(2011) 12 AHC CK 0465

In the Allahabad High Court

Case No : Writ A. 56072 of 2010

Rajeev Mohan APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Citation : (2011) 12 AHC CK 0465

Hon'ble Judges : Sunita Agarwal, J;Ashok Bhushan, J

Bench : Division Bench

Judgement

1. Heard Sri Rajeev Mohan in person and Sri Govind Krishana, learned counsel appearing for the respondent nos. 2 and 3, Sri Santosh Kumar Pandey and Sri Saumitra Singh, learned counsel appearing for the private respondents, and Sri S.K. Upadhyay, learned counsel for the respondents appearing in Writ Petition No. 23672 of 2006.

2. These two writ petitions have been connected and listed together as order of the Central Administrative Tribunal have been challenged in both these writ petitions.

3. The issue is with regard to the inter se seniority between the petitioner and the private respondents as Income Tax Inspector (direct recruitment). The petitioner claims to have been appointed initially in different region on 13.10.1988 and thereafter was transferred to Kanpur Region, he joined at Kanpur Region on 10.1.1992 and was placed at the bottom of the seniority list of the Income Tax Inspectors comprising both permanent and ad hoc basis employees. The private respondents who were appointed subsequent to the petitioner and joined at Kanpur Range after joining of the petitioner were below initially in the gradation list of 1995-99 whereas in the gradation list prepared in the year 2002 they have been shown senior to the petitioner. The dates of appointment of private respondents as well as petitioner is mentioned in the seniority list annexed as Annexure No. 7 to the writ petition along with letter dated 11.8.2002. The date of appointment of respondent no. 4 is 20.10.1992

and respondent nos. 5 to 13 were appointed even thereafter.

4. The petitioner who appears in person submits that the petitioner and respondents have already been promoted as Income Tax officer and they are due for next higher post as Assistant Commissioner (Income Tax). The Departmental Promotion Committee is going to take place for promotion of the eligible candidates to the next higher grade on 26.12.2011 & 27.12.2011 and the private respondents are likely to be considered for promotion on the post of Assistant Commissioner (Income Tax) and in the event the petitioner is not permitted to participate in the consideration of promotion he shall suffer irreparable loss.

5. Sri Govind Krishna, learned counsel for the respondents after obtaining instructions submitted that no Departmental Promotion Committee is proposed on 25.12.2011, 26.12.2011 & 27.12.2011. He has shown the letter dated 21.12.2011 received from Income Tax Officer addressed to him whereby information has been furnished by the said officer that there is no information in the office regarding any Departmental Promotion Committee.

6. Learned counsel for the petitioner has relied on Judgment of Gujrat High Court in Union of India Vs. N.R. Parmar decided on 17.8.2004. Petitioner''s case is that against the said Judgment Civil appeal was filed in which the Apex Court directed as follows:

In the meantime the judgement and order passed by the Gujrat High Court may be implemented, if not already implemented, subject to the result of these special leave petitions.

However, those who have already been promoted shall not be reverted.

7. The Division Bench of this Court while hearing the matter on 15.2.2011 has passed the following orders:

We have heard Sri Rajeev Mohan -the petitioner, who has appeared in person. We find that the Supreme Court has directed that the judgment of the Gujarat High Court, for determining the seniority from the date of appointment should be implemented.

It is necessary to find out, for giving the same relief to the petitioner, whether the directions of the Apex Court have been carried out, and the procedure adopted by the different zones for determining the seniority of the Income Tax Inspectors for promotion to the post of Income Tax Officer and for upward movement in the cadre, requires holistic consideration of the policy by the department, after the Gujarat High Court judgment.

List on 15.3.2010, to enable Sri Govind Krishna counsel for the Department and Sri Amit Sthalakar counsel for private respondents, to seek instructions, and to give positive information to the court by way of affidavits.

8. Although the learned counsel for the respondents submits that no Departmental Promotion Committee is going to take place on 25.12.2011,

26.12.2011 & 27.12.2011. The petitioner submits that the Departmental Promotion Committee is likely to take place and has also placed before this Court the letter dated 4.12.2011 of the Secretary General of the Union informing that Departmental Promotion Committee is likely to take place on 25.12.2011, 26.12.2011 & 27.12.2011.

9. In the facts of the case specially the issue raised in the writ petition, we are of the view that in event any Departmental Promotion Committee is going to take place in the last week of December, 2011 or thereafter before the date fixed for considering the promotion for the post of Assistant Commissioner (Income Tax) and in event the private respondents are in the zone of consideration as per their seniority, the petitioner''s case for promotion shall also be considered provisionally but declaration of the outcome shall not be made without the leave of the Court.

10. Sri Govind Krishna has submitted that the judgement of the Gujarat High Court was relevant only between the direct and promotee Income Tax Inspectors and here in this case there is no application of the aforesaid judgement as the inter se seniority between the direct recruitment of Income Tax Inspector is to be considered in the present case.

11. The above submission shall be considered at the time of hearing.

12. As prayed jointly by the learned counsel for the parties, list on 30.1.2011.

13. Certified copy of this order shall be provided to both the parties today on payment of usual charges.

