
(1999) 11 AHC CK 0096
In the Allahabad High Court
Case No : C.M.W.P. No. 12878 of 1996

Ram Shankar Gupta

APPELLANT

Vs

Director of Education (Basic) Nisatganj, Lucknow and another

RESPONDENT

Date of Decision : 11-11-1999

Acts Referred:

Subordinate Offices Lipik Varg Class IV Employees Service Rules, 1975 — Rule 22
Uttar Pradesh Recruitment of Ministerial Staff of the Subordinate Office in Uttar Pradesh Rules, 1970 — Rule 8

Citation : (2000) 2 AWC 1049

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Pradeep Verma, Om Prakash and Krishna Mohan, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Yog, J.—Petitioner, Ram Shankar Gupta, was initially appointed as Class IV employee (peon) in Government Junior Training College. Lalitpur vide appointment letter dated 25.8.1984 (Annexure-1 to the writ petition). He was confirmed on 27.8.1985 on completion of period of probation (Annexure-2 to the Writ Petition).

2. It is stated that petitioner has passed Intermediate Examination in the year 1983 in Second Division from Government Normal School, Fatehpur. and that he knows typing and other work attached to the post of the clerk and, accordingly, he was required to discharge duties pertaining to the post of Clerk (Class III) (Annexures-4 and 5 to the writ petition).

3. Basic Shiksha Adhikari vide order May 22. 1987 allotted the work to the petitioner pertaining to the post of Clerk (Class III) and he discharged these duties to the best of the satisfaction of those authorities concerned (Annexure-6 to the writ petition).

4. In para 6 of the petition it is stated that Deputy Director of Education vide its

order dated 13.3.1989 directed the Additional Deputy Director of Education (Basic)-appointing authority to fill up the post of Junior Clerk by making appointment/promotion (Annexure-7 to the writ petition). Consequently respondent No. 2 required the petitioner to appear in type test. Petitioner appeared in the test. Basic Shiksha Adhikart vide its order dated 28.10.1991 strongly recommended the case of the petitioner for being promoted as Junior Clerk (Annexure-9 to the writ petition). Apparently in anticipation, Basic Shiksha Adhikarl vide order dated 2.1.1992 issued orders promoting the petitioner to the post of junior clerk in the pay Scale of Rs. 950-1500 on temporary basis (Annexure-10 to the writ petition). The said order, however, contained a condition that said temporary appointment shall cease on regular appointment being made on the said post.

5. Petitioner took charge in pursuance of the said order, he was attached to Education Superintendent Nagar Kshetriya, Lalitpur. Petitioner discharged his duties and he has been issued certificate of experience also (Annexure-11 to the writ petition).

6. Petitioner was aggrieved that he has not been paid the salary-applicable to the post of Clerk (Class III) even though he has been required to work and discharge duties as a regular clerk.

7. In para 12 of the writ petition reference has been made to some of the Government Orders which provided for promotion in case of Class IV employee having continuously worked for five years. It appears that petitioner, relying upon said order, made representation and claimed regularisation as well (Annexure-12 to the writ petition). The Basic Shiksha Adhikari also strongly recommended his case vide order 6.7.1993 (Annexure-13 to the writ petition).

8. In para 14 of the writ petition, it has been categorically stated that petitioner is working as Junior clerk in the department. He has referred to another order dated 7.3.1995 passed by District Inspector of Schools, Lalitpur (Annexure-14 to the writ petition) directing Sri Shanker Prasad Samdhiya, Clerk to handover charge of receipt and despatch to the petitioner.

9. Petitioner contends that he is to be treated as regularly appointed employee and he is entitled for promotion as per Rule 8 of the U. P. Rules for the Recruitment of Ministerial Staff of the Subordinate Office in U. P., 1970 and further he is entitled for promotion under Rule 22 of the Subordinate Offices Lipik Varg Class IV Employees Service Rules, 1975.

10. On April 10, 1996 learned single Judge passed the following orders :

"Learned standing counsel prays for and is granted three weeks time to file counter-affidavit explaining therein categorically why the petitioner is not being paid his salary on the post of clerk. One week time is granted to file rejoinder-affidavit.

List in the weeks commencing 13.5.1996."

11. No counter-affidavit was filed and case was again listed on August 13, 1999. Another learned single Judge again allowed two months time to file counter-affidavit. Learned standing counsel Sri R. K. Awasthi, states that no counter-affidavit has been filed as yet.

12. Heard Sri Krishna Mohan. learned counsel for the petitioner and Sri R. K. Awasthi, learned standing counsel for the respondents.

13. Unrebutted facts contained in the writ petition show that petitioner was appointed in the year August, 1984 and confirmed thereafter (Annexure-2 to the writ petition). Though petitioner was appointed on Class IV post, he was required to discharge duties of a clerk which is the Class HI post, yet he was paid salary pertaining to Class IV post only.

14. Unrebutted facts go to show that" petitioner though de-facto a Class III employee was treated as Class IV employee for payment of salary only. The fact that he has been allowed to work shows that there is a sanctioned post or at least the quantum of work fully justified the post and appointment thereon. In any case, in such a situation, existence of a "post" should be deemed in law.

15. At the very outset, it may be stated that the fact that the petitioner was initially appointed on temporary basis on Class IV post but confirmed after one year goes to show that something was wrong in the concerned department as otherwise temporary employee could not be confirmed unless appointed substantively. This, in any case, reflects upon arbitrary and whimsical working in the concerned office.

16. According to the averments contained in the petition, he was promoted on temporary basis and directed by the Basic Shiksha Adhikari to discharge duties of Class III post as Clerk vide order dated 2.1.1992 (Annexure-10 to the writ petition). The fact that said promotion continued is fortified by subsequent order dated 6/7.3.1995 written by District Inspector of Schools (Annexure-14 to the writ, petition).

17. Since no counter-affidavit has come forth on record, it can be safely presumed that petitioner is still working and discharging his duties to the satisfaction of the concerned authorities and that concerned authorities have no defence to offer.

18. It is now well accepted principle of service jurisprudence. that if a person, possessing requisite qualifications, is allowed to work on temporary basis for several years, it shall be presumed that there is a post and gets vested right to be considered for regularisation as per relevant rules or absorption in accordance with law.

19. Taking into account that respondents are "shy" to file counter-affidavit and chosen not to contest the petition, it is not expedient now to leave the matter again in the hands of the respondents and to keep the fate of the petitioner hanging in suspense.

20. In the entirety of the circumstances of the case, this Court has no option but to direct all the concerned authorities and the respondents to treat the petitioner as duly appointed/promoted regular Clerk on Class III post w.e.f. 2.1.1992 when he was promoted vide order dated 2.1.1992 issued from the office of Basic Shiksha Adhikari (Annexure-10 to the writ petition).

21. Petitioner shall, consequently, be entitled to pay scale applicable to Class 111 post of clerk as may be in force at relevant times ever-since January. 1992 till date,

22. Accordingly, respondent are directed to pay difference of salary to the petitioner treating him duly appointed clerk on Class III post by the order dated 2.1.1992, to calculate the salary which he was entitled to receive as Clerk (Class III post), including all annual increments, privilege, perks, etc. as may have become due under relevant Government Order issued from time to time and pay balance (unpaid) amount (after adjusting the salary already paid to the petitioner as Class IV employee or otherwise) with 12% simple interest thereon within three months of receipt of a certified copy of this judgment, provided the petitioner has continued in the service for the relevant period and continue to pay him accordingly in accordance with law.

23. Writ petition stands allowed. No order as to costs.