

(2008) 02 AHC CK 0118
In the Allahabad High Court

Sanjay Sinha and Another, Ramesh and Another and
Mahendra Deo

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2008) 02 AHC CK 0118

Hon'ble Judges : Sushil Harkauli, J; Rakesh Sharma, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. All the above writ petitions raise a common question and are therefore being disposed of by this common order.
2. Basically all the writ petitions are questioning the correctness of the seniority, of certain officers of the "Uttar Pradesh Educational Service Class I Posts", as re-fixed by the order dated 27.2.2004 of the Government.
3. The essential facts for the purpose of deciding this controversy of seniority of the officers involved are that an advertisement dated 10.5.1985 was issued by the U.P. Public Service Commission, which advertised amongst others one post of Additional District Basic Education Officer (Male). By a corrigendum dated 6.8.1985, apart from the said one post, the advertisement sought filling up of 32 posts of Additional District Basic Education Officer (Mahila/Female). Thus, for all practical purposes, there was one advertisement of 1985 advertised and seeking to fill up one post of a male officer and 32 posts of female officers.
4. Thereafter, another advertisement dated 5.7.1986 was issued by the said Commission for filling up 6 posts of the Uttar Pradesh Educational Services Junior Scale (Male).
5. At that point of time i.e. 1985 and 1986, apparently there were no specific Service Rules relating to these posts. The male branch and the female branch

formed two separate service cadres. The only set of rules available on record are Uttar Pradesh Educational Service Class I Rules, 1945, which relate to Class I posts and, as such the posts which had been advertised by the Commission in 1985 or 1986 were not covered by these Rules.

6. The selection to the 32 female posts pursuant to the advertisement of 1985 was cancelled by the Commission on 8.6.1987 because of complaints. The selection of the single male candidate against the solitary post for males advertised in 1985 remained untouched. One Dinesh Babu had been appointed against that solitary post and he ranks senior to the remaining officers. Neither his selection nor his seniority is in question.

7. The cancellation of selection of 32 female candidates by the Commission was challenged in the High Court by way of Writ Petition No. 12373 of 1987. After the decision of this Court, the matter was carried to the Supreme Court. The decision of the Supreme Court is reported in AIR 1990 SC 451. By the said decision which is dated 9.11.1989, the Supreme Court set aside the final selection, but maintained the written test. The Supreme Court directed fresh interviews to be held and fresh select list to be prepared. Fresh selection took place thereafter. However, in the meantime, the six male officers were selected and also appointed pursuant to the 1986 advertisement.

8. In 1992, the two services that is, Male Cadre and the Female Cadre were merged into one single cadre by Rules made by the Governor under the proviso to Article 309 of the Constitution of India. These Rules are known as the Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 (hereinafter referred to as the 1992 Rules, for short).

9. After coming into force of these Rules, a common seniority list dated 12.11.1992 was issued. In that seniority list the persons appointed earlier, but pursuant to the later advertisement of 1986, were shown senior to the persons appointed later pursuant to the earlier advertisement of 1985. Litigations continued and promotions were also made. A fresh tentative seniority list was circulated. This tentative list sought to alter the seniority only of S.C./S.T. Officers. By the impugned order dated 27.2.2004, the Government altered the entire seniority list, including officers other than those belonging to SC/ST category, and now the officers selected on the basis of the earlier advertisement of 1985 were shown senior to the officers selected pursuant to the later advertisement of 1986. In some writ petitions interim orders were passed that promotions would be subject to the final orders passed in the writ petitions.

10. The decision of the Government dated 27.2.2004 and the seniority determined thereby is under challenge.

11. For determining seniority, the relevant Rule in the 1992 Rules is Rule 22, which is quoted below:

22. Seniority. - The seniority of persons substantively appointed in the service

shall be determined in accordance with the Uttar Pradesh State Government Servant Seniority Rules, 1991 as amended from time to time.

Provided that a combined seniority list of the officers of Men's Branch and Women's Branch as it existed prior to commencement of these rules shall be prepared in order of the date of their substantive appointment:

Provided further that if the dates of their substantive appointment are the same, the candidate who are senior in age shall be placed higher in the seniority list.

12. The appointees pursuant to the 1985 advisement are placing reliance upon the main part of the Rule 22, while the appointees pursuant to the 1986 advertisement are placing reliance upon the first proviso.

13. Affidavits have been exchanged. We have heard the parties.

14. The main part of Rule 22 deals with persons substantively appointed in service. According to Rule 3(h) "service" means the Uttar Pradesh Educational (General Education Cadre) Service. This means that the main Rule 22 deals with persons who are appointed to the new combined single service cadre created by the 1992 Rules meaning thereby that it deals with post 1992 appointees. On the other hand, the first proviso takes care of the combined seniority of the officers of the men's branch and women's branch (as it existed prior to the 1992 Rules). Upon a plain reading of the said Rule 22 and its first proviso, there is little doubt that for determining the comparative seniority of the officers of the erst while men's branch and women's branch upon creation of the combined single service cadre will be determined according to the said first proviso.

15. When the Rule relating to seniority is clear, the seniority has necessarily to depend upon that Rule and not on any abstract principles of law contrary to the Rule.

16. There being no ambiguity in the seniority Rule quoted above, the comparative seniority of the men's branch and the women's branch immediately after unification of the two cadres into a solitary cadre will have to be determined according to the said first proviso to the Rule 22 of the 1992 Rules. Therein which the only criteria is the order of the date of the substantive appointment. The date of advertisement of the vacancy is wholly irrelevant.

17. In view of the above, it is not necessary to burden this order with the voluminous case laws relied upon by the parties.

18. In view of the combined seniority criteria of the pre-1992 appointees set out above, the seniority as determined by the order dated 27.2.2004 of the Government can not be sustained as it has given preference to the date of advertisement or the date of the written examination, over the date of substantive appointment.

19. We, therefore, quash the order of the Government dated 27.2.2004 and the final seniority list issued thereby and direct the State Government to redetermine

the comparative seniority of the pre-1992 appointees according to the first proviso to Rule 22. The tentative seniority list so prepared by the order of the Government will be circulated among the concerned officers who are likely to be affected thereby within two months of the date on which certified copy of this order is presented before the respondent No. 1. The final seniority list will be issued within a further period of three months, after deciding the objections received, if any.

20. Till the final seniority list is so issued, any promotions which have been made on the basis of seniority list which has been quashed by this Judgment, will not be disturbed. However, after the final seniority list has been issued, any promotions which would not have been made if the said final seniority list to be issued pursuant to this Judgment had been in force throughout, will stand quashed and the persons wrongly promoted will be brought back to their substantive posts which they would have occupied if the final seniority list to be issued pursuant to this order had been in force throughout. Fresh selection for promotion will accordingly be held in accordance with the Rules on the basis of the new seniority list within three months of the date on which the seniority list is finalised.

21. All these writ petitions are finally disposed of with the aforesaid directions.