
(1993) 09 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No. 1855 of 1992

State of U.P. and others

APPELLANT

Vs

Sheo Nandan and others

RESPONDENT

Date of Decision : 30-09-1993

Acts Referred:

Citation : AIR 1994 SC 1183 : (1994) 2 LLJ 676 : (1995) 2 SCC 63 Supp

Hon'ble Judges : N. Venkatachala, J;A. M. Ahmadii, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The brief history of the litigation leading to the passing of the impugned order dated March 5, 1991 may be noticed in order to appreciate the real dispute between the parties. In 1983 a large number of writ petitions were filed in the High Court of Judicature at Allahabad (Lucknow Bench) which were heard by a Division Bench on January 18, 1984. The writ petitions related to employees of the Marketing Division in the Food & Civil Supplies Department of the State of Uttar Pradesh comprising Marketing Inspectors whose appointment under the relevant recruitment rules could be by direct recruitment and promotion in the ratio of 50: 50. The grievance made by the petitioners was that while their juniors had been promoted as Marketing Inspectors against regular posts they had been ignored merely because they were occupying seasonal posts and were thus discriminated against. They, therefore, prayed that they should not be reverted and should be allowed to continue as long as their juniors were occupying the post of Marketing Inspectors. Out of the batch of petitions, certain petitions were filed by temporary junior grade clerks or accountants, who also apprehended their retrenchment or reversion, since they too were promoted on a temporary post as Marketing Inspectors and were likely to be reverted to their original posts by August 31, 1983. Likewise a petition was also filed by certain clerks who apprehended that on the reversion of the junior clerks temporarily occupying the post of Marketing Inspectors, they too will be reverted to the post

of Kamdar, if not retrenched. This batch of writ petitions came to be disposed of on 18th January, 1984. The Division Bench disposed of the writ petitions relating to reversion from the post of Marketing Inspectors in terms of its earlier order dated September 28, 1983 subject to certain modifications. So also the writ petitions relating to consequential reversions/retrenchments from the posts of clerks or accountants were disposed of holding that they did not need any separate treatment. It was held that reversions/retrenchments were consequential to the reversions of Marketing Inspectors and, therefore, they did not need any separate treatment. Inasmuch as fresh reversion orders were concerned, it was stated that they may be passed in terms of the court's order dated September 28, 1993 as modified by the Division Bench. The orders which were passed in a batch of writ petitions on different dates in August and September, 1983 were carried to this Court by special leave. Those petitions were disposed of by this Court by a speaking order dated January 20, 1984. The petitioners in the said group of petitions were promoted to the cadre of Marketing Inspectors from the feeder cadre of clerks. During the procurement season the strength in the cadre of Marketing Inspectors was required to be augmented to meet the immediate need. Ad hoc promotions used to be given and once the need was met, reversions followed as a matter of course at the end of procurement season. To stall such reversions a large number of writ petitions were filed in the High Court of Uttar Pradesh at Allahabad. In some of those writ petitions interim orders were passed against effecting reversions. A Division Bench of the High Court finally disposed of the writ petition No. 6763 of 1983 observing that the promotions of the petitioners in that case were ad-hoc and up to the period ending on August 31, 1983 and; therefore, they had no right to continue on the post of Marketing Inspectors. The other writ petitions involving the same question were disposed of in the same manner relying on that judgment. The petitioners whose writ petitions were dismissed by the High Court approached this Court by way of special leave. When the said SLP came up for hearing before this Court its attention was drawn to an order made by a Division Bench of the same High Court on September 20, 1983 in Writ Petition No. 3440 of 1983, the relevant portion whereof extracted by this Court in its order reads as under AIR 1984 SC 634 para 5:

We accordingly direct that so far as appointments on the posts of Marketing Inspectors by promotion from among the clerks are concerned, such of the officiating Marketing Inspectors as are seniormost according to the said seniority list as corrected up to date and as could be accommodated within the 50 per cent promotion quota (subject to reservation, against promotion posts, in favour of Scheduled Castes and Backward Classes candidates) shall be allowed to continue as officiating Marketing Inspectors while the rest may be reverted. It is further clarified that so far as the posts of seasonal Marketing Inspectors are concerned, which were created only for the period up to the end of August, 1983 we are not directing extension of the term of such posts. The persons who are to be accommodated within the 50 per cent promotion quota as directed above

shall be accommodated to the extent possible against regular posts of Marketing Inspectors and not against seasonal posts. This order is being passed in supersession of earlier interim orders passed in this case.

Counsel for the State accepted the finding that the seniority list in respect of the clerical cadre dated January 10, 1983 should be treated as final and promotions to the post of Marketing Inspectors be made in accordance therewith, subject to individual grievances of errors to be corrected on a proper representation being made. This Court thereafter proceeded to observe as under:

The promotion would be to the regular post of Marketing Inspector. Ad hoc promotion may be made as per the seasonal requirement, more especially during the procurement season. However such promotions must be specific in terms with specification of the period during which promotion is given. Such promotions would be outside the quota of 50 per cent to be filled in by promotion in the regular cadre of Marketing Inspectors. Petitioners shall be adjusted with regard to their promotions as herein indicated.

The special leave petitions were disposed of accordingly.

2. After this judgment certain appointments which were made on ad hoc basis to meet the need of the procurement season were terminated by the order of August 31, 1984. That order reads as under:

The sanction of posts by Government is up to 31-8-84. Therefore, for want of sanction after this period and non-availability of posts your services are being terminated from the afternoon of 31-8-84 and you are hereby relieved from the afternoon of 31-8-84. You should treat yourself relieved.

Sd/- Regional Food Controller Faridabad Region, Faizabad.

Similar orders were passed in regard to others also. Thereupon certain writ petitions were filed in the High Court of Judicature of Allahabad (Lucknow Bench) which were heard and decided by a Division Bench by its judgment and order dated August 27, 1984. In doing so the Division Bench placed reliance on the decision of this Court in Sheo Dutt Sharma's case AIR 1984 SC 634 . The Division Bench made the following order:

We accordingly direct that so far as the appointments on the post of Marketing Inspectors by promotion from amongst the clerks are concerned, such of the Marketing Inspectors as are seniormost according to the seniority list dated 10-1-83 as corrected up to date and as could be accommodated within the 50 per cent promotion quota (subject to the reservation against the promotion posts in favour of Scheduled Castes and Scheduled Tribes candidates) shall be allowed to continue as Officiating Marketing Inspectors while the rest may be reverted. It is further clarified that so far as the post of Seasonal Marketing Inspectors are concerned, which were created up to a period of August, 1984, we are not directing extension of the terms of such posts. The persons who are to be accommodated within the 50 per cent promotion quota as directed above shall

be accommodated to the extent possible against regular posts of Marketing Inspector and not against seasonal posts.

Writ Petition No. 4081 relates to appointment of seasonal clerk and not to promotion. The principle of seniority shall be observed in regard to the continuation of the posts of clerks as well. In other words, if the petitioner be senior to other clerks appointed against regular posts then he will get preference for continuance. However the seasonal post is not to be extended beyond 31st August, 1984.

Another group of writ petitions came to be disposed of by a Division Bench of that Court by the order dated September 17, 1984. This included writ petition No. 4506 of 1984. The Division Bench directed that the writ petitions will stand disposed of in terms of the order of the Court in the group of writ petitions disposed of on August 27, 1984. The time for compliance was extended up to October 9, 1984. It appears that thereafter an application was filed for seeking compliance with the directions given by the Division Bench in its order dated August 27, 1984. This application came up before a learned single Judge of the High Court (Lucknow Bench), who passed the impugned order dated March 5, 1991. Even though the services of the petitioners had been terminated under the order of August 31, 1984 they preferred the application for continuance of their service on the ground that their services were terminated merely because sanction for continuance of the post was not available and on no other ground and that they were entitled to be considered for permanent appointment on regular basis and for absorption in service in accordance with law. The learned single Judge bearing in mind the directions given by the Division Bench in its order dated September 17, 1984 ordered as under:

The petitioners who have been working throughout under interim orders shall have a right to continue in service until their services are dispensed with in accordance with law and they are in no case discriminated as compared to their juniors if they are retained in service. The writ petition is accordingly disposed of finally with these observations. Parties shall bear their own costs.

It becomes immediately clear that the learned single Judge while making the said order overlooked the fact that writ petition No. 4506 of 1984 had been finally disposed of in terms of the earlier order of the Division Bench in the other group of cases on August 27, 1984. There was, therefore, no question of disposal of the writ petition finally once again by the learned single Judge. The only question which the learned single Judge, therefore, was required to consider was whether the State Government had failed to comply with the earlier order of August 27, 1984. It may also be mentioned that neither side had preferred an appeal against the order passed by the Division Bench on September 17, 1984 in Writ Petition No. 4506 of 1984. Hence what was required to be considered was the question whether the order of August 27, 1984 had been complied with. Now that order clearly provided that seasonal Marketing Inspectors appointed to work up to the end of August, 1984 are not entitled to extension in service. It was

clarified that the persons who are to be accommodated within the 50 per cent promotion quota have to be accommodated against regular posts of Marketing Inspector and not against seasonal post. In writ petition No. 4081 of 1984 relating to seasonal clerks it was said that the principle of seniority shall be observed in regard to continuation of the posts of clerks as well. In other words it was said that if the petitioner was senior to other clerks meaning thereby seasonal clerks, appointed against regular posts, then he will get preference for continuance. It Was, however, clear beyond doubt that the seasonal post was not required to be extended beyond August 31, 1984. It becomes immediately clear that by the said order dated August 27, 1984 against which also neither side had preferred an appeal, the Division Bench made it crystal clear that employees working on a post created to meet the needs during the procurement season will not be entitled to continue beyond August 31, 1984, be they Marketing Inspectors or clerks. It is also clear that those to be accommodated in the 50 per cent promotion quota were to be accommodated against regular posts and not against seasonal posts. Insofar as seasonal clerks were concerned, it was stated that their seniority shall be observed for continuation on the post meaning thereby if a seasonal clerk who is senior to another seasonal clerk who has been appointed on a regular post is continued then the former also will be entitled to continuance. The Division Bench, however, was absolutely clear in its mind that seasonal posts created up to the end of August, 1984 to meet the requirement of the procurement season were not intended to be continued by the said direction. The learned single Judge, however, took the view that since the seasonal posts were discontinued at the end of August, 1984 on the ground of want of sanction for continuance of the posts and no other ground, the petitioners were entitled to be considered for permanent appointment on regular basis by absorbing them in service in accordance with law. He, therefore, directed that the petitioners, who have been working throughout under interim orders shall have a right to continue in service until their services are dispensed with in accordance with law and they are in no case discriminated as compared to their juniors if they are retained in service. This direction proceeded on the assumption that the petitioners were the seniormost seasonal employees and that they had continued in service throughout under interim orders. However, it is common ground that their services were discontinued with effect from August 31, 1984. Even otherwise their continuance under interim orders, if any, subsequent to August 31, 1984 would not be in conformity with the Division Bench order of September 27, 1984, and would not confer any right to continuance. Be that as it may, the fact remains that the learned single Judge acted on the assumption that the petitioners were the seniormost, an assumption which is not supported by record. The possibility of others who had not approached the Court being senior to the petitioners cannot be ruled out. The direction which the learned single Judge could have given was to mandate the State Government to comply with the Division Bench's order of September 17, 1984 and no more. The final direction of the learned single Judge is not in keeping with the direction of the Division Bench order of September 17, 1984.

3. We, therefore, set aside the order and direct the State of Uttar Pradesh to comply with the order of August 27, 1984 which is based on this Court's order in Sheo Dutt Sharma's case AIR 1984 SC 634 We clarify that the seniormost seasonal employees to be accommodated in regular posts shall be against the available posts only in the regular cadre and there is no question of accommodating them by creation of supernumerary posts. The appeal will stand disposed of with the above clarifications with no order as to costs. The State Government should comply in accordance with the order of the Division Bench dated August 27, 1984, within a period of six months from today.