

(2003) 02 AHC CK 0164

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4237 of 2003

Satish Chandra Srivastava and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-02-2003

Acts Referred:

Constitution of India, 1950 — Article 141

Uttar Pradesh (Appointment of Assistant Prosecution Officer) Rules, 1974 — Rule 4

Uttar Pradesh Government Servants (Seniority) Rules, 1991 — Rule 5

Citation : (2003) 5 AWC 3697 : (2003) 2 UPLBEC 1105

Hon'ble Judges : Prakash Krishna, J; M. Katju, J

Bench : Division Bench

Advocate : T.P. Singh and Anupam Kumar, for the Appellant; Krishna Murari and Bharti Sapru, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju , J.—This writ petition has been filed for a writ of certiorari to quash the impugned seniority list dated 2.1.2003 Annexure-2 to the writ petition issued by the State of U.P. communicated by means of letter dated 6.1.2003 Annexure-1 to the writ petition and also the reversion order dated 6.10.2003 Annexure-3 to the writ petition. The petitioners have also prayed for a mandamus directing that respondents should not interfere in the working as Prosecution Officer and should paid them salary accordingly.

2. Heard learned Counsel for the parties.

3. The appointments on the post of Assistant Prosecution Officer was earlier made under the Police Department in accordance with the provisions of the Criminal Procedure Code, 1973 in which power was given to the State Government by Section 25 for making such appointments. Subsequently the U.P. (Appointment of Assistant Prosecution Officer) Rules, 1974 were framed for the purpose of making such appointments Rule 4 thereof provides that any future appointment on the post of Prosecution Officer and Assistant Prosecution Officer

has to be made by the State Government in accordance with the paid Rules or with general orders as the State Government may make from time to time issue on that behalf.

4. It is alleged in Paragraph 5 of the petition that the petitioners were duly selected and appointed as Assistant Prosecution Officer in February, 1977 after selection by a duly constituted Selection Committee. By order dated 8.2.77 as many as 192 persons were appointed on adhoc basis on the post of Assistant Prosecution Officers, and by order dated 24.12.77, 51 Assistant: Prosecution Officers were appointed. Thus, a total of 243 Assistant Prosecution Officers were appointed in the year 1977-78. In the year 1979 the U.P. Regulation of Adhoc Appointment Rules 1979 came into force which was made effective from 14.5.79 and the cut of date was fixed as 1.1.77. From 27.1.82 the post of Assistant Prosecution Officer came within the purview of the U.P. Public Service Commission.

5. On 27.1.82, 460 posts of Assistant Prosecution Officer were advertised by the Department for making substantive appointments. It is alleged in Paragraph 9 of the writ petition that though the petitioners were appointed in the year 1977 on adhoc basis for a period of one year or till regular selection which ever is earlier, however, till the date of the aforesaid advertisement the petitioner, continued on the post of Assistant Prosecution Officer and their tenure was extended from time to time. It is alleged in Paragraph 10 of the writ petition that the petitioners were entitled to regularisation under the U.P. Regularisation of Adhoc Employees Rules, 1979 and hence they filed Writ Petition No. 6157 of 1982 in this Court in which an interim order was passed on 14.5.82 that the process of selection may go on but the petitioners services may not be terminated on the ground that fresh persons have been recruited. Accordingly, a letter was sent to the Commission to recommend 220 candidates in place of 460 candidates on the post of Assistant Prosecution Officer vide letter dated 16.1.84 true copy of which is Annexure-4 to the writ petition.

6. In the meantime the U.P. Regularisation of Adhoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1984, came into force and the out of date was fixed as 1.5.83. It is alleged in Paragraph 14 of the writ petition that though the Government request the Commission to recommend 220 persons for appointment on the post of Assistant Prosecution Officer vide Annexure-4 to the writ petition and also 33 future vacancies, the Commission by letter dated 23.4.84 recommended the names of 451 persons instead of 253 as requested by the State Government. Out of the Select List a total number of 202 persons were appointed vide order dated 28.12.1984. It is alleged in Paragraph 16 of the writ petition that the petitioners services were regularized vide order dated 15.3.1994 with effect from 22.3.1984.

7. In Paragraph 17 of the writ petition it is alleged that for the purposes of seniority a Committee was constituted for determining the inter-se seniority of regularized Assistant Prosecution Officers and those appointed through the Public

Service Commission. The Committee framed certain principles, which are mentioned in Paragraph 17 of the petition. The petitioner and other Assistant Prosecution Officers who had been working on adhoc basis since 1977 and whose services were said to be regularized with effect from 22.13.84 were placed above those selected by the Commission five persons appointed through the Commission filed a writ petition before this Court Harihar Prasad and Ors. v. State of U.P. and others, which was dismissed by this Court on 16.7.97. Against that judgment an appeal was filed in the Supreme Court, which was allowed by the Supreme Court, vide judgment dated 22.11.2001 Annxc-5 to the writ petition. The five persons who went in appeal were given seniority above the petitioners and other adhoc appointees. The remaining persons who were selected through the Commission who were not issued letters of appointment filed Writ Petition No. 1683 of 1985, Rana Pratap Singh v. State of U.P. and others in which an interim order was passed on 15.4.85. This writ petition was dismissed for default on 23.8.87. However, in pursuance of the interim order the State Government issued an order dated 16.7.85 in respect of the aforesaid petitioners in the aforesaid writ petition against the future vacancies as and when they occur. True copy of the order dated 16.7.85 is Annexure-6 to the writ petition. On 19.12.86 and January, 1987 the remaining 249 vacancies were also filled up from the list of the Commission.

8. In the meantime the petitioners alongwith others were promoted to the post of Prosecution Officer against the vacant post vide order dated 2.3.2001 Annexure-7 to the writ petition. However, by the impugned order dated 2.1.2003 the petitioners have been reverted to the post of Assistant Prosecution Officer.

9. It is alleged in Paragraph 29 of the petition that even the appointees selected by the Commission who were not parties before the Supreme Court in Civil Appeal No. 6104 of 1997 nor had any grievance in respect of their placement in the seniority list have been placed above the petitioners. Certain persons who were appointed subsequent to 1985 have also been placed above the petitioners although they were appointed subsequently. It is alleged that the action of the respondents in placing all the appointees through the Commission above the petitioners and other similarly situate is illegal and in contravention of the Supreme Court judgment dated 22.11.2001. True Copy of the order dated 12.12.2001 by which officers appointed through the Commission have been promote and given promotional pay scale is Annexure-7 to the writ petition. It is alleged that no opportunity of hearing was given to the petitioner before passing the reversion order. In Paragraph 34 of the petition it is alleged that such persons cannot be placed above the petitioners in the seniority list as the petitioners were appointed in February, 1977 and their services regularized from 22.3.1984. Aggrieved this writ petition has been filed.

10. The State Government has filed a counter affidavit and we have perused the same. In Paragraph 2(Ga) it is stated that petitioners were given opportunity of hearing against the interim selection list dated 17.9.2002 and they made their

representations against the same before the final seniority list dated 2.1.2003 was issued. It is alleged that the same is in consonance with the judgment of the Supreme Court dated 22.11.2001. True copy of the representations of the petitioners are Annexurcs-CA-1 to CA-10 to the counter affidavit. A Review Application was filed in the Supreme Court against the judgment dated 22.11.2001 which was rejected on 13.3.2002 vide Annexure-CA-12. It is alleged that respondents have complied with the judgment of the Supreme Court dated 22.11.2001 and accordingly the selected through the Commission have been placed above the adhoc appointees. In Paragraph 2(Cha) it is alleged that a Committee was constituted by the State Government for regularisation of the adhoc Assistant Prosecution Officers and this Committee made recommendations on 17.4.85 but the State Government could not act on the same till 1994 due to various interim orders in various writ petition. Ultimately, a Government Order dated 7.7.1994 was issued regularising such persons. However, the Supreme Court by its judgment dated 22.11.2001 observed that such persons should be placed below in seniority to those who were selected through the Commission on 24.3.1984. Accordingly, the State Government issued the Seniority List dated 2.1.2003 after considering the objections of the petitioners and others. In Paragraph 2 (Chcha) it is stated that the recommendation of the Committee dated 17.4.1985 could not be implemented due to various interim orders in various writ petitions and hence it is only in the year 1994 that the decision could be taken by the State Government.

11. In Paragraph 11 of the counter affidavit it is denied that petitioners were entitled for regularization under the Regularisation Rules of 1979. The Rules have been amended and the cut off date was fixed as 1.5.1983. Since the petitioners had not been regularized hence the Select List of 451 Assistant Prosecution Officers were issued.

12. In Paragraph 13 of the counter affidavit it is stated that the petitioners were regularized by order dated 15.3.94 vide Annexure-CA-14 to the counter affidavit. In Paragraph 18 of the counter affidavit it is stated that according to the Supreme Court the Rules under Article 309 cannot be amended by administrative orders. Hence the directions issued by the Committee were set aside on 7.7.94.

13. A counter affidavit has also been filed on behalf of some of the respondents and we have perused the same. We have also perused the rejoinder affidavits.

14. In our opinion, the judgment of the Supreme Court clarifies the entire controversy in this case, and we really fail to understand as to why the controversy has been raked up again after the judgment of the Supreme Court in Civil Appeal No. 6104 of 1997, Harihar Prasad and Ors. v. State of U.P. and Ors., copy of which is Annexure-5 to the writ petition.

15. It is not necessary to repeat the facts of the case as they have been dealt with in the aforesaid judgment of the Supreme Court. As observed therein, the adhoc appointees will be deemed to have been appointed from 17.4.85. Hence

the Assistant Prosecution Officers selected through the Commission before 17.4.85 will become senior to such adhoc appointees, but those selected by the Commission after 17.4.85 will be junior to the adhoc appointees. This is clear from the aforesaid judgment of the Supreme Court. Hence if a select list was prepared by the Commission prior to 17.4.85, even though appointments were given after 17.4.85, such appointees would be senior to the adhoc appointees who were regularized with effect from 17.4.85 by the aforesaid judgment. The Supreme Court judgment is binding on all Courts and authorities under Article 141 of the Constitution. Even though there were only 5 appellants before the Supreme Court the law laid down therein is of a general nature and hence will apply to all.

6. In *G. Deendayalan Ambedkar Vs. Union of India (UOI) and Others*, it was held that a person ranking higher in merit in the selection list has to be placed senior to the person ranking lower in the merit irrespective of the date of appointments. From this it follows that the date of appointment is not relevant but the date of announcement of the select list.

17. Further we may mention that one of the appellants before the Supreme Court in *Harihar Prasad's case* (supra) namely Mani Lal was placed at Serial No. 375 in the merit list declared by the Commission and was appointed on 5.2.85 whereas the respondents in the present writ petition are higher in the merit list vide Paragraph 27 of the counter affidavit and Annexure-CA-4 to the counter affidavit of Sabhakar Tiwari, though some of the contesting respondents were appointed subsequent to the date of appointment of Mani Lal. Reference may also be made to Rule 5 of UP. Government Servant Seniority Rules, 1991 which provides that inter-se seniority of persons appointed on the result of one selection shall be the same as it is shown in the merit list prepared by the Commission. Hence the date of appointment is not relevant but the date of selection is relevant.

18. The impugned seniority list was hence in consequence with the judgment of the Supreme Court and the aforesaid Rules. The petition is therefore dismissed.