
(2008) 12 AHC CK 0092
In the Allahabad High Court
Case No : Special Appeal No. 1058 of 2001

State of U.P.& Ors.

APPELLANT

Vs

Kailash Nath Yadav & Ors.

RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Uttar Pradesh Sales Tax Department Ministerial Service Rules, 1973 — Rule 5(1)(A)

Citation : (2008) 12 AHC CK 0092

Hon'ble Judges : S.Rafat Alam, J and Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.

This Special Appeal has been filed against the judgment and order dated 17th August, 2001 delivered by a learned Judge of this Court by which the writ petition was allowed and a direction was issued to the respondents to consider the case of the petitioners for promotion from Class IV post to Class III post in terms of Rule 5(1)(A) of the Uttar Pradesh Sales Tax Department Ministerial Service Rules 1973 (hereinafter referred to as the 1973 Rules) by applying the criteria for promotion as contained in the U.P. Government Servants Criterion for Recruitment by Promotion Rules, 1994 (hereinafter referred to as the 1994 Rules).

The petitioners who are respondents in this Special Appeal, have been working as Class IV employees in the Trade Tax Department of the State of Uttar Pradesh. The claim set up by the petitioners in the writ petition was that they were entitled to be promoted to Class III post after completion of 5 years of service in accordance with the Government Order dated 2nd August, 1976 whereas the contention of the respondents in the writ petition was that recruitment to certain Class III posts in the pay scale of Rs.100180 mentioned in Rule 5(1)(A) of the 1973 Rules can be made only by direct recruitment but Class IV employees could also be considered for recruitment to Class III posts to the extent of 10% in accordance with Rule 5(1)(A)(ii) and Rule 16 of the 1973 Rules through a

competitive examination to be conducted by the Additional Commissioner.

The learned Judge in view of the provisions contained in Rules 8(2) and 9(2) of the 1973 Rules as also Appendix ""G" to the 1973 Rules concluded that the right given to Class IV employees under Rule 5(1)(A)(ii) and Rule 16 of the 1973 Rules is infact a right of promotion by selection through a competitive examination and having held so proceeded to examine whether the criteria for promotion by selection as contemplated by Rule 16 of the 1973 Rules would still hold the field or whether it stood repealed in view of the provisions of the 1994 Rules and held that in view of the provisions contained in Rule 2 of the 1994 Rules it stood repealed as the criteria for promotion in the 1994 Rules was in conflict with the procedure prescribed under the 1973 Rules and accordingly the writ petition was allowed.

We have heard Sri R.K. Tiwari, learned Standing Counsel appearing for the appellants as well as Sri A.K. Gupta, learned counsel appearing for the respondents.

Learned Standing Counsel submitted that from a perusal of Rule 5(1)(A) and Rule 16 of the 1973 Rules, it is clear that the source of recruitment for the four category of posts in the pay scale of Rs.100180 is (i) by direct recruitment and (ii) by selection of qualified permanent Class IV employees of the department through competitive examination to the extent of 10%, if suitable qualified candidates are available and this competitive examination is to be conducted by the Additional Commissioner in the manner provided for in Rule 16 of the 1973 Rules. He submitted that the Rule 5(1)(A)(ii) of the 1973 Rules does not contemplate promotion of Class IV employees to Class III posts and mere use of a word "promotion" in Rules 8(2) and 9(2) of the 1973 Rules will not change the manner of appointment which is by direct recruitment. In support of his contention he has placed reliance upon various provisions of the 1973 Rules to which we shall refer. He has further submitted that since the appointment is made by direct recruitment, the 1994 Rules will have no application.

Learned counsel for the respondents, however, supported the judgment and contended that the source of recruitment under Rule 5(1)(A) of the 1973 Rules as contemplated under the category (ii) relating to selection of qualified permanent Class IV employees is in the nature of promotion as would be clear from the reading of Rules 8(2) and 9(2) of the 1973 Rules together with Appendix ""G" and, therefore, there is no infirmity in the impugned judgment.

We have carefully considered the submissions advanced by learned counsel for the parties.

In order to appreciate the rival contentions it would be relevant to refer to the relevant provisions of the 1973 Rules and the same are as follow:

"The Uttar Pradesh Sales Tax Department Ministerial Service Rules, 1973,

Rule 5: (1) The source of recruitment to the various categories of posts in the

Service shall be follows:

Designation of Post Source of recruitment

1. 2. 3.

(A) Posts in the pay scale of Rs. 100180 (i) Routine Clerk / Typist in Circle and Range offices and Head Office.(ii) Record Keeper in Circle Office.(iii) Accounts Clerk in Head Office (iv) Ahalmad in the offices of Assistant Commissioners (Judicial). (i) By direct recruitment (ii) By selection of qualified permanent Class IV employees of the department through competitive examination to the extent of 10 per cent if suitable qualified candidates are available.

(B) Posts in the pay scale of Rs. 120220 (i) Noter and Drafter in Circle and Range Offices and Head Office. (ii) Reader in the offices of Assistant Commissioner (Judicial) (iii) Record Keeper in Head Office and Range Offices. (iv) Accountant in Circle offices. By promotion from the persons in the pay scale of Rs. 100180, mentioned at (A) above.

(C) Posts in the pay scale of Rs.120250 Munsrim in the offices of Assistant Commissioner (Judicial). By promotion from the persons in the pay scale of Rs.120220 mentioned at (B) above.

(D) Posts in the pay scale of Rs.150260 Head clerk in Circle offices By promotion from the persons in the pay scale of Rs.120250 mentioned at (C) above.

(E) Posts in the pay scale of Rs.140280 Noter and Drafter in Head Offices By promotion from the persons in the pay scale of Rs.150260 mentioned at (D) above

(F) Posts in the pay scale of Rs. 160320 Assistant Superintendent in Head Offices By promotion from the persons in the pay scale of Rs.140280 mentioned at (E) above

(G) Posts in the pay scale of Rs.250325 Head Clerk in Range Offices By promotion from the persons in the pay scale of Rs.160320 mentioned at (F) above

(H) Posts in the pay scale of Rs.350450 Superintendent in Head Offices By promotion from the persons in the pay scale of Rs.250325 mentioned at (G) above

(I) Stenographer in the pay scale of Rs120250 Stenographer in Circle, Range Offices, Office of Assistant commissioner (Judicial) and in Head Offices. By Direct recruitment

(J) Stenographer in the pay scale of Rs.160320 Stenographer in Head Office By promotion from stenographers in the pay scale of Rs.120325 mentioned at (I) above

(2).....

Rule 8. Age.(i) A candidate for direct recruitment must have attained the age of 18 years and must not have attained the age of 27 year"s on the first day of January next following the date of commencement of the written examination.

(2) A candidate from amongst class IV employees for promotion to the posts as mentioned at (A) of subrule (1) of rule 5 must not have exceeded the age of 45 years on the first day of January next following the date of commencement of the written examination.

Rule 9. Academic Qualifications. (1) A candidates for direct recruitment to the Service must possess the minimum academic qualifications indicated below:

Name of post (s) Essential Qualifications

(i) Routine Clerk/Typist in Circle Offices, Range Offices and Head Office, Accounts Clerk in Head Office, Record Keeper in Circle Offices and Ahalmad in the Offices of Assistant Commissioner (Judicial). Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an examination declared by the Governor as equivalent thereto.

(ii) Stenographer in all offices In addition to the above qualifications, there should be good knowledge of Hindi and English Shorthand and typewriting.

(2) A candidate from amongst Class IV employees for promotion to the posts mentioned item (i) of subrule (1) above must have passed the High School Examination of the Board High School and Intermediate Education, Uttar Pradesh or an examination declared by the Governor as equivalent thereto.

Rule 14. Application for recruitment. (1) The appointing authority shall ascertain the probable number of vacancies likely to occur in the different categories of posts during the course of the year, which require to be filled by direct recruitment and the number of vacancies to be reserved in accordance with Rule 6. The vacancies so ascertained shall be communicated to the Additional Commissioner.

(2) The procedure for inviting applications shall be such as may be decided by the Government from time to time.

(3) The examination for direct recruitment shall be conducted by the Additional Commissioner and, as far as may be, it will be held in the month of October of the year in which recruitment is sought to be made.

Rule 16. Recruitment by selection from class IV employees.(1) Recruitment from amongst class IV employees as mentioned in rule 5(1) (A) (ii) shall also be made through a competitive examination to be conducted by the Additional Commissioner.

(2)The procedure and the syllabus relating to the competitive test shall be such, as may be prescribed by the Government from time to time.

(3) The candidate securing 50 per cent or more marks in the written examination

will qualify for interview before a Selection Committee. The constitution of the Selection Committee shall be the same as provided in subrule (2) of rule 15 and the interview shall be held as provided in subrule (3) of that rule.

(4) The total marks obtained by the candidates on the basis of the written test, character roll and interview, will determine their position and the Merit List shall be prepared accordingly. If two or more candidates secure equal marks the candidate senior in Class IV Service will be placed higher in the list.

Rule 18. Recruitment by promotion.(1) Recruitment by promotion to the various posts in the Service shall be made by selection based on the principle of seniority subject to rejection of the unfit through a Departmental Selection Committee from amongst those eligible for promotion under the rules.

(2) The Departmental Selection Committee shall consist of the following:

(a) Additional CommissionerChairman,

(b) Assistant Commissioner (Administration),

(c) An Assistant Commissioner to be nominated by the Commissioner.

(3) The appointing authority shall intimate to the Additional Commissioner the number of vacancies to be filled for each category of posts for which selection is to be made.

(4) The eligibility list together with the Gradation List of all persons within the field of eligibility and the character rolls of the candidates included in the eligibility list together with such other records, if any, pertaining to them as may be relevant to the purpose, shall be placed before the Selection Committee.

(5) The Selection Committee shall consider the cases of all the candidates eligible for promotion with reference to their character rolls and other records placed before it and their position in the Gradation List with a view to judging their suitability for the post of which the selection is to be made. If the Selection Committee feels that the suitability of the candidates in a particular category of posts cannot be judged with the help of the records alone as placed before it, it may also interview all the candidates in that category. Similarly if the Selection Committee feels that the suitability of a particular candidate or candidates cannot be judged with the help of the records alone placed before it, it may, despite the fact that interview is generally considered unnecessary for such category of posts, interview such candidate or candidates.

(6) The names of the candidates selected by the Selection Committee shall be arranged in the order of their seniority in the cadre from which the promotion is made. The Select List so prepared shall contain the names of the candidates double the number of vacancies for which the selection is made. This list shall hold good till the next selection.

Rule 20. Appointment against substantive vacancies.(1) Appointment to the

posts in the pay scale of Rs. 100180 referred to in subrule 5(1) which are required to be filled in both by direct recruitment as well as by selection from amongst Class IV employees, shall be made in such a manner that after every nine candidates have been appointed from the list prepared under rule 15(4), one candidate, if available, shall be appointed from the list prepared under rule 16(4).

(2) Appointment to the posts of Stenographers in the pay scale of Rs. 120250 which are to be filled in by direct recruitment shall be made from the list of the candidates prepared under rule 15 (4) in the order in which their names appear in that list.

(3) In the case of posts to which recruitment is made by promotion only appointments shall be made from the list prepared under rule 18 (6) in the order in which the names of the candidates appear in that list."

A perusal of Rule 5(1)(A) of the 1973 Rules shows that the recruitment to the four posts of Routine Clerk, Record Keeper, Accounts Clerk and Ahalmad in the pay scale of Rs.100180 is to be made (i) by direct recruitment and (ii) by selection of qualified permanent Class IV employees of the department through competitive examination to the extent of 10%, if suitable qualified candidates are available. The recruitment for the posts mentioned in the Rule 5(1)(B) to (J) is to be made by promotion except for the post of Stenographer mentioned in Rule 5(1)(I) in the pay scale of Rs.120250. It is, therefore, clear that for the posts mentioned in Rule 5(1) of the 1973 Rules there is a specific mention where recruitment is to be made by promotion. Rule 5(1)(A) contemplates recruitment by direct recruitment only and not by promotion. Under subclause (ii) of the Rule 5(1)(A) all that is provided is that qualified permanent Class IV employees to the extent of 10% can also be considered for appointment to the four category of posts and the appointment is to be made by selection through a competitive examination to be conducted in the manner provided for in Rule 16 of the 1973 Rules. On the other hand the procedure for recruitment by promotion is provided for in Rule 18 of the 1973 Rules. It deals with the recruitment by promotion to the various posts in the service and provides that promotion shall be made by selection based on the principle of seniority subject to the rejection of the unfit through a Departmental Selection Committee from amongst those eligible for promotion under the 1973 Rules. Thus, all the promotions under the 1973 Rules have to be made in accordance with the procedure prescribed in Rule 18. The procedure prescribed under Rule 5(1)(A)(ii) for selection of qualified permanent Class IV employees is entirely different from the procedure prescribed for promotion under Rule 18 of the 1973 Rules. Thus, if Rule 5(1)(A)(ii) also contemplates appointment to Class III posts by promotion, then certainly some exception would have been provided for in Rule 18 of the 1973 Rules but that is not so. In fact, Rule 20 clinches the issue against the petitioners inasmuch as it provides that appointment to the posts in the pay scale of Rs.100180 referred to in Rule 5(1)(A) which are required to be filled up both by direct recruitment as

well as selection from the amongst Class IV employees shall be made in such a manner that after every 9 candidates have been appointed from the list prepared under Rule 15(4), one candidate, if available, is appointed from the list prepared under Rule 16(4). Rule 15 and Rule 16 both fall under part V of the 1973 Rules dealing with the procedure for direct recruitment.

The contention advanced by learned counsel appearing for the respondents, however, is that Rules 8(2) and 9(2) of the 1973 Rules which deal with the appointments made under Rule 5(1)(A) of the 1973 Rules talk of promotion and, therefore, the appointment of Class IV employees made by selection through a competitive examination of Class IV employees contemplated under Rule 5(1)(A) (ii) should be considered as an appointment by promotion and not by direct recruitment. It is true that Rule 8(2) of the 1973 Rules provides that a candidate from amongst Class IV employees for promotion to the post as mentioned at (A) of the subrule (1) of Rule 5 must not have exceeded the age of 45 years on the first date of January next following the date of commencement of the written examination, but the use of word "promotion" in this subrule cannot change the nature of recruitment and it appears that the word "promotion" has been loosely used in the Rule 8(2). Likewise, the word "promotion" appears to have been loosely used in Rule 9(2) and Appendix "G" of the 1973 Rules.

Thus, for all the reasons stated above, the appointment contemplated under Rule 5(1)(A)(ii) of the 1973 Rules is by direct recruitment and not by promotion.

Learned Standing Counsel appearing for the appellants also contended that the 1994 Rules on which reliance has been placed by the learned Judge have no application to the present case because they deal with promotion and not appointment by direct recruitment.

Sri A.K. Gupta, learned counsel appearing for the respondents, however, submitted that the 1994 Rules do apply in the present case as it is provided in the Rules that they shall have effect notwithstanding anything to the contrary contained in any other service Rules made by the Governor under the proviso to Article 309 of the Constitution. He, therefore, submitted that the learned Judge was justified in placing reliance upon these Rules.

In order to appreciate the rival contentions advanced by the learned counsel for the parties, it would be useful to reproduce the relevant provisions of the said Rules and they are as follows:

"1. Short title, commencement and application.(1) These rules may be called the Uttar Pradesh Servants Criterion for Recruitment by Promotion Rules, 1994.

.....

(3) They shall apply to a recruitment by promotion to a post or service for which no consultation with the Public Service Commission is required on the principles to be followed in making promotions under the Uttar Pradesh Public Service Commission (Limitation of Functions) Regulation, 1954, as amended from time to

time.

2. Overriding effect. These rules shall have effect notwithstanding anything to the contrary contained in any other service rules made by the Governor under the proviso to Article 309 of the Constitution, or orders, for the time being in force."

A perusal of Rule 1(3) of the 1994 Rules clearly shows that the Rules apply only to recruitment by promotion. Thus, though Rule 2 of the 1994 Rules provides that these Rules shall have effect notwithstanding anything to the contrary contained in any other service Rules made by the Governor under the proviso to Article 309 of the Constitution, but as noticed hereinabove, they will not have overriding effect over the 1973 Rules as the 1994 Rules apply only to appointment by promotion and not to appointment by direct recruitment. Indeed, the learned Judge has also observed that the 1994 Rules provides the criteria for recruitment by promotion. The learned Judge has, therefore, placed reliance upon these 1994 Rules only after having found that subclause (ii) of Rule 5(1)(A) of the 1973 Rules provides for a right of promotion by selection through a competitive examination. However, as we have held that the appointment contemplated under Rule 5(1)(A)(ii) of the 1973 Rules is by direct recruitment and not by promotion, it inevitably follows that the 1994 Rules will not prevail over the 1973 Rules. Hence, the learned Judge fell in error in applying the 1994 Rules in the present case in which appointment is to be made by direct recruitment and not by promotion. The contention of Sri A.K. Gupta, learned counsel for the respondents that the 1994 Rules had overriding effect over the 1973 Rules cannot, therefore, be accepted.

Thus, for all the reasons stated above, the impugned judgment cannot be sustained and is accordingly set aside. The Special Appeal is allowed and the writ petition stands dismissed.