

(2015) 02 AHC CK 0066

In the Allahabad High Court

Case No : Special Appeal Defective No. 69 of 2015

State of U.P. and Others

APPELLANT

Vs

Ram Pati Yadav and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 2 ADJ 636 : (2015) 3 ALJ 184 : (2015) 110 ALR 710 : (2015) 2 AWC 2096

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.;Suneet Kumar, J.

Bench : Division Bench

Advocate : O.P. Singh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. The special appeal has arisen from a judgement and order of the learned Single Judge dated 8 October 2013 by which a writ petition filed by the respondents was allowed and a direction has been issued to the effect that the respondents would be entitled to at least notional promotion on the post of Commandant from the date on which other persons in a promotion order dated 13 December 2005 had been given promotion. For convenience of reference parties shall be referred to by the array of parties in the original Court proceedings.

2. The two petitioners were promoted as Platoon Commanders on 29 June 1991 and 9 June 1994 respectively. On 14 June 2001, they were promoted as Inspectors, Home Guard Cadre and retired from service on 30 November 2003 and 31 December 2004. A meeting of the Departmental Promotion Committee (DPC) for promotion to the District Commandant Cadre was held for 2003-04 and 2004-05 under the U.P. Public Service Commission. The DPC for 2003-04 was held on 24 October 2005. The petitioners were found eligible for promotion against the vacancies for 2003-04. On 13 December 2005, the Principal Secretary in the Home Department issued promotional orders for thirteen persons. As against the names of the first and second petitioners, the

promotional order indicated that they had retired on 30 November 2003 and 31 December 2004 respectively. The promotional orders were to take effect from the date on which the employees assumed charge of the promotional post. The eligibility list was for 2003-04. On 14 December 2005, promotional orders were issued by the Home Guards Secretariat in which names of the two petitioners were not included since they had retired prior to that date. The petitioners moved a representation which was disposed of on 22 April 2008. The order dated 22 April 2008 relied on a Government Order dated 23 August 1997, according to which, in the case of an employee who had retired, notional promotion would be granted with effect from the date on which a junior had been promoted. In the present case, no junior had been promoted prior to the date of retirement. Hence the representation was rejected.

3. That led to the filing of a writ petition before the learned Single Judge for challenging the order dated 22 August 2008 and for a mandamus to the authorities to compute pensionary dues of the petitioners on the post of District Commandant (Home Guards) w.e.f. 13 December 2005. The writ petition has been allowed by the learned Single Judge. The learned Single Judge has held that since the petitioners were within the eligibility criterion of promotion to the post of Commandant and their names were considered and found fit by the DPC, having been mentioned in the promotional order dated 13 December 2005, they were entitled to at least notional promotion on the post of Commandant from the date when other persons in the order dated 13 December 2005 had been given promotion. Aggrieved, the State is in special appeal.

4. The issue which falls for consideration before the Court turns on a Government Order dated 23 August 1997. The Government Order states that there is a provision for preparing an eligibility list for each year. Accordingly, the name of an employee would be included in the eligibility list for that year in which the employee had been found entitled, even if in the meantime, the employee had died or attained the age of superannuation. However, the Government Order states that where the question of notional promotion is concerned, there is no legal compulsion to grant promotion with effect from the date on which the vacancy has arisen. Notional promotion would be granted in the event of a junior being promoted, upon the employee being found fit by the DPC.

5. The law on the subject, is well-settled.

6. In *Union of India and Others Vs. K.K. Vadera and others*, , the Supreme Court held that after a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date such post falls vacant. Similarly, there is no principle of law under which a promotion is to be effective from the date of creation of a promotional post since promotions can be granted only after the Assessment Board has met and made its recommendations for the grant of promotions. On the other hand, if promotions are directed to be effective from the date of creation of the additional posts, then in such eventually, it would have the effect of giving promotions even

before the Assessment Board has met and assessed the suitability of the candidates for promotions. This judgment was followed by a subsequent judgement in Baij Nath Sharma Vs. Hon"ble Rajasthan High Court At Jodhpur and Another, , where the Supreme Court held that there was no rule in that case under which an officer was to be granted promotion from the date when the post fell vacant. Moreover, it was held that, in the case, no officer who had been junior to the appellant, had been promoted to the Higher Judicial Services.

7. In the present case, as the facts would indicate, the name of the petitioners were considered by the Departmental Promotional Committee together with other persons. The Departmental Promotion Committee, as was stated in the counter filed by the State, met on 24 October 2005. The petitioners were found eligible for promotion for 2003-04. However, in the case of all employees, the orders of promotion were to be effective from the date on which the employees assumed charge on the promotional post. This is evident from a notification dated 13 December 2005 issued by the Home Department with the approval of the Governor. The petitioners had, in the meantime, retired respectively on 30 November 2003 and 31 December 2004.

8. The Government Order, on which the learned Single Judge has placed reliance, has been carefully scrutinized during the course of the hearing of the special appeal. As a matter of fact, the Government Order adopts a position quite contrary to what has been held by the learned Single Judge. What the Government order stipulates is that though an employee has since died or has retired from service, the name of such an employee would be included in the eligibility list for the year for which he has been found to be eligible. However, the Government order clarifies that there is no legal compulsion to grant notional promotion and an employee would be allowed notional promotion only with effect from the date on which an employee who was junior to him has been promoted. This Government order is, in fact, in consonance with the two judgments of the Supreme Court which have been referred to earlier.

9. Significantly, in the writ petition which was filed by the petitioners, there was no averment to the effect that any junior had been promoted prior to the date on which the petitioners superannuated. Moreover, no entitlement was claimed on the basis of any rule allowing the benefit of notional promotion.

10. In this view of the matter, the learned Single Judge was in error in holding that the petitioners would be entitled to notional promotion at least, on the post of Commandant from the date when other persons in the order dated 13 December 2005 had been given such promotion. As a matter of fact, the other employees were given promotion by the order dated 13 December 2005 with effect from the date on which they assumed charge. By then, the petitioners had already retired.

11. For these reasons, we allow the special appeal and set aside the impugned judgment of the learned Single Judge dated 8 October 2013. In consequence,

the writ petition filed by the petitioners before the learned Single Judge shall stand dismissed.

12. There shall be no order as to costs. There is a delay on the part of the State in filing an appeal against the judgment and order dated 8 October 2013 of the learned Single Judge. The delay of one year forty two days has been satisfactorily explained in the affidavit filed by the Senior Staff Officer, Home guard Headquarters and hence, is condoned. The application stands disposed of.