

(2010) 10 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition No's. 211 of 2009 and 22 of 2010 (S/B)

Sri Rakesh Nautiyal

APPELLANT

Vs

State of Uttarakhand and Another
 Gopal Singh Mehra
and Another Vs State of Uttarakhand and Others

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Uttar Pradesh Government Servants (Seniority) Rules, 1991 — Rule 6, 7, 8(1), 8(3)
Uttar Pradesh Service of Engineers (Irrigation Department) (Group "B") Service Rules,
1993 — Rule 17, 18(1), 18(2), 18(3), 21

Citation : (2010) 10 UK CK 0011

Hon'ble Judges : Barin Ghosh, C.J;Sudhanshu Dhulia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—The writ petitions question similar actions on the part of the Respondents. We, accordingly, heard the writ petitions together and dispose of the same by this common judgment and order. Writ Petition (S/B) No. 255 of 2009 is one of the writ petitions, which was thought to have questioned the same actions and, accordingly, was clubbed with the other writ petitions, but the fact remains that Writ Petition (S/B) No. 255 of 2009 does not question the actions questioned in the other writ petitions. We, accordingly, de-link Writ Petition (S/B) No. 255 of 2009.

2. By consent of the parties, the writ petitions are taken up for hearing. Heard learned Counsel for the parties.

3. The writ Petitioners have challenged the seniority list finally prepared on 25th September, 2009.

4. It is the contention of the Petitioners, to which there appears to be no dispute, that during the recruitment year 1998-1999, certain vacancies were requisitioned, when in fact more vacancies were available. On the basis of the requisition given, selection was made during the said recruitment year and

selected candidates were given promotions also during the self-same recruitment year.

5. When such selection followed by promotions, pursuant to such short requisition, were being given, it transpired to the State that by mistake it has not given requisition for some more vacancies. It, therefore, made a request to the Commission to make selection once again for those vacancies too. The Commission did not do so. It asked the Government to give a complete requisition containing also those vacancies, which had, in the meantime, already been supplied by reason of selection made on the basis of the short requisition and promotions accorded on the basis of such selection. The State Government, accordingly, prepared a requisition which contained the vacancies, which had already been supplied in the manner as above and also vacancies, which were to be supplied by further selection. This requisition was unfortunately given in the recruitment year 1999-2000. The Commission made the selection pursuant to the said requisition and thereby made recommendation for supplying the remaining vacancies. The State Government accepted the recommendation and appointed the selectees. The Petitioners are those. In the same recruitment year, i.e. in the year 1999-2000, some of the private Respondents were directly recruited.

6. When the final seniority list was published, as impugned in the writ petitions, it transpired that direct recruitees have been treated as senior to the Petitioners and some of the promotees, namely Respondent Nos. 3, 60 & 61 [in Writ Petition (S/B) No. 211 of 2009], who were junior in the feeder post, have been treated as senior to the Petitioners. That led the Petitioners to file the present writ petitions.

7. It is the contention of the Petitioners that in the backdrop of the facts as above, it must be deemed that the Petitioners were recruitees of the recruitment year 1998-1999 and, accordingly, they should be treated to be senior to those, who had been recruited, either by direct recruitment or by promotion, during the recruitment year 1999-2000. We are not in a position to accept such contention on the part of the Petitioners, inasmuch as, the requisition resulting in selection and subsequent promotions of the Petitioners was given during the recruitment year 1999-2000.

8. The Petitioners contend that in accordance with the recruitment rules, which were in force, namely, the Uttar Pradesh Service of Engineers (Irrigation Department) (Group "B") Service Rules, 1993 (hereinafter referred to as the said "Rules"), "year of recruitment" means a period of twelve months commencing from the first day of July of a calendar year. It is also the contention of the Petitioners that in terms of the mandate contained in Sub-rule (2) of Rule 18 of the said Rules, where, in any recruitment year, appointments are to be made both by direct recruitment and by promotion, regular appointments can only be made when selections are made from both the sources and a combined list is prepared in accordance with Rule 17 of the said Rules. It is the further contention of the Petitioners that Rule 17 of the said Rules mandates that the

name of the first selectee in the select list should be that of a promotee. It is also the contention of the Petitioners that in terms of Sub-rule (3) of Rule 18 of the said Rules, appointments by direct recruitment and promotions are required to be made in accordance with the cyclic order referred to in Rule 17, which accordingly mandates that the first appointment shall go to a promotee, the second to a direct recruitee, third to a promotee and the fourth to a direct recruitee and so on and so forth. It is also the contention of the Petitioners that the same is also clear from the mandate of Rule 21 of the said Rules, inasmuch as, Rule 21 insists determination of seniority in accordance with the Uttar Pradesh Government Servants Seniority Rules, 1991 (hereinafter referred to as the "1991 Rules"). It is the further contention of the Petitioners that in terms of the provisions contained in Sub-rule (3) of Rule 8 of the 1991 Rules and, in particular, Proviso (ii) thereto, the seniority inter se promotees and direct recruitees is to be determined on the basis of rotation contemplated in the said Rule. In the circumstances, it was contended that in the seniority list, the rotation, as is the mandate, having not been acceded to, the same is not sustainable.

9. It was further contended that Respondent Nos. 3, 60 & 61 were promoted along with the Petitioners. It was contended that the said Respondents were junior to the Petitioners in the feeder posts of Junior Engineers. There appears to be no dispute to the said factual aspects. It was contended that in the seniority list, the said Respondents have been shown as senior to the Petitioners, which is not permissible in law.

10. The learned Counsel for the Respondents, including the counsel for the State, submitted that the said Rules nowhere mandates that recruitment must be made from the combined select list. On the other hand, it was submitted that Sub-rule (1) of Rule 18 of the said Rules authorises appointments being given from the select list of direct recruitees as well as from the select list of promotees in addition to the combined select list. The learned Counsel for the Petitioners submitted that having regard to the mandate contained in Sub-rule (2) of Rule 18, there is no discretion left, but the mandate is to recruit from the combined select list prepared under Rule 17, in case in a recruitment year, the recruitment is required to be made from both sources, i.e. by direct recruitment and by promotion. We are ad idem with the views expressed by the learned Counsel for the Petitioners. However, Sub-rule (3) of Rule 18 makes it clear that when appointments are given from the combined select list prepared under Rule 17, more than one order may be issued, but in such cases, a combined order is also required to be issued mentioning the names of the persons in order of seniority as determined in the selection or, as the case may be, as it stood in the cadre from which promotions are accorded. The same makes it absolutely clear that in the matter of appointment of direct recruitees, the merit adjudged at the selection has to be honored; while in the matter of giving promotions, seniority of the promotees, as stood in the cadre from which they were promoted, should be honored. Sub-rule (3) of Rule 18 thereupon says something which creates

confusion. It says that if appointments are made both by direct recruitment and by promotion, names shall be arranged in accordance with the cyclic order referred to in Rule 17, when, however, Rule 17 does not prescribe any cyclic order. After having had mentioned that the first name in the combined select list shall be of a promotee, it does not say who shall be the second person in the said list or who shall be the third person in the said list and so on and so forth. There being no mandate of making a cyclic order in Rule 17 of the said Rules, as we have said earlier, the last sentence of Sub-rule (3) of Rule 18 has created a confusion. The said confusion has been enlarged by Sub-rule (3) of Rule 8 of the 1991 Rules, in terms whereof, the seniority is also required to be maintained as is the mandate of Rule 21 of the said Rules. The 1991 Rules nowhere deals with or talks about recruitment year. There is no concept of recruitment year in the 1991 Rules. Sub-rule (1) of Rule 8 of the 1991 Rules deals with seniority of persons, who have been promoted as well as persons who have been directly appointed. It provides that both the said classes of persons shall be entitled to their seniority from the date of their substantive appointments subject to the other Sub-rules contained in the said Rule. Sub-rule (3) of Rule 8 says that where appointments are made both by promotion and direct recruitment on the result of any one selection, the seniority of promotees vis-?-vis direct recruitees shall be determined in a cyclic order (the first being a promotee) as far as may be, in accordance with the quota prescribed for the two sources. It then gives an illustration and thereby makes it clear that the first would be a promotee, the second would be a direct recruitee and so on and so forth. The learned Counsel for the Petitioners submitted that the word "one selection" used in Sub-rule (3) of Rule 8 of the said Rules should be read as selection in one recruitment year. It was submitted that in order to give true meaning to the intention contained in Sub-rule (3) of Rule 8, recourse to supplying such meaning should be taken, otherwise the Sub-rule will become otiose. On the papers before us, it is not possible for us to conclude that in one selection, promotion and direct recruitment cannot be considered, as was urged before us and which is the foundation of the contention for supplying meaning. That being the conclusion, it would not be proper on our part to expand the meaning of Sub-rule (3) of Rule 8 of the 1991 Rules as was propounded by the learned Counsel for the Petitioners. In the event, the same was the intention, there was no difficulty on the part of the framers of the rule to incorporate the same in so many words. Be that as it may, since for the reason already indicated above that it is not possible for us to hold definitely that in one selection, promotion and direct recruitment cannot be considered, it would be beyond our competence to attempt to give further clarification to or amplification of Sub-rule (3) of Rule 8 of the 1991 Rules as the same is not required for the purpose of saving the same. The conclusion, therefore, would be that if Sub-rule (3) of Rule 8 does not apply to the case of the Petitioners and the Respondents, the seniority vis-?-vis the Petitioners and the Respondents is required to be fixed only on the basis of the mandate contained in Sub-rule (1) of Rule 8 of the 1991 Rules. There is no dispute that the Petitioners were substantively appointed on being promoted after the

Respondents were substantively appointed either by direct recruitment or by promotion except Respondent Nos. 3, 60 & 61 whose seniority is required to be determined in accordance with Rule 6 of the 1991 Rules. In the circumstances, the challenge thrown by the Petitioners to the final seniority list, impugned in the writ petitions, is of no substance. However, since there is no dispute that Respondent Nos. 3, 60 & 61 were junior to the Petitioners in the feeding post, i.e. the post of Junior Engineers, merely because they were promoted either before the Petitioners were promoted or they were promoted in the quota available for graduate Engineers, it does not appear to us that the said Respondents could be treated as senior to the Petitioners.

11. The learned Counsel appearing on behalf of Respondent No. 61 submitted that since his client was a graduate Engineer, he was promoted to the post of Assistant Engineer in the quota of Degree Holders available in the posts of Assistant Engineers, and as such it should be deemed that his client came from a different feeding cadre and, accordingly, Rule 7 of the 1991 Rules will apply and his client will be senior to the Petitioners. Inasmuch as, it has not been brought to our notice that there is a division in the cadre of Junior Engineers, namely, Junior Engineers (Graduate) and Junior Engineers (Diploma Holders), we are not in a position to accept the contention that Respondent No. 61 came from a separate cadre than the cadre from which the Petitioners came.

12. Inasmuch as the 1991 Rules would apply to the present controversy, we dispose of the writ petitions by directing the State Government to fix the seniority of Respondent Nos. 3, 60 & 61 in accordance with law after giving a hearing to the said Respondents as well as the Petitioners and in the light of what has been observed above as quickly as possible, but not later than three months from the date of service of a copy of this order upon the Secretary, Irrigation Department, Government of Uttarakhand, Dehradun.