
(1996) 09 AHC CK 0084
In the Allahabad High Court
Case No : Writ Petition No. 6049(5/5)1996

V.K.Shukla

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Uttar Pradesh Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 1995 — Rule 5

Citation : (1996) 09 AHC CK 0084

Hon'ble Judges : Shobha Dikshit, J

Final Decision : Allowed

Judgement

Smt. S. Dikshit, J.—Supplementary affidavit filed today. Let it be kept on record.

2. Heard.

3. This writ petition is directed against the order dated 10.9.96 by which the learned U.P. Public Services Tribunal modified its earlier interim order dated 8.8.96 and directed the opposite parties to consider the claim of the petitioner in future selection ignoring the adverse entries against which the representations were still pending and not decided by the said authorities. Learned Counsel for the petitioner has assailed the impugned order on the ground that once the learned Tribunal had accepted the contention of the petitioner that when representations against an adverse entry were pending and not disposed of, the Departmental Promotion Committee (DPC) could not have declined to consider his case for promotion ignoring the adverse entry along with other eligible candidates, than its was legally bond to directed the opposites parties DPC to reconsider the case of the petitioner as on the date it had byepassed him. According to learned Counsel the direction for consideration in future is erroneous and cannot be sustained in law.

4. The facts of the case are that the petitioner was selected by U.P. Public Service Commission on the post of Sales Tax Officer, currently known as Trade Tax Officer and he has been working as such regularly with the opposite parties to their

satisfaction. A Departmental Promotion Committee was convened on 7.6.96 for holding selection for the next higher post of Assistant Commissioner Trade Tax. However, the case of the petitioner was rejected by-passed for consideration on the ground that two adverse entries existed against him for the years 1990/91 and 1992/93, one of which was a special entry. One adverse entry was awarded to him for alleged use for political pressure for his transfer and the other was given by the reviewing officer for alleged shortfall in achieving the targets fixed by the department for collection of tax. Petitioner had made representations against both the aforesaid adverse entries and the same were pending undisputedly and remained undisposed at the time the Departmental Promotion Committee met. This fact has not been disputed by the opposite parties.

5. Initially, petitioner preferred a Writ Petition No. 592 (SB) of 1996 before this Court but it was rejected on 30.7.96. on the ground of availability of alternative remedy by approaching the U.P. Public Service Tribunal. Petitioner, therefore, filed a Claim Petition No. 1218/96 against the action of the Departmental Promotion Committee along with an application for interim relief. Two more claim petition being Nos. 1221/96 and 1241/96 were also filed challenging both the adverse entries opposite parties informed the Tribunal that one of the representation preferred by the petitioner was rejected by the opposite parties on 21.8.96. In a way it was admitted by the opposite parties that on the relevant date 7.6.96 when the Departmental Promotion Committee had met, representations against both the adverse entries were pending. The learned Tribunal initially directed the opposite parties to keep one vacancy reserved for the petitioner and consider him in future for promotion, petitioner moved an application for modification of this order. The learned Tribunal passed the interim order dt. 10.9.96 directing the opposite parties to consider the case of the petitioner in future ignoring both adverse entries which is under challenge in the present proceedings.

6. Learned Counsel for the petitioner challenges this order mainly on the ground that it is in violation of Rule 5 of U.P. Government Servant (Disposal of Representation Against the Adverse Annual Confidential Reports and Allied Matters Rule, 1995, Rule 5 which reads as follows:

"Rule 5. Except as provided in Rule 56 of the Uttar Pradesh Fundamental Rules contained in Financial Handbook Volume II, Part II to IV, where an adverse report is not communicated or a representation against an adverse report has not been disposed of in accordance with Rule 4, such report shall not be treated adverse for the purposes of promotion, crossing of efficiency bar and other service matters of the Government Servant concerned."

Learned Counsel for the petitioner contends that this Rule provides that if the representation against an adverse remark has not been disputed or as provided under these Rules then the said adverse entry cannot be treated as adverse for the purpose of promotion, crossing of efficiency bar and other service matters of the concerned Government Servant, but the Departmental Promotion Committee

inspite of this fact that representations against adverse remarks were pending did not consider the case of the petitioner for promotion, therefore, it acted contrary to the said statutory rules. In these circumstances, it has been strenuously argued by the learned Counsel for the petitioner that the learned Tribunal ought to have directed the Departmental Promotion Committee to consider the case of the petitioner for promotion as on 7.6.96. forthwith instead of deferring it for future. According to learned Counsel, there is no likelihood of promotion on the post in question for several years and, therefore, petitioner shall suffer irreparable loss if his case is not considered as on 7.6.96 because he shall remain superseded illegally for all these years.

7. Learned Standing Counsel who has accepted notice raised preliminary objections that since the impugned order is interim therefore, this writ petition is not maintainable. Normally, this Court does not interfere with the interim orders but there is no such absolute bar, when the order challenged is, though interim but the same prima facie appears to be contrary to law.

8. In the aforesaid facts and circumstances I am of the opinion that the learned Tribunal should reconsider the application of the petitioner for modification in the light of Rule 5 of the Rules of 1995. I, therefore without entering into the merit and demerit of the case allow the writ petition and quash the order dated 10.9.96 with direction to U.P. Public Service Tribunal to reconsider the application for modification and the legal submissions made by learned Counsel for the petitionerclaimant in the light of the observations made hereinabove and pass a fresh order with in ten days from the date of receipt of this order.

9. I am informed that the claim petition itself is listed for hearing on 22.10.96. The Tribunal should, therefore, decide all the three claim petitions either on the said date, if possible, or on any other future date expeditiously, say, with in a period of four months, as the point involved is short.

10. With these observations, this writ petition is allowed to this extent.