
(2010) 01 AHC CK 0112
In the Allahabad High Court
Case No : Writ Petition No. 7776 (S/S) of 2006

Ram Milan

APPELLANT

Vs

U.P.Subordinate Services Selection Commission and Others

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0112

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Heard learned Counsel for the parties.

2. The grievance of the petitioner is that the impugned order dated 25.7.2006 has been passed reverting the petitioner to the post of Peon, after having served nine years on the promotional post of Typist.

3. The facts of the case, in brief, are that the petitioner was appointed as Peon (Class IV post) on 1.2.1990 in the U. P. Subordinate Services Selection Commission [hereinafter referred to as the "Commission"] for the sake of brevity] after due selection procedure. Subsequently, in the year 1997, the petitioner was promoted to the post of Typist (Class III post) vide order dated 18.9.1997 alongwith Mr. Rudal Prasad belonging to Scheduled Caste category on the recommendation of the Selection Committee duly constituted by the Commission. From the perusal of the order dated 18.9.1997 (Annexure 2), it is crystal clear that the petitioner was promoted on the aforesaid post in the pay scale of Rs.9501500 on ad hoc basis and was kept on probation for one year. Further reading of the said order shows that the petitioner and another promoted candidate were required to obtain a typing speed of 30 words per minute in Hindi within three months. Thereafter, the persons promoted by means of the said order dated 18.9.1997, which includes the petitioner, had appeared in the Typist Test conducted on 16.12.1997 and by the order dated 18.12.1997, the promotion of the petitioner stands confirmed as per requirement of the promotional order. Being aggrieved, the opposite party No.3 filed a Writ Petition

No. 6597 (SS) of 1997, wherein he challenged the said promotional order dated 18.9.1997 with a further prayer that he be promoted to the post of Typist.

4. Learned Counsel for the petitioner submits that the opposite party No.3 too had appeared in the selection procedure for promotion to the post of Typist, but failed to achieve the same. The petitioner kept on performing and discharging his duties on the said post to the entire satisfaction of his superiors. While disposing of the Writ Petition No. 6597 (SS) of 1997, this Court observed that since the petitioner was not promoted and the commission has been rescinded, therefore, no relief can be granted to the petitioner. If some employees from Class III are working under the Administrator, who have taken over for liquidation of the rest of the work of the Commission, the petitioner shall also be given appointment in Class III. Subsequently, the Administrator of the old Commission chose to file Special Appeal No. 494 of 2000 challenging the order dated 13.7.1999 passed in Writ Petition No. 6597 (SS) of 1997. All of a sudden, the impugned order dated 25.7.2006 has been passed by the opposite party No.2 reverting the petitioner to the post of Peon.

5. Petitioner's Counsel attacked the impugned order on the grounds that in pursuance of the U. P. Subordinate Services Selection Commission Act, 2006, the U. P. Subordinate Services Selection Commission was established. The said Act does not confer any power upon the new commission as regards any dispute arose while the old commission was in existence and no power was granted to the new commission to change or modify the decision taken by the old commission. The petitioner continuously remained working in the U. P. Subordinate Services Selection Commission since his initial appointment or thereafter on his promotional post also. Nonaffording the opportunity of hearing to the petitioner and passing of the impugned order after more than nine years after the promotion of petitioner reverting to his earlier post, without there being any complaint or allegation against him, smacks of mala fides on the part of the opposite party No.2.

6. By means of the order dated 22.6.2006, the Special Secretary has been assigned to look after the work of opposite party No.2. Therefore, the impugned order has been passed by the opposite party No.2 in the officiating capacity. Submission of the learned counsel for the petitioner is that the Special Secretary of the Government of U. P. who is holding the additional charge of Secretary of the Commission, cannot pass such an order as he is not the appointing authority.

7. On the other hand, learned Standing Counsel submits that the power vests with the Secretary, U. P. Subordinate Services Selection Commission to appoint, promote, revert or dismiss the services of Class III and Class IV employees. While supporting the impugned order, he contends that the Government has taken decision vide letter dated 18.7.2006 that Sri Abdul Mukhtar, Daftari/ opposite party No.3 was entitled for promotion, whereas the selection of the petitioner was found irregular. Therefore, the impugned has rightly been passed.

8. After hearing learned Counsel for the parties, I am of the opinion that the reversion has been passed, without issuing any showcause notice or affording opportunity of hearing to the petitioner. The promotion was made to the petitioner on the recommendations of the Committee and when he acquired the typing speed of 30 words per minute, the petitioner was confirmed on the post of Typist. From the perusal of the orders dated 18.9.1997 and 18.12.1997, it is clear that the requirement provided under para 2 of the promotional dated 18.9.1997 was deleted by means of the office memorandum dated 18.12.1997. Thereafter, he continued to work on the promotional post till passing of the impugned order. Much water has flown down in the river since the promotion was made in the year 1997 and at this distance of time, subverting the same by means of impugned order under the pretext that some application was submitted before the Commission by the opposite party No.3, after the selection is wholly arbitrary and mala fide as the opposite party No.3 himself filed a writ petition but failed to get any relief in his favour. The Commission cannot be allowed to revert the petitioner that he had fallen short of one per minute only in the required typing speed after lapse of nine years.

9. The long and short of the discussion is that since a valuable right has been created to the petitioner, he ought to have been afforded opportunity of hearing to the petitioner. As it has not been done in this case, the impugned reversion order is liable to be quashed.

10. Accordingly, the writ petition is allowed and the impugned order dated 25.7.2006 passed by the opposite party No.2 reverting the petitioner from the post of Typist to Peon is hereby quashed.

(Petition allowed)