
(1998) 10 AHC CK 0006
In the Allahabad High Court
Case No : C.M.W.P. No. 7544 of 1995

Virendra Kumar Srivastava

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 13-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9
Evidence Act, 1872 — Section 115
Uttar Pradesh Palika (Centralised) Service Rules, 1966 — Rule 9, 9(1)

Citation : (1998) 4 AWC 630 : (1998) AWC 630 : (1998) RD 149

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Ashok Bhushan, for the Appellant; S.C., K.R. Singh, Shashi Nandan and V.M. Sahai, for the Respondent

Judgement

D. K. Seth, J.—The petitioner was engaged on daily wage basis as a Junior Engineer in the Nagar Palika. Jaunpur. He worked some time in December. 1993. There was an advertisement published for recruitment for Junior Engineer, civil prescribing the age between 21 and 30 years with the stipulation that the period may be relaxed to the extent of 7 years maximum if a candidate has worked in any civil centralised service or the Palika to the extent of the period of service he has rendered continuously- Such a proviso was appended to the advertisement itself- This provision was in commensurate with Rule 9 proviso 1 of Part IV U. P. Palika (Centralised) Service Rules. 1966. The date of birth of the petitioner is not in dispute as being 2.11.1954 which calculates to 31 years 2 months as of LI.1986 being the cut off date provided in the said advertisement. If the petitioner has worked from December, 1983 till 1.2.1986. It will be exactly 2 years and a few days. If the two years is adjusted then definitely, the petitioner would be below 30 years at least by 8 months. Therefore, the petitioner's case cannot be rejected on the ground of being over aged for the purpose of recruitment pursuant to the said advertisement.

2. In this petition, it is alleged that the petitioner's case was not considered

because of being over aged. The Nagar Palika had filed a counter-affidavit and represented by Shri Shasht Nandan. learned counsel which clearly supports the case of the petitioner. The petitioner had filed one writ petition earlier which is being Civil Misc. Writ Petition No. 8839 of 1987 which was disposed of on 3.11.1994 by a learned single Judge of this Court. The said order is Annexure-11 to the writ petition and perusal of the said order shows that the said writ petition was dismissed on the ground of mis-joinder of parties viz., that U. P. Public Service Commission and the District Magistrate being the appointing authority who were necessary parties though it was observed that the petitioner has a very good strong case to show that he has been denied of natural justice that he was entitled to age relaxation for his continuous service for more than 3 years before the impugned termination order as passed. Against the said order, the petitioner had preferred a Special Appeal being Special Appeal No. 876 of 1994. The said Special Appeal was disposed of by an order dated 31.1.1995 by dismissing the appeal with the liberty to the appellant to file a fresh writ petition on the same cause of action. Pursuant to the said liberty, the present writ petition has been filed impleading President. Nagar Palika, Jaunpur. Instead of District Magistrate who was an Administrator earlier and was substituted by the President, Nagar Palika, Jaunpur, as well as the U. P. Public Service Commission. Though the State Government had filed counter-affidavit in the earlier writ petition but no fresh counter-affidavit has been filed in the present writ petition. Be that as it may. Admittedly on record, it is found that the petitioner was engaged on daily wage basis in 1983 and has thereby served for exactly two years in the Palika on the cut off date, viz., 1.1.1986 and. therefore, by reason of first proviso to Rule 9 of the said rule, is entitled to relaxation of age to the extent of the said period of two years. If the credit is given to the said period, then the petitioner was well within age of 30 years as on the cut off date. Therefore, his case could not have been rejected on the ground of his being over aged. Mr. K. R. Singh. learned standing counsel has not pointed out from the earlier counter that the petitioner's case was rejected on merit or otherwise. It is also not so-recorded in the order dated 3.10.1994 passed in the earlier writ petition that the State Government had taken such stand. On the other hand, it appears from the said judgment, that the learned standing counsel was unable to produce the result of the Interview along with the ground for which the petitioner was considered unfit for absorption despite giving sufficient time and in that view of the matter adverse inference was drawn on the principle laid down u/s 115 of the Indian Evidence Act. The Court had found against the Government. It would be useful to quote the said finding for our present purpose as hereinafter :

"Learned standing counsel contended that though from time to time, time was granted to the State to produce the result of the interview along with the grounds for which the petitioner was considered unfit for absorption but the State failed to produce those documents before the Court so there may be scope to draw adverse presumption against the State in view of the provisions of Section 115 of the Indian Evidence Act still then petitioner's present petition

becomes non-maintainable on the ground of defects of necessary parties. It has been further contended that rulings cited by the petitioner do not hold good in view of the fact that there were cases of group 3 and group 4 employees who do not require to come through the U. P. Public Service Commission but the Junior Engineers are high officials and they cannot be appointed without being selected for the same by the U. P. Public Service Commission. Since the U. P. Public Service Commission has not been made a party, this Court cannot grant relief to the petitioner because for such relief those persons' presence are necessary as they are necessary parties within the meaning of Order I, Rule 9. Civil Procedure Code."

3. Despite such finding, the State Government did not choose to file counter-affidavit in the present writ petition or taken any step in respect of which adverse inference was drawn on the earlier writ petition so as to substantiate their case. Since no counter-affidavit has been filed in the present petition despite such a long period having lapsed and the record of the interview having not been produced, on the same analogy and reason, adverse inference can still be drawn as against the State in the present case. That apart, the allegation made in the writ petition having not been disputed and denied, the same are treated to have been admitted. The petitioner has alleged that his case was denied only on the ground of over-age and there was no other occasion to find him unfit for the purpose of absorption.

4. Since it has been clearly laid down in Rule 9, proviso 1 of the 1966 Rules "that in case of the person who had already rendered one year service or more in any of the central services or in the Palika. the maximum age limit shall be greater to the extent he has rendered continuous service or a period of 7 years, whichever is less". In the present case, admittedly the petitioner has worked for more than one year in the Palika and having been served for two years, the age is to be relaxed by the same period which are admitted facts to bring the petitioner within the prescribed age as reflected in the advertisement itself.

5. In the case of Ram Kishan and Others Vs. Union of India (UOI) and Others, the Apex Court has held that daily wage employed Assistant Engineers and Junior working for 3/4 years for public body like Ghazlabact Development Authority should be regularised though P.S.C. and till then they should be treated as temporary employee on monthly salary subject to annual increment with benefit of normal perks and allowances except D, A. Mr. Ashok Bhushan learned counsel for the petitioner had relied on the said decision to substantiate his contention that the petitioner's service for two years cannot be ignored though he did not rely on the said judgment for the - purpose of treating the petitioner as a regular employee. On the other hand. he had insisted that the petitioner being well within the age limit he was supposed to be absorbed pursuant to the said advertisement. Alternatively, he had contended that even then the decision of the Apex Court might help the petitioner in espousing his cause that he is a person fit to be absorbed.

6. In the absence of anything on record to show that the petitioner was otherwise unfit, particularly in view of the specific statement made in the writ petition that the petitioner was denied absorption only on the ground of overage which fact could not be substantiated by the State Government in the earlier writ petition and has not attempted to discard in the present one, in such a situation there is no alternative left to the Court except to accept the contention of Mr. Ashok Bhushan.

7. In the light of the above observation. I have no alternative but to allow the writ petition. The writ petition, therefore, succeeds and is allowed. Accordingly, the order terminating the petitioner service contained in Annexure-6 to the writ petition being dated 3.2.1987 is hereby quashed and the petitioner shall be deemed to have been absorbed in the selection held on 21.2.1987 pursuant to the said advertisement relaxing the age of the petitioner in terms of proviso contained in Rule 9 (1) and be allowed all service benefit treating him as in service for all the time provided the petitioner produces proof to the satisfaction of the Pallka that he was not employed elsewhere during this period. At this Mr. K. R. Singh, learned standing counsel points out that since on account of non-joinder of necessary parties, the earlier writ petition was dismissed, therefore, the petitioner cannot claim any benefit till the date he had filed the present writ petition. However, the petitioner should be treated as of continuous service notionally but the financial benefit accrued to him may be calculated from the date when the present petition was filed on the basis of such notional calculation and be paid as such. The petitioner should be permitted to Join within a period of six months from the date a certified copy of this order is produced before the concerned respondents.