
(2013) 04 AHC CK 0017
In the Allahabad High Court
Case No : W.P. No. 3340 (S/S) of 2000

Ram Chandra Asthana

APPELLANT

Vs

Secretary, U.P. Legislative Assembly

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2014) 1 AWC 381

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shabihul Hasnain, J.—Heard Sri Akhilesh Kalra learned counsel for the petitioner and Sri P. N. Gupta for the opposite parties.

2. The petitioner has challenged the impugned order dated 28.6.2000 issued by the opposite party, as contained in Annexure-1 to the writ petition.

3. Some facts are necessary for the adjudication of this case. As the counter and rejoinder-affidavits have been exchanged the petition has been heard finally.

4. It is admitted case in para No. 4 of the counter-affidavit that the petitioner was initially appointed on the post of Lower Division Assistant on ad hoc basis on 15.3.1974. His services were "regularized" on 2.6.1980. Services were "confirmed" on the post of Lower Division Assistant on 7.1.1985. This was done when the petitioner qualified the requisite typing test with the minimum speed of 25 words per minute in Hindi typewriting.

5. The post of Lower Division Assistant has been explained in Rule 11 of the U. P. Legislative Assembly, Secretariat (Recruitment and Conditions of Service) Rules. 1974. Said Rule 11 is being quoted here below:

11. Lower Division Assistant.--A Bachelor's degree of a University established by law in India alongwith minimum speed of thirty five word's per minute in Hindi typewriting. Candidates having a minimum speed of thirty five words per minute

in English typewriting shall be given preference:

Provided that a person working on the post of temporary Lower Division Assistant in Secretariat prior to the commencement of the "Uttar Pradesh Legislative Assembly Secretariat Services (Recruitment and Conditions) of Services (Third Amendment) Rules, 1996, who has passed at least High School Examination, if he is otherwise eligible for the post, shall be deemed to possess necessary academic qualification for the post of Lower Division Assistant as a departmental candidates;

Provided further that for being eligible for promotion to the post of Lower Division Assistant Group D employees of the Secretariat must have passed High School Examination of the Board of High School and Intermediate Education Uttar Pradesh.)

6. Meanwhile the petitioner was promoted on the post of Treasurer on ad hoc basis by the opposite party on 6.7.1981. The pay scale of the Treasurer is the same to the post of Upper Division Assistant at that time. On 21.12.1984, the petitioner was further promoted on the post of Upper Division Assistant on regular basis by the opposite party. Seniority list of the Upper Division Assistant was published on 25.11.1985 in which the name of the petitioner finds place at serial No. 53. Petitioner had also worked on the post of Chief Treasurer in higher grade on ad hoc basis since 4.3.1991 up to 7.8.1995. The opposite party vide its order dated 7.6.1991 placed the petitioner for probation for two years w.e.f. 1.6.1991 for confirmation on the post of Upper Division Assistant after the lapse of 6 years from regular promotion on the post of Upper Division Assistant. Petitioner says that the opposite party vide its order dated 28.6.2000 reverted the petitioner from the post of Upper Division Assistant to the post of Treasurer without giving any prior notice or without giving any opportunity of hearing to the petitioner after a lapse of 16 years in an illegal and arbitrary manner.

6. Upper Division Assistant (including U.D.A.-cum-Caretaker) and Translator.--A bachelor's degree of any University established by law in India.

7. Learned counsel for the opposite party says that he was to be confirmed on said post after successful completion of period of probation. Confirmation has been provided under Rule 36. Rule 36 is being quoted here below:

36. Confirmation.--Every probationer shall at the end of the period of probation or extended period of probation be confirmed if he is considered fit for confirmation, and the case of a probationer on the post of Upper Division Assistant (including Upper Division Assistant-cum-Caretaker) or Lower Division Assistant, If he also possesses minimum speed of 25 words per minute in Hindi type-writing.

8. According to the supplementary counter-affidavit opportunity was given thrice to the petitioner to show that he had knowledge of typewriting and he had acquired a speed of 25 words per minute.

9. Sri P. N. Gupta asserts that since the petitioner could not show that he had the sufficient speed and caliber of typing the impugned order was passed.

10. A careful perusal of Rule 36 as mentioned above will show that confirmation is provided at two stages. A person appointed on Lower Division Assistant had to be confirmed and the same requirement is available for Upper Division Assistant. Confirmation in both the cases have to be followed by the typing test having minimum speed of 25 words per minute in Hindi. Both these confirmations have been provided in one heading Confirmation".

11. The Court was intrigued by this statutory provision. A person who is confirmed on the post of Lower Division Assistant after successfully appearing in a typing test and shown a speed of 25 words per minute cannot be required to do the same on the next higher post.

12. Sri Kalra has argued that a person who has passed his High School cannot be asked to appear in the same even if he is promoted a number of times. Similarly, a person who has been confirmed on the basis of one qualification as a Lower Division Assistant cannot be asked to qualify the same test once again for getting confirmed on the promotional post of Upper Division Assistant.

13. It has been informed that the petitioner has retired on 31.3.2013.

14. On examination it has transpired that there are two sources of recruitment on the post of Upper Division Assistant. It has been informed that 50% of the Upper Division Assistant are to be recruited directly and the rest 50% are to be promoted from the post of Lower Division Assistant. In-fact the confirmation of the directly recruited Upper Division Assistant will be required to undergo the test of typing at the speed of 25 words per minute. This requirement for the directly recruited candidate has been misinterpreted and applied to the case of the petitioner due to some misconceived interpretation of Rule 36.

15. Argument of Sri Akhilesh Kalra carries weight and the court agrees with it.

16. The petitioner who had been confirmed on the post of Lower Division Assistant had shown his ability of Hindi typing at the speed of 25 words per minute. He was confirmed on this count. Later on when he was promoted on the post of Upper Division Assistant this requirement of typing once again was not applicable in his case. He could not have been subjected to the same test which he had successfully qualified on the lower post, therefore, the impugned order dated 28.6.2000 issued by the opposite party, as contained in Annexure-1 to the writ petition deserves to be set aside.

17. Accordingly, the writ petition is allowed and the impugned order dated 28.6.2000 issued by the opposite party, as contained in Annexure-1 to the writ petition, is hereby set aside.

18. Consequences to follow.