
(2011) 09 UK CK 0003

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1108 of 2005

Vipin Chandra Bhagat

APPELLANT

Vs

Principal Chief Conservator of Forests and Others

RESPONDENT

Date of Decision : 27-09-2011

Acts Referred:

Citation : (2011) 09 UK CK 0003

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Alok Mehra, Advocate for the Petitioner and Mr. N.P. Sah, Standing Counsel for the State of Uttarakhand.

2. The Petitioner was a Forest Guard in the Forest Department and subsequently in the year 1998 he was promoted as a Junior Clerk. It is an admitted position that the Forest Guard is only liable to be promoted to the post of Forester and not to the post of Junior Clerk. All the same, the Petitioner was discharging the duties of a Junior Clerk in the Forest Department since 1991 and subsequently he was granted a formal promotion in the year 1998. This promotion was cancelled by the Conservator of Forest, South Kumaon Circle, Nainital by order dated 9.7.1998, which was challenged by the Petitioner before the Public Services Tribunal at Lucknow being Claim Petition No. 1385 of 1998, where the claim petition of the Petitioner was allowed holding that the Petitioner has to be treated as Junior Clerk since 1998. Against the said order, the Petitioner filed a writ petition being Writ Petition No. 1010 (S/B) of 2001. The order of the Public Services Tribunal was also challenged by the State of Uttar Pradesh in Writ Petition No. 1011 (S/B) 2001 wherein the order of the Tribunal upholding the promotion of the Petitioner was also challenged. These two writ petitions were clubbed and heard together by a Division Bench of this Court. The Division Bench of this Court disposed of the aforesaid two writ petitions vide order dated 11.8.2003 declaring as follows:

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.

3. The Petitioner now claims his seniority as a Junior Clerk since 30.12.1991, as by order dated 3.3.2005 he was given seniority of Junior Clerk from 30.12.1991. This order dated 3.3.2005 was set aside vide order dated 19.4.2005, by which the order dated 3.3.2005 was cancelled. It is this order which the Petitioner has challenged inasmuch as now the seniority of the Petitioner was liable to be considered from 1998. The Petitioner has heavily relied upon the judgment of Division Bench of this Court, already referred above. The Division Bench of this Court has categorically held that the promotion of the Petitioner at the first place was not correct inasmuch as the Petitioner being a Forest Guard was not liable to be promoted to the post of Junior Clerk, as the Forest Guard was liable to be promoted under the rules to the post of Foresters. All the same, this promotion of the Petitioner was not to be disturbed according to the Division Bench of this Court for the following reasons:

(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.

4. Counsel for the Petitioner states that by logic the date of seniority has to be calculated from year 1991. Here the Petitioner is patently wrong inasmuch as the Division Bench of this Court has upheld the decision of the Tribunal dated 14.7.1999. The Division Bench in its decision dated 11.8.2003 has held as under:

8. ...Therefore, in the interest of justice and without setting a precedent, we uphold the order of the Service Tribunal. Our judgment should not be cited as a precedent. Our judgment is registered to the facts of this case only.

5. The decision of the Tribunal dated 14.7.1999 was on the following facts:

The Petitioner was promoted to the post of junior clerk vide order dated 25.6.1998. This order dated 25.6.1998 was cancelled by the Forest Department on 9.7.1998. It is this order dated 9.7.1998 which was challenged by the

Petitioner before the Tribunal where the claim petition of the Petitioner was allowed. Therefore the Petitioner all throughout can only claim his seniority from 1998 and not from 1991 from the simple reason that since 1991 the Petitioner was only asked to work as a Junior Clerk. This promotion crystallized only on 25.6.1998. This order dated 25.6.1998 was subsequently cancelled which was challenged by the Petitioner before the Public Services Tribunal where the claim petition was allowed. The net result would be that the seniority of the Petitioner shall always be calculated from 25.6.1998 and not from 30.12.1991. The claim of the Petitioner for calculating his seniority since 30.12.1991 and not from 25.6.1998 is on wholly untenable grounds.

6. The writ petition fails and is liable to be dismissed and is hereby dismissed.

7. No order as to costs.