

**Ashok Kumar And Another Vs. State Of U.P. Thru' Secy. Education And Others**

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**Court : Allahabad**

**Decided On : Jan-18-2011**

**Judge : Sudhir Agarwal, J.**

**Appeal No. : WRIT - A No. - 28449 of 2008**

**Appellant : Ashok Kumar And Another**

**Respondent : State Of U.P. Thru' Secy. Education And Others**

**Advocate for Def. : C.S.C.; P.K. Sharma, Advs**

**Advocate for Pet/Ap. : S.K. Mishra, Adv**

**Judgement :**

1. Heard Sri S.K. Mishra, learned counsel for the petitioners and learned Standing Counsel for respondents no. 1 and 3. On behalf of respondent no. 2 a counter affidavit has been filed by Sri Ajit Dubey, Advocate but he is not present when the case was taken in revised list.

2. This writ petition is directed against the order dated 31.05.2008 (Annexure-9 to the writ petition) passed by respondent no. 3 cancelling the promotion of petitioners on the ground that the promotion from Class-IV to Class-III ought to have been made on the basis of inter se seniority of Class-IV employees prepared

on local body basis and not on district basis.

3. Admittedly, the Basic Education Board maintains number of primary schools in rural and urban areas alike in accordance with provisions of the U.P. Basic Education Act, 1972. No statutory rules framed governing the manner in which recruitment and conditions of service of Class-IV and Class-III employees shall be made and the matter is being governed by various executive orders. Vide order dated 27.12.2003 the respondent no. 2 adopted the provisions of Government Orders dated 31.08.1982 and 09.01.1997 providing for 15% promotion to Class-IV employees in Class-III at district level and directed that the local employees shall be considered by holding written test, interview, typing test and service record. Pursuant thereto in respect to all Class-IV employees working in various primary schools maintained by the Board in District Agra a seniority list was prepared, selection was made by holding written test, interview and typing test and thereafter vide order dated 31.03.2008 the petitioners were promoted as Junior Clerk and placed on probation for one year.

4. The petitioner no. 1 was working as Class-IV employee in Primary School Nagla Sikarwar, Block Akola (Agra) and was posted in the office of Nagar Shiksha Adhikari, Nagar Nigam, Agra. It appears that some complaint was made about promotion of Class-III and that the same ought not to have been considered on the basis of district level seniority. Thereafter the matter was considered and an order was issued on 19.05.2008 stating that promotion from Class-IV to Class-III pursuant to the Government Order dated 31.08.1982 shall be considered on local body basis and not on the State level basis. It is in furtherance of this order dated 19.05.2008 the impugned order dated 31.05.2008 has been passed cancelling the promotion of petitioners.

5. Learned counsel for petitioners contended that decision taken by respondent no. 2 for considering Class-IV employees for promotion to Class-III on local body basis was taken on 19.05.2008 for the first time and, therefore, it would not vitiate the promotion already made in accordance with the Government Order dated 31.08.1982 as followed by respondent no. 2 vide order dated 27.12.2003. He further contended that the impugned order has been passed without affording any

opportunity and in utter violation of principle of natural justice.

6. In the counter affidavit filed by respondent no. 2 it is said that the primary schools in rural areas construe different cadre than urban areas and, therefore, different seniority list ought to have been prepared which was not done, hence the order impugned has rightly been passed.

7. Nothing has been placed on record firstly to show that for the purpose of Class-III and Class-IV employees rural and urban areas construe two different cadres. A bare perusal of the order dated 27.12.2003 shows that the respondent no. 2 while adopting Government Orders dated 31.08.1982 and 09.01.1997 for making reservation of 15% vacancies for promotion to Class-III did not confine it to the employees working on local body basis but in the last paragraph it clearly says that said promotions be made and the Government orders be implemented in the district concerned. Therefore, all the employees working in various primary schools maintained by Basic Education Board in a district, i.e., District Agra in the instant case, were allowed to compete for promotion to Class-III post and after making selection, promotion order was issued on 31.03.2008 pursuant whereto the petitioners and others have joined on the promoted post. If any decision making any change in policy has been taken subsequently that would govern the subsequent recruitment and not vitiate the promotions already made. The order dated 19.05.2008 issued by respondent no. 2, therefore, can be applied only prospectively and shall not vitiate the promotions already made in accordance with the policy as it was on the date of promotion.

8. Moreover, it is also not disputed that the impugned order of cancelling the promotion of petitioners has been passed without affording any opportunity of hearing and without giving any show cause notice. This averment has been made in para 17 of the writ petition and while replying it in para 17 of the counter affidavit nothing has been said specifically about the manner in which any show cause notice or opportunity of hearing was afforded. It is not the case where the order of promotion of petitioners can be said to be illegal or in violation of any statutory provision or otherwise vitiate the vary promotion in which case the principle of natural justice may not be affected but here the position is that the policy was

changed later on hence the above principle has no application.

9. In the result, the writ petition is allowed. The impugned order dated 31.05.2008 is hereby quashed. The petitioners are entitled for all consequential benefits. No costs.

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