
**Nand Lal Vs The Executive Engineer, Canal Construction Division-I,
Superintending Engineer, Engineer in Chief (Establishment Gha-Section),
Irrigation Department and The State of U.P.**

None

Court: Allahabad High Court

Date of Decision: Dec. 7, 2007

Acts Referred:

Constitution of India, 1950 " Article 226

Citation: (2008) 2 AWC 1195 : (2008) 117 FLR 18

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Anjani Kumar, J.

This writ petition was heard by me and after hearing learned Counsel for the parties, the same was dismissed on 7th

December, 2007. Now here are the reasons for dismissal of the writ petition.

2. The brief facts of the present case are that the petitioner was initially appointed to the post of work charged employee (helper of driver) in the

year 1982 of Truck No. UPF 5338 and since then he is regularly working on the said post. The petitioner was thereafter issued driving license on

12th November, 1988 and his driving license is renewed from time to time. It is further alleged that a committee for regularization of the daily wage

employee was constituted and the said committee called the petitioner, along with two other persons namely Kanhaiya Lal and Shiv Muni for

interview and selected them for the post of driver in the month of January, 1993. It is further alleged that Kanhaiya Lal and Shiv Muni were issued

appointment letters and appointed to the post of driver pursuant to the aforesaid select list. Since both the persons who have been selected along

with the petitioner, have been appointed and the petitioner has not been appointed, he filed writ petition before this Court being civil misc. writ

petition No. 24069 of 1993 before this Court. This Court vide order dated 7th May, 1993 disposed of the writ petition with the following

direction ""...However, the petitioner is permitted to make a representation before the opposite party No. 3, who will decide the same within a

period of three months from the date of its filing along with a certified copy of this order before him."" Pursuant to the order passed by this Court,

the petitioner submitted his representation along with certified copy of the order passed by this Court to the Executive Engineer, who forwarded

the same to the authority concern that he being the appointing authority should decide the representation of the petitioner. It appears that in the

meantime the petitioner again approached this Court and this Court issued further direction on 8th August, 2001 for consideration of petitioner's

case for promotion to the post of driver and since the petitioner was not appointed/promoted, he filed a representation dated 25th August, 2007

before the authority concern, Pursuant to the direction issued by this Court, the petitioner's representation for appointment/promotion to the post

of driver was considered and decided by Engineer-in-Chief, Irrigation department vide order dated 17th September, 2007 wherein he has held

that the post of driver is a post of direct recruitment and cannot be filled in by promotion. The petitioner is already working as work charged

employee (class-IV post) on regular basis, in these circumstances the petitioner's request for appointment to the post of driver by promotion

cannot be accepted, as the same will be in violation of the relevant Rules. The Superintending Engineer also vide his order dated 29th October,

2007 rejected the petitioner's request for promotion to the post of driver on the ground that the post of driver is a post of direct recruitment and

cannot be filled in by promotion, as the petitioner has already regularised in class-IV employee from the work charged employee. Since petitioner

is already working as regular employee, his cadre cannot be changed and the petitioner's request cannot be accepted. It is these two orders,

which are being challenged by the petitioner by means of present writ petition.

3. Before this Court, learned Counsel for the petitioner submitted that the petitioner has been discriminated, inasmuch as two persons who were

similarly selected along with the petitioner, have been promoted as driver, whereas the petitioner has been denied this benefit. So far as this

argument is concerned, it is settled that mere selection does not confer any right of appointment and further in view of what has been stated above,

since the post of driver cannot be filled in by promotion, I do not think that the petitioner has any right to be appointed as driver, particularly in

view of the fact that the petitioner is regularised on class-IV post on which he is already working, now therefore it is not permissible under law that

he ought to have been promoted to the post of driver, which is meant to be filled in by direct recruitment. Thus, the view taken by the respondents

that promotion of the petitioner to the post of driver is contrary to the relevant Rules and therefore cannot be granted, in my opinion, do not

warrant any interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

4. In view of what has been stated above, this writ petition has no force and is accordingly dismissed. However, there shall be no order as to

costs.