
(2014) 03 AHC CK 0100

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 11467 of 1999

Ram Naresh Singh

APPELLANT

Vs

U.P. State Public Services Tribunal

RESPONDENT

Date of Decision : 25-03-2014

Acts Referred:

Citation : (2014) 4 ADJ 693 : (2015) 1 AWC 1081 : (2014) 3 ESC 1588 : (2014) 3 UPLBEC 2008

Hon'ble Judges : Rajesh Kumar Agrawal, J; Ashwani Kumar Mishra, J

Bench : Division Bench

Advocate : Shashi Nandan, Dinesh Dwivedi, C.B. Yadav, Nisheeth Yadav and Shatrughan Yadav, Advocate for the Appellant; Vivek Saran, P. Padia, R.G. Padia and U.N. Sharma, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri Shashi Nandan, learned Senior Advocate, assisted by Sri Nishith Yadav, learned counsel for the petitioners, Sri Vivek Saran, learned counsel appearing on behalf of U.P. Rajkiya Nirman Nigam and Sri Prakash Padia, learned counsel for respondent Nos. 5 to 9.

By means of the present petition, petitioners have challenged the order of the Tribunal dated 14.10.1998 filed by the private respondents. The claim petition has been allowed.

The brief facts, giving rise to the present writ petition, are that both the petitioners and the respondent Nos. 5 to 9 were engaged either on ad hoc basis or on daily wage basis. Subsequently, their services have been regularised. It is contended that the services of the petitioners have been regularised on 24.3.1986 and the services of the respondent Nos. 5 to 9 have been regularised on 29.7.1986. It appears that a provisional seniority list was prepared on 8.8.1994, wherein, the respondent Nos. 5 to 9 have been placed at Sl. Nos. 1, 2, 4, 6 & 7 and thereafter, the final seniority list has been issued on 26.10.1994 in

which the petitioners were shown as senior to the respondents.

2. Being aggrieved by the seniority list dated 26.10.1994, the respondents filed the claim petition, which has been allowed by the impugned order. The Tribunal has held that both the parties agreed that unamended sub Rule-4 of Rule-23 of U.P. Rajkiya Nirman Nigam Rules, 1980 (hereinafter referred to as the Rules, 1980) will apply. The claim of the Rajkiya Nirman Nigam was that the final seniority list was prepared on the basis of the amended sub Rule (4) of Rule-23 which has been made vide notification dated 9.3.1995, on the basis of the date of joining. The Tribunal has held that un-amended Rule 23(4) will apply. However, the Tribunal has allowed the claim petition of the respondents on the ground that the seniority is to be determined from the date of the selection and not from the date of the appointment and since the respondents' selection were made earlier to the petitioners, they have been held senior to the petitioners.

3. Learned counsel for the petitioners submitted that there is no dispute that unamended Rule 23(4) will apply but it appears that the Tribunal has misinterpreted Rule 23(4). Rule-23(4) shows that "the person appointed on the basis of selection in a particular year of recruitment shall be senior to the persons appointed on the basis of subsequent selections". The particular year of recruitment is defined by Rule 3(w) of the Rules which says that the year of recruitment means a period of 12 months commencing from the 1st day of July of a calendar year. In this way, the year of recruitment of both the petitioners as well as the respondents would be the same namely 1985-1986. It is submitted that there is no provision under the Rule for further determination of inter-se seniority of the persons selected in the same year of recruitment and, therefore, U.P. Regularisation of Adhoc Appointment (On The Post Outside The Purview of Public Service Commission) Rules, 1979 would be applicable. Rule-7 of such Rule provides that a persons appointed under this Rule shall be entitled to seniority from the date of year of appointment after selection in accordance with these Rules. Therefore, as per Rule-7 of the Rule of 1979, since the date of regularization/appointment of the private respondents earlier to the petitioners they should be treated senior to the respondents. It is submitted that the Tribunal has committed an error in directing to treat the respondents senior to the petitioners.

4. Sri Vivek Saran, learned counsel appearing on behalf of U.P. Rajkiya Nirman Nigam has reiterated the stand taken before the Tribunal. Sri Prakash Padia supported the judgment of the Tribunal. He also agrees that the unamended Rule will apply for the determination of the seniority but submitted that the seniority should be determined from the date of selection and not from the date of the appointment, therefore, the order of the Tribunal is justified.

5. We have considered the rival submissions of the learned counsel for the parties and also perused the relevant records of the case.

It would be appropriate to refer rule 3(w) and unamended Rules-23 of Rules

1980.

year of recruitment" means a period of twelve months commencing from first day of July of a calendar year".

23(1) There shall be maintained separate seniority lists for each category/grade of posts.

(2) Inter-se seniority shall be determined according to the order in which the names of candidates are arranged in the panel.

Provided that:

(1) The inter-se seniority of persons appointed by direct recruitment shall be according to their respective order in the panel made by the selection committee.

(2) The inter-se seniority of the persons appointed by promotion shall be according to their respective order in the panel made by the D.P.C.

(3) Where appointments to any category of posts are made both by direct recruitment and promotion, against a set of vacancies in any year of recruitment, their inter-se seniority shall be determined by arranging their names alternatively in acyclic order, the first name being from the promotee list.

(4) The persons appointed on the basis of selection in a particular year of recruitment shall be senior to the persons appointed on the basis of subsequent selections.

Rule-23 of the said Rule deals with the seniority. Sub-rule (4) of Rule-23 provides that, "the person appointed on the basis of selection in a particular year of recruitment shall be senior to the persons appointed on the basis of subsequent selections". The particular year of recruitment is defined in Section 3(w), which says that the year of recruitment means a period of 12 months commencing from the 1st day of July of a calendar year. Before the Tribunal, it was contended on behalf of the Corporation that the final seniority list has been prepared applying sub rule (4) of Rule-23 of the amended Rules, which was amended on 9.3.1995, on the basis of the date of joining. We do not agree with such stand of the Corporation.

6. We are of the view that the Rule which was in existence on the date of the year of recruitment will be relevant. Thus, the Rule-23(4), which was amended in the year 1995 is not applicable. We are further of the view that the Tribunal has wrongly interpreted sub Rule (4) of Rule-23, inasmuch as the Tribunal has not considered the definition of the particular year of recruitment, which is provided in Rule-3(w). Since the selection of both the set of persons is in the same recruitment year i.e. 1985-1986, as such seniority cannot be determined on the basis of selection. The view, thus, taken by the Tribunal is unsustainable.

7. The issue of seniority of both the set of persons, who are selected and appointed in the same year of recruitment, was required to be determined. The

Corporation erroneously applied the amended Rule and, thereby, retrospectively extended its application, which was impermissible. Since the issue of seniority not been decided in correct perspective, therefore, it requires reconsideration at the first instance by the Corporation itself. In the absence of any provision to the contrary, the normal rule of counting of seniority, from the date of appointment, pursuant to regularization, would be a relevant consideration to be examined by the Corporation.

In the facts and circumstances of the case, we are of the view that the matter relating to the seniority of the petitioners as well as respondent Nos. 5 to 9, requires reconsideration by the Corporation.

Let the Corporation start its exercise of finalisation of seniority of the parties within a period of one month from the date of production of certified copy of this order and finalise the same within another period of 3 months thereafter, in the light of the observations made above.

In the result, the writ petition is allowed with the aforesaid observations.