
(2002) 08 AHC CK 0084
In the Allahabad High Court
Case No : C.M.W.P. No. 32665 of 1993

Sushil Kumar Gupta

APPELLANT

Vs

Secretary, Public Service Commission and Another

RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Uttar Pradesh Public Service Commission Staff (Conditions of Services) Regulations, 1942 — Regulation 5(5)

Citation : (2002) 4 AWC 3188

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Yar Mohammad, for the Appellant; V.M. Sahai, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—This petition is directed against the action of respondent No. 1 in not paying salary of Personal Assistant (Stenographer) to the petitioner since 28.6.1985, i.e., the alleged date from which the petitioner is said to have been discharging duties of the said post.

2. The facts of the case are that after 1974, no examination was held by the Public Service Commission, U. P., Allahabad to fill up the available posts of Personal Assistants. Since the petitioner knew short-hand and was working as Lower Division Assistant in the pay scale of Rs. 1,350-2,200 in the office of the Secretary, Public Service Commission, U. P., Allahabad, he was directed to discharge the duties of Personal Assistant. It is alleged that in view of a note dated 25.6.1985 to the Secretary, the Joint Secretary made a request to allow the petitioner to work with him as he knew short-hand, and in pursuance thereof, the petitioner started doing the work of Personal Assistant in the Commission. The pay scale of the Personal Assistant was Rs. 1,600-2,900 at the relevant time. It is alleged that he is continuously working as Personal Assistant and is entitled to the salary in aforesaid pay scale with effect from 28.6.1985 and consider him

for regularisation on the said post in terms of notification dated 7.8.1989 read with notification dated 14.5.1979.

3. Shri B.N. Singh, appearing for the respondents, submitted that the post of Personal Assistant is to be filled in by direct recruitment and not by promotion. He has relied upon the averments made in paragraphs 4, 5, 6 and 7 of the counter-affidavit and has submitted that the petitioner was a Lower Division Assistant. He was attached to different offices as per need of the office, but was never appointed as Personal Assistant neither on ad hoc basis or in officiating capacity. He submits that as per regulation 5 (5), of the U. P. Public Service Commission Staff (Conditions of Services) Regulations, 1942, the post of Personal Assistant can be filled only by direct recruitment through competitive examination and the petitioner has never passed any such competitive examination.

4. Shri Singh has also brought to the notice of this Court the averments made in paragraph 7 of the counter-affidavit in which it has been stated that on the basis of test held in December, 1988 and August, 1989, no employee of the office was found suitable for the post of Personal Assistant. The further case put forth by the respondents is that there are 14 posts of Personal Assistant sanctioned by the Government to the office of the Commission and an advertisement was issued for recruitment against the 6 vacant posts through competitive examination for which written examination was held in January, 1993, result of which was declared on 17.12.1993. As such, it is wrong to say that no competitive examination was held to fill up the posts of Personal Assistant since 1974. It has been submitted that the petitioner was attached to the office of the Joint Secretary (Law) but he worked there as Lower Division Assistant and did not perform any work of Personal Assistant as he was not eligible for the post. Shri Bajrang Bali Singh, who was working as stenographer in the Commission's office, had passed the test of stenographer in 1964 whereas the petitioner had failed to qualify the examination of stenographer held in 1986 and as such cannot claims any parity with Bajrang Bali Singh or complain of discrimination.

5. There is no material on record to show that the petitioner has actually performed the duties of Stenographer. Annexure-1 to the writ petition by respondent No. 1 requesting for attachment of the petitioner to his office does not conclusively establish that the petitioner was regularly doing the work of stenographer or was appointed or promoted as stenographer. This Court will not delve into any findings of fact. From the record. It appears that the petitioner was only attached as Lower Division Assistant in different offices and there was no material to show as to whether he has actually worked as stenographer. In absence of any record or material before this Court to show the actual working of the petitioner on the post of stenographer, it could not be presumed by this Court that the petitioner has been performing the duties of stenographer regularly. Moreover, the post of stenographer is to be filled by direct recruitment and in this view of the matter, the petitioner is neither entitled to be appointed by promotion

to the post of stenographer nor to any salary for the alleged officiating on the said post. He is also not eligible for consideration as he had failed in the test for the post.

6. The writ petition, therefore, fails and is dismissed. No order as to costs.