

(2008) 10 SC CK 0114

In the Supreme Court Of India

Case No : Civil Appeal No. 2274 of 2002 and Civil Appeal No. 6050 of 2008
(Arising out of SLP (C) No. 6878 of 2002)

Rajinder Pal Singh Lamba

APPELLANT

Vs

Suraj Bhan and Others

RESPONDENT

Date of Decision : 03-10-2008

Acts Referred:

Government of India (Adaptation of Indian Laws) Order, 1937 — Article 9
Punjab Courts Act, 1918 — Section 35(3)

Citation : (2009) 6 ALT 31 : (2008) 155 DLT 571 : (2008) 11 JT 246 : (2008) 13 SCALE 208 : (2009) 2 SCC(L&S) 166 : (2009) 5 SLR 285

Hon'ble Judges : R. V. Raveendran, J; Mukundakam Sharma, J

Bench : Division Bench

Advocate : C. Hari Shankar, C.M. Jayakumar, Jagdish Kainikkara and Tara Chandra Sharma, for the Appellant; B.B. Singh, Subhash Kaushik, S. Pandey and D.S. Mahra, for the Respondent

Final Decision : Allowed

Judgement

Mukundakam Sharma, J.—Leave granted in SLP (C) No. 6878 of 2002

2. What is challenged in these appeals is the judgment and order of the Division Bench of Delhi High Court whereby the appeals filed against the order of the Ld. Single Judge in two Writ Petitions were allowed.

3. The grievance of the appellants as was raised in the Writ Petitions, in nutshell, is as follows:

S/Shri Rajendera Singh Lamba and V.K. Garg, appellants herein were appointed as Lower Division Clerks (for short 'LDC') on 01.10.1972 and 24.11.1969 respectively, in the Ministerial Establishment of the District & Sessions Judge, Delhi. During their employment they completed their graduation from Delhi University in the year 1975 and 1974 respectively. S/Shri Rajinderpal Singh Lamba and V.K. Garg on 24.12.1986 and 02.01.1987 respectively submitted their

applications to the District & Sessions Judge, Delhi seeking promotion to the posts of Upper Division Clerk (for short 'UDC'). The said applications were made seeking benefit of Rule VI, Chapter 18-A, High Court Rules and Orders, Vol. 1 framed u/s 35(3) of the Punjab Courts Act, 1918. The said Rule reads as under:

Promotion--(1) Appointments to the higher grades of the ministerial establishment should ordinarily be made by seniority from lower grades, provided that the official who would thus receive promotion possesses the prescribed educational qualifications and is otherwise fit to perform the duties to which he will be promoted; for which purpose tests may be imposed. This rule does not apply to such posts as that of stenographer; for which special qualifications are needed; but preference should be given to officers with such qualifications who are already working in the lower grades;

Provided that permanent vacancies in the 75-5-125 grade shall be filled by the District & Sessions Judges in the following rotation:

(i) By selection on merit out of graduates who have atleast two years' experience in the work of the office, if there is no suitable graduate who fulfills this condition an 'outsider' graduate may be appointed, but he must be one who normally resides within the jurisdiction of the District & Sessions Judge.

(ii) & (iii) By normal promotion in the office, i.e., the appointment of the next senior man whether graduate or non- graduate subject to his fitness:

Provided further that the rotation may be modified in very exceptional cases when the direct appointment of a graduate would mean the ousting of a man, who had been officiating quasi-permanently in the post concerned for an appreciable period. What is an appreciable period will depend on the circumstances of each case. After such a modification, the rotation should be restored as soon as possible.

(2) In making promotions preference may invariably be shown to officials who are known to be strictly honest. No promotion should be given and no recommendation for promotion made in the case of an official who does not possess and maintain a reputation for strict integrity. Efficiency without honesty is not to be regarded as constituting a claim to promotion.

The appellants were seeking their promotion w.e.f. 1975, as according to them permanent vacancies in the cadre of UDC have occurred in the year 1975.

The said applications were rejected by the District and Sessions Judge, Delhi. Aggrieved by the said rejection the appellants filed service appeals in the Administrative side of Delhi High Court. By communication dated 02.03.1988, the service appeals were allowed, but to the extent that the appellants are entitled to be considered for promotion to the grade of UDC and that the promotion, if any, will be prospective only.

The appellants still aggrieved, as the promotion and other service benefits were

not granted with retrospective effect, approached the Delhi High Court, on Judicial Side, by filing two separate writ petitions.

4. In the meantime acting upon the above-mentioned communication dated 02.03.1988 the appellants viz. V.K. Garg and Rajinderpal Singh Lamba were promoted to the grade of UDC with effect from 1.4.1988 and 30.1.1992 respectively, with prospective effect.

5. The Ld. Single Judge while disposing of the writ petitions held that as there were number of vacancies in the post of UDC in the year 1975-76, the claims of the appellants could and should have been considered in accordance with the statutory rules embodied in Rule VI, Chapter 18-A, High Court Rules and Orders and consequently ordered that the appellants be deemed to have been promoted as UDC w.e.f. 01.01.1976. However, they were denied monetary benefit for the said period.

The Ld. Single Judge further held that the High Court of Delhi and the District & Sessions Judge, Delhi being respondent No. 4 and 5 herein, would also give the benefit to the other similarly situated persons like the appellants, who had become graduates before 01.01.1976.

6. The order of the Ld. Single Judge was challenged by two of the private respondents viz. Shri Suraj Bhan and Radha Krishan, who were working on the post of UDC at that point of time, primarily on the below mentioned grounds:

i) The representations were made after a lapse of about 11/12 years, thus the claim was barred by laches;

ii) Section 35(3) of the Punjab Courts Act, 1918 under which, Rule VI was framed stood repealed by the Government of India (Adaptation of Indian Law) Order 1937 as a result of which the said rule ceased to exist.

An appeal was also filed by the appellants claiming monetary benefits, which were denied by the Ld. Single Judge.

7. The Division Bench allowed the appeal filed by the private respondents, respondent No. 1 and 2 herein, primarily on the ground that since the rule of promotion with retrospective effect involves the issue of seniority as well, the said issue and question cannot be re-opened after lapse of a considerable time and reasonable period to disturb the settled position. It was therefore held that the writ petition was liable to be rejected. On the issue of validity and applicability of Rule VI it was held that the said rule was applicable at the relevant time as the same was saved by virtue of Article 9 of Order of 1937. As against the said impugned order this appeal was filed.

8. It is pertinent to mention at this stage that both the appellants after being promoted to the post of UDC in the year 1988 were further promoted to the post of Assistant, in the year 1995 in case of Shri V.K. Garg and in the year 1997 in case of Shri Rajender Pal Singh.

9. In the backdrop of the aforesaid facts we heard learned Counsel for the parties and perused the record.

10. The learned Counsel for the appellants placing reliance on Rule VI contended that as per the said statutory rule which was valid and applicable at the relevant time the respondent Nos. 4 and 5 were obliged to consider appellants for promotion to the grade of UDC when there were number of vacancies in the said grade in the year 1975-76. He further argued that as the rule was statutory in nature the benefit of the said rule cannot be denied on the ground of delay and laches.

11. None appeared on behalf of respondent No. 1 and 2, viz. Shri Suraj Bhan and Radha Krishan who filed the appeal before the Division Bench of the High Court. We were told that both of them have retired during the pendency of present proceedings. Counsel appearing for the remaining respondents reiterated the stand taken before the Division Bench.

12. So far as Rule VI, of the Chapter 18-A, High Court Rules and Orders is concerned the same was valid and applicable on the relevant date despite the fact that Section 35(3) of the Punjab Courts Act, 1918 stood repealed by the Government of India (Adaptation of Indian Law) Order 1937, by virtue of Article 9 of Order of 1937. Article 9 reads as under:

The provisions of this Order which adapt or modify Indian laws so as to alter the manner in which, the authority by which, or the law under, or in accordance with which, any powers are exercisable, shall not render invalid any notification, order, commitment, attachment, byelaw, rule or regulation duly made, or issued, or anything duly done, before the commencement, of this Order; and any such notification, order, commitment, attachment, byelaw, rule, regulation or thing may be revoked, varied or undone in the like manner, to the like extent and in the like circumstances as if it had been made, issued or done after the commencement of this Order by the competent authority and under and in accordance with the provisions then applicable to such a case.

Rule VI has been in operation without any amendment therein until 19.03.1999 when fresh rules of promotion were framed by the Punjab & Haryana High Court substituting Rule VI vide Punjab Government, Gaz., March 19, 1999 (PHGN, 1920, SAKA).

13. The Respondent No. 4 was under a fiduciary duty and was required to consider the name of appellants for promotion to the post of UDC in accordance with the statutory rule as and when the vacancy arose. Unfortunately, there was lapse on the part of the Respondent No. 4 due to which the case of the appellants for promotion could not be considered.

14. At the same time it cannot be scored out that the appellants slept over their rights, which led to a considerable delay i.e. delay of 11-12 years on the part of the appellants to give representation for promotion to the grade of UDC. Delay

defeats equity is a well-known principle of jurisprudence. Delay of 11 to 12 years cannot be overlooked when an applicant before the court seeks equity and specially in the case of service matters as in the said case it jeopardises the existing positions of a very large number of members of that service.

15. The appellants, however, submitted that pursuant to the order of the Ld. Single Judge they have been granted promotion w.e.f 01.01.1976 and they have been further promoted to the post of the Assistant.

16. Thus the question is, whether we should now take away the benefit which the appellant had actually obtained under the order of the Ld. Single Judge. The settled position has been once unsettled by the order of the Ld. Single Judge which has now some how settled again, the question is also that should we by our order now once again unsettle the so called settled position.

17. Interestingly though the appeal was filed against the common judgment and order passed by the Ld. Single Judge but only Shri Rajendera Singh Lamba was added into the array of respondents, thus, not challenging the relief granted to Shri V.K. Garg. Respondent Nos. 1 and 2 did not raise the issue of delay and laches before the Ld. Single Judge and the said issue was raised for the first time in appeal before the Division Bench of the High Court. The plea of delay and laches raised by respondent Nos. 4 and 5 was declined by the Ld. Single Judge on the ground that once there was a statutory rule the said respondents were obliged to follow the same.

18. As of today respondent Nos. 1 and 2 have no grievance against the appellants as they stood retired and no benefit will accrue upon them even if the order denying the promotion to the appellants to the post of UDC w.e.f 01.01.1976 is allowed. On the other hand the promotion to the appellants with retrospective i.e. w.e.f 01.01.1976 was granted subsequent to the judgment and order of the Ld. Single Judge which was in the year 1998. As of now, the appellants have reaped the benefits of promotion with retrospective effect for nearly 10 years.

19. Though it cannot be denied that there was considerable delay and the observations of the Division Bench in this regard cannot be faulted with but in the peculiar facts and circumstances of the case we do not think that it would be fair to the appellants if the benefits they had secured are taken away. Therefore, we direct that the benefits granted to the appellants and already received by them pursuant to the order of Ld. Single Judge shall not be taken away as they have enjoyed such benefit for a very long period of time. However, they shall not be entitled to any additional benefit and no additional benefit will be granted. Obviously, such relief cannot be granted to anybody else.

20. We make it clear that all the observations made herein are our views and opinion in the peculiar facts and circumstances of the present case. The questions of law raised before the High Court are kept open to be examined by this Court in an appropriate case. Needless to say, this order shall not be

construed as a precedent in any other matter.

21. Accordingly, the appeals are disposed of in terms of the aforesaid order. No order as to cost.