

Bhakti Vijay Shukla S/o Late S.S. Shukla Presently posted as 'Scientific Assistant' Fragrance and Flavour Development Centre Vs. the Chairman, Fragrance and Flavour Development Centre and Ors.

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Court : Allahabad

Decided On : May-22-2008

Reported in : [2008(118)FLR712]

Judge : Yatindra Singh and ;S.K. Gupta, JJ.

Appellant : Bhakti Vijay Shukla S/o Late S.S. Shukla Presently posted as 'Scientific Assistant' Fragrance and Fl

Respondent : The Chairman, Fragrance and Flavour Development Centre and Ors.

Disposition : Petition dismissed

Judgement :

S.K. Gupta, J.

1. The present writ petition has been filed inter- alia against the order dated 6-2-2002 whereby the representation of the petitioner claiming promotion to the post of Extension Officer and praying for considering his claim to the post of Assistant Director(Chemical Fractionation & Process), has been rejected by the Principal Director. It is further prayed that Office order dated 2/4 March 2004 be quashed and the petitioner be promoted to the post of Extension Officer (Chemical) with effect from June 1998 or in any case from June 1999 and to pay all consequential monetary benefits. ,

2. Three posts of Lab Technicians were advertised by respondent No. 1 in 1992. The Selection committee for the three posts of Lab Technician found Sri S.B. Shukla, Nadeem Akbar and Sri B.V. Shukla suitable for appointment to the post of Lab Technician. The merit list for appointment given by the selection committee was as follows:

(1) S.B. Shukla

(2) Nadeem Akbar

(3) B.V. Shukla

The recommendation of the selection committee was accepted by the appointing authority and the aforesaid candidates were offered appointment. On joining the post their names were placed in the seniority list in the order of merit indicated by the selection committee wherein the petitioner stood junior to respondent No. 4. The designation of the post of Lab Technician was changed to Scientific Assistant in the year 1993. The next post of promotion from the post of Scientific Assistant is that of Extension Officer.

3. There was one vacant post of Extension Officer (QC) in the year 1998 for which the Departmental Promotion Committee (herein after referred to as D.P.C) was convened in March 1998. Both the respondent No. 4 and the petitioner being eligible and available for consideration were assessed by the D.P.C and the

Committee recommended respondent No. 4 for appointment to the post of Extension Officer (QC) and accordingly respondent No. 4 was granted promotion to the post of Extension Officer (Q.C). Though the petitioner was also considered by the panel but placed lower than respondent No. 4, and hence the petitioner could not be promoted in absence of any vacancy to the post of Extension Officer (Q.C).

4. The respondent No. 3 subsequently advertised a vacancy for the post of Assistant Director (Chemical Fractionation & Process), for which the petitioner and the respondent No. 4 both immediately applied in pursuance of advertisement dated 14-20th April 2001.

5. The petitioner filed Writ Petition No. 4270 of 2001 for promoting him to the post of Extension Officer (Chemical) with effect from June 1998 and to further consider his case for promotion and appointment to the post of Assistant Director (Chemical Fractionation & Process). The said writ petition was disposed of finally by order dated 14-12-2001 directing the petitioner to make a representation to respondents No. 1 and 2, to decide the same preferably within a period of six weeks.

6. Pursuant to the order dated 14-12-2001 passed by this Court the petitioner made a representation dated 22-12-2001 to respondent No. 3. The respondent No. 3 vide impugned order dated 6-2-2002 rejected the representation of the petitioner dated 22-12-2001 and held that (on the basis of the recommendation of the Selection committee to the post of Lab Technician) the petitioner stood junior to respondent No. 4 and further held that the vacancy for the post of Extension Officer (F & F) became available in June 1999 and the panel which was drawn up for filling one post of Extension Officer (Q.C) in March 1998 was no longer valid after expiry of one year and was inoperable for different posts.

7. Heard learned Counsel for the parties.

8. The main plank of the argument of the counsel for the petitioner is that the petitioner is senior to respondent No. 4 as such he should have been promoted to the post of Extension Officer (QC) in June 1998 and further his claim to the post of Assistant Director (Chemical Fractionation & Process) should have been considered prior to respondent No. 4. The petitioner further contended that life of the panel constituted in March 1998 was for one and half year and the post of Extension Officer (F & F) fell vacant in June 1999. Therefore, the petitioner should have been appointed on the post of Extension Officer (F & F) in June 1999 on the basis of recommendation of the panel constituted in March 1998.

9. On the other hand counsel for the respondent have supported the impugned order dated 6-2-2002 and contended that the panel was drawn up in March 1998 for promotion to a single post of Extension Officer (QC). The D.P.C. recommended the name of respondent No. 4 and accordingly respondent No. 4 was granted promotion to the post of Extension Officer (Q.C). Though the petitioner was also considered by the panel but was placed lower than respondent No. 4, and hence the petitioner could not be promoted in absence of vacant post of Extension Officer (QC). It is further contended that the post of Extension Officer (Q.C) did not fall vacant during the life time of the panel. Therefore the petitioner cannot make claim on the basis of recommendations made by the D.P.C in March 1998 for the post of Extension Officer (QC) which was already filled up by respondent No. 4 in June 1998.

10. It is further contended by the learned Counsel for the respondent that respondent No. 4 has been appointed on the post of Assistant Director (Chemical Fractionation & Process) on 2/4th March 2004 by way of direct recruitment and it is not promotional post. Thus the petitioner has no locus standi to challenge the order of his appointment to the post of Assistant Director (Chemical Fractionation & Process).

11. It has not been seriously disputed by counsel for the petitioner that the petitioner stood junior to respondent No. 4 as per the recommendation of the Selection committee at the time of recruitment to the post of Lab Technician. The seniority amongst the direct recruits has to be determined on the basis of ranking secured in selection subject to reservation and roster rules and not on the basis of the date of joining the duties unless some contrary provision are provided in the relevant rules The petitioner has failed to show any

such departmental rule where seniority has to be reckoned from the date of joining and not on the basis of ranking secured in the selection.

12. As far as the validity and legality of the order dated 2/4th March 2002 whereby respondent No. 4 has been appointed as Assistant Director (Chemical Fractionation & Process) on direct basis is concerned, it is suffice to say that the said post was not a promotional post but was to be filled up by direct recruitment. Thus the petitioner has no locus-standi in this regard. More over the petitioner despite the service of the interview letter did not appear before the Interview committee and was hence not considered for selection.

13. Admittedly, there was one post of Extension Officer (Q.C) vacant in 1998 for which D.P.C. was convened in March 1998. Both the petitioner and respondent No. 4 being eligible and available for consideration were assessed by the D.P.C. The Committee recommended respondent No. 4 for appointment to the post of Extension Officer (Q.C).

14. There is a dispute between the petitioner and the respondent No. 4 with regard to the validity period of the panel. On one hand the petitioner has stated that life of the panel was for one and half years, whereas on the other hand, the respondents have contended that life of the panel was only for one year with effect from March 1998. We are not expressing any opinion on the said issue as it is not relevant for deciding the present petition.

15. The panel was constituted to fill up one post of Extension Officer (QC) only in March, 1998 and was inoperable for different posts. No further vacancy of Extension Officer (QC) became available even during one and half years from the date of constitution of the panel i.e. March 1998. Therefore the petitioner cannot be considered for promotion to the post of Extension Officer (QC) although different post of Extension Officer (F&F;) fell vacant in June 1999 after expiry of more than one year, wherein the recommendation of the earlier panel constituted in 1998 could not have been given effect as the post of Extension Officer (F&F;) was a different post and beyond the purview of the panel constituted in March 1998.

16. Thus the vacancy of Extension Officer (F&F;) which fell vacant in June 1999 could not have been filled up on the basis of recommendation of the panel constituted in March 1998 since the said panel was constituted only for filling up one post of Extension officer (QC) and not the post of Extension Officer (F&F;)

17. In view of the above the petitioner has got no right to be promoted to the post of Extension Officer (F&F;)/Extension Officer (Chemical) on the basis of recommendation of the panel constituted in March 1998.

18. In spite of the clear position of law the petitioner has been pursuing his misplaced claim. The petitioner has already been promoted to the post of Extension Officer (Chemical) vide order dated 27-3-2002 on which he has already joined and is discharging his duties.

We do not find any illegality or infirmity in the impugned orders. We therefore dismiss the present writ petition as being devoid of any substance. The writ petition is accordingly dismissed.

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