

(1998) 05 AHC CK 0038

In the Allahabad High Court

Case No : C.M.W.P. No's. 3506, 5742 and 5743 of 1997

Rami Ram

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-05-1998

Acts Referred:

Constitution of India, 1950 — Article 142
State Development Service (Gazetted) Rules, 1972 — Rule 5, 6
State Development Service (Gazetted) Rules, 1992 — Rule 21

Citation : (1998) 79 FLR 952 : (1999) 3 LLJ 875 : (1998) 3 UPLBEC 2095

Hon'ble Judges : R.R.K. Trivedi, J; R.K. Mahajan, J

Bench : Division Bench

Advocate : Sushil Kumar Srivastava, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.K. Mahajan, J.—This order will dispose of all the three writ petitions mentioned above as common question of fact and law is involved therein. However, Civil Misc. Writ Petition No. 5742 of 1997 would be the leading petition.

2. The main question involved in these petitions is as to what extent and how long the ad hocism in Government service will be tolerated ? The Government servants have legitimate expectations of their promotions. In case the promotions are not made on due dates, frustration creeps in resulting into inefficiency in the working. The ad-hocism or not appointing the eligible persons in accordance with Rules also produces arbitrariness. In this background these petitions will be disposed of.

3. The main grievance of the petitioner in the leading petition is that he was appointed initially as Panchayat Sewak on November 9, 1972, and on January 29, 1979 he has promoted on the post of Assistant Development Officer (Panchayat) and he was confirmed and regularised on the same post on December 15, 1990. It appears that on August 12, 1996 petitioner was promoted as Block Development Officer at Dhaula Devi Block in District Almora for a short

term till a regularly appointed candidate replaces him. But the Commissioner has promoted persons junior to petitioner and has given financial and other powers to them whereas the financial powers given to petitioner have been withdrawn w.e.f. August 3, 1996. It is submitted that despite representation petitioner's grievance has not been redressed.

4. It may be mentioned at the outset that the sources of recruitment as mentioned in para 11 of the writ petition are as under: (The rules are called The State Development Service (Gazetted) Rules, 1992):

"5. Recruitment to the Service shall be made to posts in the ordinary grade from the following sources namely:--

(a) by direct recruitment of candidates who having been selected on the results of a competitive examination held by Commission in the manner prescribed in Part V of these Rules and having successfully completed three months training as prescribed in Rule 21 of these Rules;

(b) by promotion of the following categories of permanent officials:--

Assistant Development Officers, Agriculture, Co-operative, Panchayat-cum-Social Education, Minor Irrigation, Senior Instructors of Extension Training Centres, Distt. Organiser Vikas Dal and officials equivalent in status to these posts in the department."

5. Learned counsel for the petitioners submitted that similarly situated persons who were promoted in officiating capacity or on ad-hoc basis got interim orders from this Court to continue as Block Development Officers till they are replaced by regularly selected Block Development Officers and in this regard reference has been given of Civil Misc. Writ Petition No. 116 of 1996, Atar Singh v. State of U.P. and Ors., Civil Misc. Writ Petition No. 3506 of 1997, Dharamveer Singh v. State of U.P. and Ors. Learned counsel further submitted that persons junior to petitioner are enjoying all powers of Block Development Officer and status of a gazetted officer whereas the same has been arbitrarily refused to the petitioner. Learned counsel for the petitioner also submitted with all fairness that the petitioners would feel satisfied if this Court directs holding of D.P.C. within a fixed schedule for considering promotions of petitioners and other eligible candidates on the post of Block Development Officers. In view of the last submission made by learned counsel for petitioners it looks needless to refer other averments and prayers made in the writ petitions.

6. Now we would like to refer the counter affidavit in which startling reply had been given. Vide para 5 of the counter affidavit filed on behalf of respondents it is submitted that the appointment on the post of Block Development Officer vests with the Government, therefore, suitable reply cannot be given. Vide para 14 of the counter affidavit it is submitted that even the juniors can also steal the march over the erstwhile seniors with regard to their promotion as it is held in case reported in Jagdish Lal v. State of Haryana 1997 (76) FLR 30 (Sum.)

therefore, the claim of the petitioner that it has been not given promotion, is absolutely untenable. Vide para 16 of the counter affidavit it is submitted that since there has been no discrimination, the promotion policy is guided by Govt. and time to time departmental promotion committees are constituted for the purposes of promotion to the persons, the petitioner may also be considered by the Departmental Promotion Committee whenever it will be constituted. Thus, from perusal of the counter affidavit we fail to find as to what is the definite stand of the State Government in the matter. There is also no clear indication as to when the Departmental Promotion Committee is likely to meet and as to how long the Government wants to continue the ad hocism.

7. We have heard learned counsel for the parties and perused the record. Annexure 7 to the writ petition is The State Development Service (Gazetted) Rule, 1972". Rule (6) of the said Rules provides that the Ayukta shall by the end of May every year determine the number of the vacancies to be filled up to the end of December in the succeeding calendar year and the proportion in which they are to be filled from each of the two sources specified in Rule (5). Provided that recruitment shall be so arranged that, so far as may be possible, 50% of the vacancies to be filled during any one period of recruitment mentioned above, shall be filled by direct recruitment under Rule 5 (a) and remaining vacancies by promotion under Rule 5 (b). It may be mentioned that since in the Rule itself it is mentioned that it is the State Development Service (Gazetted) hence it is State Cadre Gazetted service.

8. It is pertinent to mention that in Mahmood Hasan and others, etc. etc. Vs. State of U.P. and others, the problem of junior persons occupying promotional posts came to be considered before the Apex Court and their lordships had to exercise extra-ordinary powers under Article 142 of the Constitution to undo the injustice and repair the imbalance caused. Their lordships of Apex Court held as under:

"The exceptional situation has arisen because the number of officials seeking promotion on the ground that their juniors have been promoted is almost as large as the total strength of the promotional cadre. The proper course in such a situation is for the juniors to vacate and to make room for their senior colleagues. and to direct that promotions be made, keeping in view all relevant rules and norms. with retrospective effect from the date a vacancy arises for an incumbent according to the State Level Seniority List now prepared and submitted to the Court."

9. Thus, after giving our anxious and thoughtful considerations to all facts and circumstances of instant case as well as the law on the point we are of the considered opinion that the proposal given by the learned counsel for the petitioner to fix a time frame for holding the Departmental Promotion Committee meeting is absolutely just and proper because learned Standing Counsel is not in a position to inform this Court as to when the D.P.C. is expected to meet for the purpose.

Accordingly in the interest of justice as well as in public interest we direct the respondents 2 and 3 to take steps throughout the State to hold the meetings of Departmental Promotion Committees in accordance with the Rules for considering promotions to the posts of Block Development Officers. The process must start within a fortnight from the date of receipt of this judgment which will be produced before the authority concerned by the parties as well as by the Registry of this Court which is directed to do so immediately and must be completed within four months from the date of its commencement. All eligible candidates will be considered for promotion in accordance with rules, against year-wise vacancies.

11. With these directions all the three writ petitions are disposed of finally.