he could not succeed in the said examination, he is not entitled for his promotion.

That the contents of paragraph 15 of the writ petition are not admitted as stated. It is denied being misconceived that there is any vacancy on the Class-III post under the promotional quota. It is submitted that for promotion from the Class-IV post to the Class-III post, an examination was held on 9.10.2004 in which he had participated. The candidate who were declared successful on the basis of their merit were promoted vide office order No. 5431/19 E.Pra.Fa.Vri./04 dated 9.11.2004 of the Superintending Engineer, Pratapgarh/Fatehpur Circle, a copy of which is being enclosed herewith as Annexure No. CA-1 to this Affidavit. Since the petitioner could not pass the said examination, he could not be promoted. Anything, as alleged by the petitioner which are contrary to the above, are wrong and denied being misconceived.

11. Accordingly, he submits that the present writ petition filed by the petitioner lacks merit and the petitioner is not entitled for promotion from the post of Class-. IV post to Class-III post in P.W.D. only on the basis of seniority as submitted on his behalf, so the present petition filed by him lacks merit. Liable to be dismissed.

12. After hearing learned counsel for parties and going through the records it is clearly established that for the purpose of promotion from Class-IV post to Class-III post in P.W.D. in construction Division-II Pratapgarh, as per direction issued by the Chief Engineer, P.W.D., Allahabad on 28.4.2000, a promotional exercise/examination has been conducted as per the procedure provided for the said purpose and in the said examination the petitioner as well as Shri Raja Ram Pal and other candidates appeared however, the petitioner was unsuccessful in the examination whereas Shri Raja Ram Pal passed the examination accordingly on the basis of merit list prepared on the said examination held on 9.10.2004, an order dated 19.11.2004 (Annexure CA-1) has been issued whereby promoting the persons as per merit list from the post of Class-IV category to Class-III category in Construction Division-II Pratapgarh, P.W.D.

13. I have heard learned counsel for parties and gone through the records.

14. It is well settled law that the person has got to be considered for promotion in terms of service but cannot claim any right of promotion by virtue of seniority. In the literal sense the word "promote" means "to advise to a higher position, grade, or honour". So also "promotion" means "advancement or preferment in honour, dignity, rank, or grade". (See: Webster's Comprehensive Dictionary,

International Edn., p. 1009) "Promotion" thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression "promotion" has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post".

15. Promotion, as is generally understood, means the appointment of a person of any category or grade of a service as a class of a service to a higher category or grade of such service or class.

16. "Promotion" as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfied either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service or class. (See *State of Mysore and Another Vs. Syed Mahmood and Others*, , and *P.D. Aggarwal and Others Vs. State of U.P. and Others*,)

17. Further, in the instant case, for promotion from Class-IV category to Class-III category in Construction Division-II Pratapgarh, p.w.d. Department as per letter dated 22.8.2004 issued by Chief Engineer, Allahabad the examination held on 19.10.2004 and petitioner alongwith other candidates appeared in the said examination and he was unsuccessful hence the petitioner should not have any grievance and cannot challenge the selection process on the ground that the same has to be done by way of seniority because it is well settled law that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein are not entitled to question the same as per the law laid down by the Apex Court in the case of *Munindra Kumar and others Vs. Rajiv Govil and others*, ; *Rashmi Mishra v. M.P. Public Service Commission*, (2006) 12 SCC 724.

18. It is also well settled law that if a person appeared in competitive examination. The post advertised were public posts. They did not have any vested right for appointment/promotion as even selected candidates do not have legal right in this behalf (See *Shankarsan Dash Vs. Union of India*, ; *Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others*, ; *All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc.*, and *Food Corporation of India and Others Vs. Bhanu Lodh and Others*,)

19. In view of the abovesaid facts, submission made by learned counsel for the petitioner that the promotion from the post of Class-IV category to Class-III category in P.W. Department is to be done by seniority and selection process and *Shri Raja Ram Pal* who is junior to him, has been promoted, has got no force, rejected.

20. For the foregoing reasons, the writ petition lacks merit and it is dismissed.

21. No order as to costs.