

(2003) 08 UK CK 0015

In the Uttarakhand High Court

Case No : Writ Petition No's. 1010 and 1011 (S/B) of 2001

State of U.P. and Others

APPELLANT

Vs

Bipin Chandra Bhagat and Another

RESPONDENT

Date of Decision : 11-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 — Rule 17, 6

Citation : (2003) 08 UK CK 0015

Hon'ble Judges : S.H. Kapadia, C.J; P.C. Verma, J

Bench : Division Bench

Advocate : U.K. Uniyal, Additional Government Advocate, for the Appellant; K.P. Upadhyaya, for the Respondent

Judgement

S.H. Kapadia, C.J.—Bipin Chandra Bhagat filed his claim petition for quashing an order cancelling his promotion to the post of Junior Clerk and restoration of the post of Junior Clerk in which he has been working since 1991. He is Respondent No. 1 in the petition. He was appointed to the post of Forest Guard on 18th March 1983. Since then he has been working as a Junior Clerk. He was selected to the post of Junior Clerk by a Selection Committee on 18th June 1990. He was given an appointment order appointing him on substantive basis as a Junior Clerk. That order is dated 25th June 1989. That order was cancelled on 9th July 1998. It is that order, which is under challenge.

2. In reply, the opposite party namely, State of U.P., contended that Bipin Chandra was appointed as Forest Guard in 1983 under Lower Subordinate Forest Service Rules, 1980. That, 90% posts of Forest Guard were to be filled by direct recruitment and 10% by promotion, under those Rules. That, those Rules of 1980 were amended in 1982 which came into force with effect from 1st March 1979 which provided for promotion of Forest Guards to the post of Forester. The post of Forester was a class-III post. The Rules were further amended in 1995 under which 50% posts of Foresters were to be filled by Forest Guards, Jamadars

and Moharirs.

3. On the other hand, the U.P. Government had framed U.P. Forest Department Clerk Cadre Service Rules in 1981, which provided for recruitment to the post of Junior Clerk at an entry point. Under those Rules of 1981, the post of Junior Clerks were to be filled by direct recruitment only. According to the State of U.P., Bipin Chandra was wrongly promoted to the post of Junior Clerk because he was a Forest Guard whose promotion was to the post of Forester under the above mentioned Subordinate Forest Rules, 1980. According to the State of U.P., the promotion of Bipin Chandra was illegal and therefore, by the impugned order dated 9th July 1989, the promotion was cancelled. Therefore being aggrieved, the claim petition was filed before State Public Services Tribunal by Bipin Chandra Bhagat. It is important to note that in the written statement the State of U.P. has not denied the averments of Bipin Chandra to the effect that he has been working as a Junior Clerk from 1991 and that he was selected by a committee for that post on 8th June 1990.

4. By judgement 14th July 1999, the Services Tribunal allowed the claim petition and the State of U.P. was directed restoration of Bipin Chandra to the post of Junior Clerk with pay and allowances from the date of restoration on the ground that Bipin Chandra was promoted to the post of Junior Clerk in accordance with Government order dated 21st August 1982 and also on the ground that Bipin Chandra has been discharging the duties of a Junior Clerk from 1991.

5. Being aggrieved by the decision of the Services Tribunal, the State of U.P. has come by way of writ petition to this Court.

6. It is argued on behalf of the Petitioners that the hierarchy in the case of Subordinate Forest Services was quite different from the hierarchy mentioned in U.P. Forest Department Clerk Cadre Service Rules, 1981. It was argued that the entry point for the clerical cadre was that of Junior Clerk under the Clerical Cadre Service Rules. That, under the Clerical Cadre Service Rules, the post of Junior Clerk was the lowest post on the entry level and the next higher post was that of Senior Clerk to which the higher post was that of Senior Assistant. It was argued that, on the other hand, the post of Forest Guard was a feeder post to the post of Forester, under Subordinate Forest Services Rules, 1951 which has been amended from time to time. That, as per the Rules of 1951, the post of Forester was to be filled in by promotion from Forest Guards. It was, therefore, contended that there are two different streams of recruitments and promotions. It was argued that Bipin Chandra was appointed as a Forest Guard under the Forest Services Rules and therefore, he could not have been promoted or recruited to the post of Junior Clerk. It was the post at the entry level under the Clerical Service Rules, 1981.

7. On the other hand, it was argued on behalf of Bipin Chandra that he has been discharging the duties of Junior Clerk since December 1991. That, this allegation of Bipin Chandra has not been denied. That, under the Government order dated

31st August 1982, he was promoted to the post of Junior Clerk from the post of Forest Guard and therefore, it was not proper on the part of the department to cancel his promotion. It was argued that if the department denied such promotions on the ground that the post of Junior Clerk was not a promotional post for Forest Guards, then they could do so in future but not retrospectively. That natural justice was violated, therefore it was contended that the High Court should not interfere under Article 226 of the Constitution.

FINDINGS

8. At the outset we find that there is a dichotomy between Forest Services Rules as amended from time to time and Clerical Service Rules of 1981. Under the Forest Services Rules, the post of Forest Guards is a feeder post and the promotional post is that of a Forester. Whereas, under Clerical Service Rules, the post of Junior Clerk is the post at the entry level and it constitute feeder post to the post of Senior Clerk. Therefore, there are two different streams. Therefore, these are two separate cadres. Therefore, we find merit in the case of U.P. Government, as Forest Guards were not entitled to be promoted to the post of Junior Clerks. To that extent, the Government of U.P. succeeds before us. However, in this case, we find on facts that Bipin Chandra has been working as a Junior Clerk from December 1991. That, he holds the qualifications for the post of Junior Clerk. However, he has become age-barred. The claim of Bipin Chandra that he has been working from 1991 is not denied. Therefore, in the interest of justice and without setting a precedent, we uphold the order of the Service Tribunal. Our judgement should not be cited as a precedent. Our judgement is restricted to the facts of this case only.

9. Before concluding, we may also refer to the provision of U.P. Subordinate Offices Ministerial Staff Direct Recruitment Rules, 1985. Rule-6 deals with source of recruitment of the lowest grade of the Ministerial Staff in a Subordinate Office. It states that recruitment to the lowest grade shall be made by direct recruitment through Selection Committee, under Rule-17, on the basis of academic and other qualifications. Rule-6 has a Proviso. It states that 15% of the vacancies may be filled by promotion from High School pass Group-D employees of that office in accordance with the orders of the Government. These Rules govern recruitment to Ministerial post of the lowest grade. It was argued on behalf of Bipin Chandra Bhagat that his promotion was valid in view of the Proviso to Rule-6. We do not find any merit in this submission. In this case, we are concerned with the cadre falling under Forest Services Rules. We are not concerned, in this case, with Clerical Service Rules. Hence, the Proviso of Rule-6 of Ministerial Staff Direct Recruitment Rules, 1985 has no application. Moreover, the Proviso states that the promotee should be a Group-D employee of a subordinate office (underlining given by us). Now under-Rule-6, a promotee is to be a Group-D employee of a subordinate office, which will cover Junior Clerk, Senior Clerk, Senior Assistant etc. The Petitioner was a Forest Guard, however, he was not a Group-D employee of the Subordinate Office. Therefore, the Proviso to Rule-6 of Ministerial Staff

Direct Recruitment Rules, 1985 will not apply. Therefore, there is no merit in the argument advanced on behalf of Bipin Chandra Bhagat.

10. Therefore, we hereby declare as follows:

(a) That the post of Forest Guards is not a feeder post for promotion to the post of Junior Clerk.

(b) That the Forest Services Rules, 1951, as amended from time to time and the Clerical Service Rules, 1981 provide for two different streams of recruitment and promotions.

(c) However, on facts of this case, without setting any precedent, since Bipin Chandra Bhagat has been working as Assistant Clerk from 1991 and since he is qualified to work as a Assistant Clerk and since he is age-barred, in the interest of justice, we are not allowing the U.P. Government to discontinue his working as Junior Clerk.

11. Accordingly, writ petition is disposed of. No order as to costs.