
(2009) 10 AHC CK 0048
In the Allahabad High Court

Ram Awatar Chaurasiya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Uttar Pradesh State Universities (Affiliated and Associated Colleges Non-Teaching Staff Qualifications and Service Conditions) First Statute, 1977 — Section 7(2)

Citation : (2010) 1 AWC 1081 : (2010) 124 FLR 131

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Both these writ petitions involve similar controversy on fact and law and, therefore, are being decided by this common judgment.

2. The only question up for consideration in these cases is as to whether the petitioner fulfils the requisite qualification for promotion to the post of Office Superintendent in Bapu Degree College, Pipiganj, Gorakhpur which is an affiliated college with the Gorakhpur University and governed by the U.P. State Universities Act, 1973 and the Statutes framed thereunder.

3. It is not in dispute that the petitioner was appointed as Routine Grade Clerk on a leave vacancy on 6.11.1980. He continues till 30.6.1981 and thereafter was appointed on regular basis as Routine Clerk on 4.1.1982. According to the petitioner, he was promoted as Senior Clerk on 12.3.1999 and was placed in the pay scale of Rs. 4,000-6,000 and since then he is working as such. Though the appointment of petitioner as Routine Clerk in 1982 is not disputed by respondent No. 4 but the petitioner's claim of promotion to the post of Senior Clerk has been denied in para 6 of the counter-affidavit filed by respondent No. 4 which says as under:

6. That, the contents of paragraph No. 6 of the writ petition are incorrect, and not admitted, hence denied. It is submitted that the Committee of Management,

Bapu Degree College Pipiganj, Gorakhpur has never promoted as Senior Clerk to the petitioner till today and not give the approval by the Director, Higher Education or any competent authorities. He is getting pay scale Rupees 4,000-6,000.

4. Para 4 of the counter-affidavit of respondent No. 4 has been replied in para 5 of the rejoinder-affidavit as under:

5. That the contents of para 6 of the counter-affidavit is not admitted as stated hence denied and whatever stated in para 6 of the writ petition is reiterated and re-affirmed. It is further stated that Office Superintendent Mr. Murli Manohar Gaur retired on 17.7.2007 and in his place Mr. Sambhu Narain Lal, Senior Clerk was promoted as Office Superintendent Grade II but he filed an application dated 19.5.2003 saying that he does not want to work as Office Superintendent Grade-II and his proposal was accepted on 24.6.2003, thus only petitioner is the candidate to be promoted on the post of Office Superintendent Grade-II in accordance with the Statute No. 25.03 of the First Statutes of the University of Gorakhpur 1977.

5. The recruitment to the post of Office Superintendent is governed by U.P. State Universities (Affiliated and Associated Colleges Non-Teaching Staff Qualifications and Service Conditions) First Statutes, 1977 (hereinafter referred to as the "First Statutes, 1977") published in U.P. Gazette, Extraordinary, dated 11.5.1977. Rule 4 provides for source of recruitment and Sub-rule (3) thereof reads as under:

4. Sources of recruitment.--

(3) Appointment to the post of Head Clerk-cum-Accountant, Head Clerk, Accountant, Office Superintendent and Bursar shall be made by promotion according to seniority, subject to suitability and fitness from amongst the existing employee having required qualifications. In case of nonavailability of qualified and suitable candidates from amongst the existing staff, appointments on such posts may be made by direct recruitment on the basis of selection after advertisement of the vacancy in newspaper.

6. Rule 7 provides for educational qualifications and for the post of Office Superintendent Sub-rule (1) (iv) provides as under:

7....

(1) (iv) Office Superintendent.--For the post of Office Superintendent degree from a recognised university established by law together with at least ten years, working experience as Head Clerk or Accountant in a college affiliated to or associated with a university or in any other similar institution.

7. Sub-rule (2) of Rule 7 further provides that no employee who does not possess the qualification prescribed in Clause (1) shall, after the commencement of these Statutes, be eligible for promotion or confirmation unless he attains the aforesaid qualification. It is quoted as under:

7. (2) No employee who does not possess the qualification prescribed in Clause (1) shall, after the commencement of these Statutes, be eligible for promotion or confirmation unless he attains the aforesaid qualifications:

Provided that nothing contained in Clause (1) shall effect the promotions and confirmation made prior to commencement of these Statutes.

8. From the pleadings of the parties it is thus evident that though the promotion of petitioner on the post of Senior Clerk has been disputed by respondent No. 4 but without entering into this controversy for the purpose of deciding the present dispute it is suffice to mention that admittedly the petitioner has never been appointed/ promoted to the post of Head Clerk at any point of time and, therefore, the question of his rendering 10 years service as Head Clerk does not arise. The petitioner, therefore, does not fulfil the requisite qualification provided under Rule 7(1) (iv) for the post of Office Superintendent and, therefore, in view of Sub-rule (2) of Rule 7 of the First Statutes, 1977, he cannot be considered for promotion to the post of Office Superintendent: Rule 4 clearly provides that in case of non-availability of qualified and suitable candidates from amongst the existing staff, appointments on such post may be made by direct recruitment on the basis of selection after advertisement of vacancy in newspapers. Once it is found that the petitioner is not at all eligible for promotion to the post of Office Superintendent, his satisfactory service rendered as Clerk or Senior Clerk would make no difference inasmuch as he being not eligible for the post of Office Superintendent, has no right to claim even consideration for promotion to the post of Office Superintendent.

9. In view of above, both the writ petitions lack merit and are accordingly dismissed. No order as to costs.