

(1993) 04 AHC CK 0051
In the Allahabad High Court
Case No : Writ Petition No. 6178 (S/S) of 1992

State of U.P.

APPELLANT

Vs

Kamlesh Chandra Dixit and others

RESPONDENT

Date of Decision : 22-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 04 AHC CK 0051

Hon'ble Judges : K.L.Sharma, J

Final Decision : Dismissed

Judgement

K.L. Sharma, J.—Heard Sri Harshwardhan, the learned counsel for State and Sri R. C. Saxena, the learned counsel for the opposite party No. 1, The other opposite parties have not contested, This writ petition is being disposed of finally.

2. The State of U.P. and the Regional Director, Social Forestry, Avadh Region, Uttar Pradesh, Lucknow, filed this writ petition under Article 226 of the Constitution of India against the impugned judgment and order dated August 25, 1990 rendered by the U.P. Public Services Tribunal in Claim Petition No. 176/II/89 (Kamlesh Chandra Dixit v. State of U.P. & others). The claim petition has been allowed ex parte and the opposite party No. 1 and 2, now the petitioners, were directed to treat the petitioners as promoted to the post of Forester with effect from the date his junior was given said promotion and given him all the consequential benefits of seniority and arrears of pay and allowances.

3. According to the petitioners' case before the U.P. Public Services Tribunal, he was holding the post of plantation jamadar in the Forest department of the Shasan and had been paid regularly by order dated November, 1978 with effect from May 24, 1978. In the year 1989, promotions were made to fill the 24 vacancies of foresters by promotion of Forest Guards and Plantation Jamadars. The quota for plantation jamadars was 25% and accordingly, six plantation jamadars were to be promoted as Foresters. But only four vacancies were filled up by promotion of the plantation jamadars who were juniors to the opposite

party No. 1 of the present writ petition. The criteria for promotion was seniority subject to rejection of unfit. The opposite party No. 1 of the present writ petition, being the senior most, the plantation jamadar should have been promoted first, but he was ignored and juniors were promoted. He then submitted a representation to the petitioner No. 2 of the present writ petition but it was not decided. According to the opposite party No. 1 of the present writ petition, there existed only one adverse entry against him for the year 198586, when he refused to undergo the training prescribed for equal posts of Forest Guards. He filed a writ petition No. 424 of 1987 in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow and obtained stay order against the order of his training. He also submitted a representation to the petitioner No. 2 against the adverse entry for the year 198586. This representation was also not decided, but the promotion of the juniors were made ignoring the opposite party No. 1. He then preferred a claim petition before the learned Tribunal. The opposite party No. 1 did not file the counter affidavit before the learned Tribunal and did not pay the amount of costs imposed by the learned Tribunal. When no alternative remedy was left, the learned Tribunal proceeded to hear the opposite party No. 1 ex parte and passed the impugned judgment and order.

4. Against the said judgment and order dated August 25, 1990, the present writ petition has been filed on August 26, 1992, after expiry of full two years from the date of the impugned judgment and order. In paragraph10 of the writ petition, attempt has been made to explain the delay of two years in filing the present writ petition. At the time of admission of this writ petition, the learned Judges of this court passed order to the effect that however, it will be open to the opposite parties to take the plea of delay for filing the writ petition.

5. A counter affidavit has been filed by the contesting Opposite Party No. 1 taking the plea of delaying the filing of the present writ petition as well as the dismissal of the writ petition on merit. It has been stated by the opposite party No. 1 that only adverse entry for the year 198586 would not be considered by the department of the promotion committee because it was under representation and had not been decided before the promotion of the juniors were considered.

6. Rejoinder affidavit has also been filed on behalf of the petitioners stating that the opposite party No. 1 was found unsuitable by the Promotion Committee on the ground of adverse entry for the year 198586 in respect of the refusal to undergo the training and, therefore, he was not entitled to be promoted as Forester. I have heard the learned standing counsel Mr. Harsh Wardhan, for the petitioners and Mr. R.C. Saxena, the learned counsel for the opposite party No. 1. Perused the record and the writ petition.

7. The first question, requiring consideration, is whether the writ petition filed after two years from the date of the impugned judgment, is liable to be dismissed on the ground of laches. In paragraph10 of the writ petition, attempt has been made to explain the delay. The application for setting aside the ex parte judgment Was presented before the learned Tribunal and it was dismissed

on November 30, 1991. Thereafter, the opinion from the DGC, Rai Bareilly was sought whether the writ petition be filed or not. The legal opinion was received from the District Government Counsel on January 7, 1992. A permission from the Government to file the writ petition was received on March 3, 1992. Immediately, thereafter action was initiated to file the writ petition and, for 'certain unavoidable reasons', action has been delayed.

8. In view of the explanation, it is not clear that the petitioners have themselves failed to explain the delay and have resorted to seek help from the word 'certain unavoidable reasons' as if those reasons related to the secrecy of the State that the disclosure of which is not in public interest. I am not satisfied with the explanation of the delay on the part of the petitioners. There was no necessity at all for seeking any legal advice from the District Government Counsel for filing the writ petition. Under the rules of the business of the Government it was the duty of the administrative department to decide whether to comply with the judgment or to propose filing of the writ petition and, in the event of the latter proposal, it was only to obtain the permission of the legal remembrancer.

9. A right course has not been adopted by the petitioners and they are not entitled to get the benefit of their irregular activities. When the petitioners have failed to explain the reasons of delay they have used unnecessary words like 'certain unavoidable reasons'. The State Government is not expected to ignore the judgment of the U.P. Public Services Tribunal for two years. This writ petition is liable to be dismissed on the ground of laches.

10. The petitioners' counsel raised the contention that the learned Tribunal committed error of law by directing the promotion of the opposite party No. 1, when it was within the competence of the Appointing Authority to judge the suitability or otherwise of the opposite party No. 1. This contention does not have substance because no counter affidavit was filed before the learned Tribunal despite several opportunities, imposition of costs and warnings. In the absence of any counter affidavit advanced, the learned Tribunal was wholly justified to make the adverse presumptions against the noncooperative party. Moreover, even if the plea of unsuitability, now raised through rejoinder affidavit is considered, it does not carry the petitioners to success. The only adverse entry referred to and relied upon by the departmental promotion committee relates to the year 1985-86 which was based on refusal of the opposite party No. 1 for undergoing training as Forest Guard on the ground that he was not holding equal post and, he could not be deputed for such a training. When the department did not concede to its proper request, he filed a writ petition No. 424 of 1987 in the High Court and a stay order was passed. In view of the said stay order of the High Court, it was not justified on the part of the authorities concerned, of the department to record the adverse entry against the opposite party No. 1. A representation was also submitted against the adverse entry but it was not decided. Since the representation was pending against the adverse entry, the departmental promotion committee was not justified to consider the suitability of

the opposite party No. 1 on the basis of the adverse entry under representation.

11. Therefore, the conclusion drawn by the departmental promotion committee that the opposite party No. 1 was unsuitable for promotion, is perverse, vitiated in law. The adverse entry relied upon by the department against the opposite party No. 1, is not hurdle in the way of the promotion of the petitioner. The learned Tribunal was, therefore, justified after considering the alleged adverse entry, also to hold that the petitioner was entitled to be promoted along with his juniors on the basis of the promotion criteria, that is, seniority subject to rejection of unfit. Accordingly, the learned Tribunal directed that the petitioner shall be treated as promoted to the post of Forester with effect from the date on which his juniors were given promotion. The learned Tribunal was also aware about the nonavailability of vacancy to keep the opposite party No. 1 and, accordingly, made a direction for arrangement for such adjustment. The Government should have implemented the directions given by the learned Tribunal and should not have wasted time and public money in filing this writ petition and by filing the writ petition after two years.

12. I do not find any infirmity in the impugned judgment and order and rather I find the conduct of the petitioners highly objectionable and undesirable.

13. The present writ petition is dismissed with costs to the opposite party No. 1 assessed as rupees two thousand payable within a period of two months. The impugned judgment and order dated August 25, 1990, passed in Claim Petition No. 176/11/89 are hereby confirmed and the petitioners are directed to implement the judgment within one month from the date of delivery of the judgment.

(Petition dismissed.)