(2005) 02 AHC CK 0066

In the Allahabad High Court

Case No : Writ Petition No. 3502 (S/S) of 2004

Ram Milan Singh APPELLANT

Vs

State of U.P. and Another RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Uttar Pradesh Subordinates Revenue Executive (Naib Tahsildar) Rules, 1944 — Rule 28
Uttar Pradesh Subordinates Revenue Executive (Naib Tahsildar) Rules, 1944 — Rule 28
Uttar Pradesh Subordinates Revenue Executive (Naib Tahsildar) Rules, 1944 — Rule 28

Citation : (2005) 2 ESC 991

Hon'ble Judges : U.K. Dhaon, J

Bench : Single Bench

Advocate : A.P. Singh, for the Appellant; V.K. Singh and Shabiul Hasnain, for the Respondent

Final Decision : Allowed

Judgement

U.K. Dhaon, J.—Heard Sri A.P. Singh, learned Counsel for the petitioner and Sri Vinod Kumar Singh, learned Additional Advocate General, U.P., assisted by Sri Shabiul Hasnain, the learned Addl. Chief Standing Counsel appearing for the opposite parties.

2. The petitioner has approached this Court, against the order dated 3.12.2003, by which the representation of the petitioner, dated 13.8.2003, was rejected by the Board of Revenue and the order, dated 4.9.2004, rejecting the review petition of the petitioner.

3. The petitioner has alleged that he was promoted to the post of Naib Tehsildar by the order, dated 7.5.1990, on ad hoc basis against the substantive vacancy and thereafter the State Government by the order, dated 10.3.1999, took the decision on the representation preferred by the petitioner to regularise the services of the petitioner on the post of Naib Tehsildar, as an exceptional case, and it was provided that this shall not be treated as a precedent. The petitioner has further alleged that he was confirmed on the post of Naib Tehsildar by the

Board of Revenue, U.P., Lucknow by the order, dated 21.6.2003.

4. Sri A.P. Singh learned Counsel for the petitioner submits that the petitioner was promoted to the post of Naib Tehsildar on ad hoc basis against the substantive vacancy, vide order dated 7.5.1990, passed by the Collector under the directions of the Board of Revenue U.P., Lucknow, under Rule 28 of the U.P. Subordinates Revenue Executive (Naib Tehsildar) Rules, 1944. He further submits that the petitioner is entitled for the seniority in the cadre of Naib Tehsildar from the date of his initial promotion, i.e. 7.5.1990. He has relied upon the decisions of Hon''ble the Supreme Court in Shri L. Chandrakishore Singh v. State of Manipur and Ors., JT 1999 (7) SC 576: R.B. Desai and Anr. v. S.K. Khanolker and Ors., JT 1999 (6) SC 141: Keshav Deo and Anr. v. State of U.P. and Ors., JT 1998 (7) SC 216: T. Vyayan and Ors. v. Divisional Railway Manager and Ors., JT 2004 (4) SC 196 and Dr. Chandra Prakash and Ors. v. State of U.P. and Anr. 2003 (2) ESC 124 (SC). He further submits that the opposite parties, in an arbitrary and illegal manner, have assigned seniority to the petitioner from the date of the order of regularisation on the post of Naib Tehsildar, excluding about ten years of continuous service rendered by the petitioner on the post of Naib Tehsildar.

5. Sri Vinod Kumar Singh, the learned Additional Advocate General, U.P., submits that the petitioner was promoted on ad hoc basis in local arrangement by the order of the District Magistrate and, as such, there is no illegality in the impugned orders. He further submits that the seniority has been given to the petitioner, from the date of regularisation, on the post of Naib Tehsildar, and the petitioner cannot set seniority from the date of his initial promotion. He further submits that according to Rule 28 of the U.P. Subordinates Revenue Executive (Naib Tehsildar) Rules, 1944, the Board of Revenue only is competent to make promotion on the post of Naib Tehsildar and the direction contained in the letter, dated 1.2.1989, sent by the Board of Revenue to the District Magistrate, Faizabad, was only regarding consideration of the petitioner for promotion in local arrangement. The Additional Advocate General further submits that the letter, dated 10.3.1999 was not addressed to the petitioner and now the Government cannot withdraw the said letter without permission of this Hon''ble Court, as the same was taken into consideration by this Hon''ble Court in the judgment and order, dated 22.9.1999, passed in the earlier petition preferred by the petitioner.

6. I have considered the arguments of the learned Counsel for the parties and gone through the record.

7. The petitioner was promoted on the post of Naib Tehsildar on ad hoc basis in local arrangement, by the order passed by the District Magistrate, dated 7.5.1990, under Rule 28 of the U.P. Subordinates Revenue Executive (Naib Tehsildar) Rules, 1944. Rule 28 of the U.P. Subordinates Revenue Executive (Naib Tehsildar) Rules, 1944, reads as under :

"Officiating and Temporary Appointments.--(1) Temporary vacancies not likely to last for more than six weeks may be filled by the District Officer by the appointment of a listed candidate, if one is available, in the district, but if no such candidate is available, the most suitable official available may be appointed.

(2) Vacancies lasting for more than six weeks but not more than three months shall be filled by the District Officer by the appointment of a listed candidate, if one is available, in the district. If no such candidate is available, a report shall be made to the Commissioner who shall if possible, appoint a listed candidate from some other district of the division. If no listed candidate is available in the division, the Commissioner shall appoint, or authorise the District Officer to appoint the most suitable official available.

(3) All vacancies lasting for more than three months shall, on the report of the Commissioner, be filled by the Board."

8. The petitioner was regularised on the post of Naib Tehsildar by the order, dated 10.3.1999, passed by the State Government. A perusal of the order, dated 10.3.1999, reveals that the petitioner was regularised on the post of Naib Tehsildar as an exceptional case and it was provided that it shall not be treated as a precedent. While passing the said order, the State Government also took into consideration that the petitioner was promoted on the post of Naib Tehsildar on 7.5.1990. The opposite parties have filed the copy of the order, dated 7.5.1990, and the communication between the Secretary of the Board of Revenue and the District Magistrate along with the counter affidavit. From a perusal of the aforesaid order/communication, it is evident that the petitioner was promoted on the post of Naib Tehsildar on ad hoc basis in local arrangement by the District Magistrate, in accordance with the provisions of Rule 28 of the U.P. Subordinates Revenue Executive (Naib Tehsildar) Rules, 1944, pursuant to the communication between the Board of Revenue and the District Magistrate. When the State Government issued the order, dated 10.3.1999, the petitioner was working continuously on the post of Naib Tehsildar with effect from 7.5.1990. In service law, seniority has its own weightage and, unless and until, the rules specifically exclude this weightage of seniority, it is not open to the authorities to ignore the same. Hon''ble the Supreme Court has held that seniority itself based upon the length of service is an acquired right of an employee, which entitles him to be considered for further promotion. Since the petitioner was promoted on ad hoc basis with effect from 7.5.1990, he is entitled for seniority in the cadre of Naib Tehsildar from his initial promotion i.e. 7.5.1990.

9. in L. Chandra Kishore Singh (supra), Hon''ble the Supreme Court has held as under :

"Even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list.

Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. The respondents are directed to treat the officiating appointments of the appellants as the date of their regular appointment and re-fix their seniority in terms of the observations made in this judgment."

10. The contention of the learned Additional Advocate General that the letter, dated 10.3.1999, was not addressed to the petitioner and, as such, he is not entitled for the benefit given by the State Government through the said letter, cannot be accepted, as a conscious decision was taken by the State Government, considering the fact that the petitioner was working on the post of Naib Tehsildar with effect from 7.5.1990. In pursuance of the order, dated 10.3.1999 passed by the State Government, the Board of Revenue by its order, dated 21.6.2003, has confirmed the petitioner on the post of Naib Tehsildar.

11. In the result, the writ petition succeeds and a writ in the nature of certiorari is issued quashing the order, dated 3.12.2003, which was communicated to the petitioner vide letter dated 11.12.2003, a copy of which has been annexed as Annexure-1 to the writ petition, and the order, dated 4.9.2004, a copy of which has been annexed as Annexure 1-A to the amendment application, and a writ in the nature of mandamus is issued directing the opposite parties to fix the seniority of the petitioner in the cadre of Naib Tehsildar with effect from his initial promotion, i.e. 7.5.1990.