

Ram Nath Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-26-1989

Reported in : [1989(59)FLR872]; (1994)IIILLJ118All

Judge : U.C. Srivastava and ;S.H.A. Raza, JJ.

Acts : Departmental Services Rules

Appeal No. : W.P. No. 2598 of 1985

Appellant : Ram Nath Singh

Respondent : State of U.P.

Advocate for Def. : S.C. Misra, ;C.S.C. and ;Sri Anil Kumar, Advs.

Advocate for Pet/Ap. : Umesh Chandra and ;K. Chandra, Advs.

Disposition : Petition allowed

Judgement :

U.S. Srivastaya and S.H.A. Raza, JJ.

1. By means of this writ petition the petitioner has prayed for quashing the notices dated May 27, 1985 and June 1, 1985 through which he has been proposed to be reverted from the post of Head Assistant to the post of Stenographer. The petitioner had preferred a claim petition which was allowed against which a writ

petition was filed. Subsequently the writ petition was amended and a prayer for quashing the same was made.

2. It appears that the petitioner after graduating himself in laws and appointed as Stenographer in the office of Chief Audit Officer in the year 1956 while opposite party No. 3 was appointed in the ministerial cadre in lower pay-scale. In the office of Chief Audit Officer, there is a post of Head Assistant in the pay-scale of Rs. 450-770 revised to Rs. 625-1360 which was created in the year 1973. One Rajbir Prasad was appointed as Head Assistant and on his retirement the said post fell vacant and was to be filled in from amongst the ministerial cadre working in the pay scale of Rs. 570-1,100 on the principle of seniority-cum-fit-ness which principle was being followed in other-Government offices. A committee was constituted for the purposes of making selection which consisted of the three Deputy Chief Audit Officers including the one who has filed his counter-affidavit in the case. The case of the petitioner was not considered on the ground that he was from Stenographer cadre. The petitioner submitted a representation against the same on July 14, 1976 stating that the Stenographer comes within the definition of ministerial staff and he was eligible for the post of Head Assistant and in support of his plea he submitted a copy of judgment of this Court in Second Appeal No. 120 of 1971. Mazhar Husain v. Registrar, Co-operative Societies in which case it was held that the Stenographer belonged to the Ministerial cadre. On the basis of said judgment the Committee took the view that the petitioner was also eligible for appointment as one Kailash Narain Saxena did not agree to return to his parent department and one Abdul Mazid was found unsuitable on the basis of adverse entry in his character roll in the year 1975-76 while Birbhan Bhatia was under suspension. According to the petitioner opposite-party No. 3 was the only officiating head-clerk and was confirmed as Noter and Drafter and as such he was not eligible. Ultimately, a Selection Committee was constituted and interview took place on October 14, 1976 and a select list was prepared in which petitioner was placed at No. 1 while Birbhan Bhatia was at No. 2. Although in the counter-affidavit filed by the State document has not been filed but before us a document was produced to show that in the interview opposite-party No. 3 secured 34.3 marks out of 50 while the petitioner secured 32 marks out of 50 and that is why a list was prepared accordingly. It seems that the petitioner was found fit by virtue of his

seniority in the higher grade in which he was confirmed Stenographer and was appointed in higher pay-scale and that is why he was appointed as Head Assistant vide order, dated November 20, 1976 and although he is working on the said post for the last nine years the impugned order has been passed. In the gradation list which was issued in the year 1979 which included the ministerial staff, the petitioner was placed at No. 1 and no objection to the same was raised by anyone including opposite-party No. 3, who did not raise any objection against the appointment and confirmation of the petitioner. One Birbhan Bhatia who was lower in the gradation list submitted several representations against the promotion of the petitioner to the post of Head Assistant and on April 3, 1980 he filed a claim petition before the Public Services Tribunal which was dismissed vide order, dated December 9, 1981 and the appointment of the petitioner as Head Assistant was upheld. Against the said judgment and order said Birbhan Bhatia filed a writ petition before this Court which is pending. In the meantime, the said Bhatia attained the age of superannuation and has been retired. In the counter-affidavit filed before the Services Tribunal it was stated that although the claimant was seniormost Head Clerk but there was adverse entries against him and disciplinary proceedings were pending. It has been stated that one Kailash Narain Saxena was recommended but in the meantime as the petitioner had preferred a representation to the effect that the Stenographer comes within the definition of ministerial cadre and in support of which he filed a copy of judgment referred to above, he was also considered.

3. According to the petitioner, the present Chief Audit Officer who was also a member of the Selection Committee, may be for certain reasons and in order to harass him for the first time issued notice on May 27, 1979 to show cause why his confirmation order may not be set aside. The petitioner submitted reply and made reference to the decision of the Public Services Tribunal which was under subjudice before this court but even then on June 1, 1985 the said opposite party issued another show cause notice which has led to petitioner to file the instant writ petition challenging the said notice.

4. This court granted an interim order on June 3, 1985. Subsequently the interim order was modified with the following observations: '.....Meanwhile it is provided

that on the basis of the interim order dated June 3, 1985 the claim for promotion of opposite party No. 3 shall not be ignored, This order has been passed in view of the fact that as stated in paragraph 13 of the counter-affidavit, dated December 18, 1985 of the opposite party No. 3 stood at serial No. 1 in the select list while the petitioner stood at serial No. 3. Obviously the opposite party No. 3 has prior right of promotion to the post of Head Assistant'.

After grant of interim order no fresh promotion was made but the Chief Audit Officer vide order, dated June 10, 1988 reverted the petitioner from the post of Head Assistant to the post of Stenographer and de-confirmed him on the post of Head Assistant. Thereafter the writ petition was amended. Opposite party No. 3 who was a party in earlier proceedings got himself impleaded as a party to writ petition.

5. In the counter-affidavit it has been stated that under the Departmental Services Rules the Stenographers constitute a different cadre but no such rule was placed before us in which Stenographers were taken to belong to any other cadre and the High Court's judgment which was taken into account in promoting the petitioner, that position was considered.

6. On behalf of the petitioner it was contended that he was duly selected and was in the higher pay-scale and was senior to opposite party No. 3 and he not having been unfit was promoted to the post of Head Assistant without any objection and was latter on confirmed; his name in the gradation list was placed at No. 1 against which no objection was raised and as such same could not have been disturbed after so many years. The petitioner's appointment was challenged by one Birbhan Bhatia on the ground that he was eligible but the Public Services Tribunal upheld the appointment of the petitioner. In absence of any flaw or finding that the petitioner was unfit to be promoted or that he was ineligible, no objection having been raised to the seniority list for years together and the matter rather having become a close chapter, same could not have been reopened for appointment of another person and not the person who agitated it. The opposite party No. 3 having submitted to the appointment of the petitioner and subsequent confirmation and also the seniority list, it was no longer open to disturb the same. Even

otherwise, the petitioner's appointment having already been upheld by the Public Services Tribunal, the same could not have been disturbed unless there was a judicial order to the contrary. As such the order passed by opposite party No. 2 is arbitrary and suffers from the vice of abuse of powers even ignoring the judicial pronouncement. Even otherwise the operation of notices was stayed. As such the Chief Audit Officer could not have set aside the appointment or confirmation order of the petitioner and reverted him in any view of the matter without giving opportunity of hearing. The order so passed is violative of principles of natural justice. In the circumstances, the writ petition deserves to be allowed.

7. Consequently, the writ petition is allowed. The notices, dated May 27, 1985 and June 1, 1985 (Annexures 1 and 2) and the order, dated June 10, 1988 (Annexure 9) are quashed. The opposite parties are directed to allow the petitioner to continue on the post of Head Assistant as usual. However, there will be no order as to costs.

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