

(2011) 07 AHC CK 0253

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 7121 of 2003

Ashok Kumar Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: July 21, 2011

Acts Referred:

- Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 - Rule 4(1), 7

Citation: (2011) 7 ADJ 909

Hon'ble Judges: Sunil Ambwani, J; K.N. Pandey, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Shri Ashok Kumar Singh, the Petitioner was heard in person. Dr. H.N. Tripathi appears for the Respondents.
2. The Petitioner was appointed after advertisement and selection in the year 1983 by the Chairman, U.P. Pollution Control Board as Legal Assistant in the pay scale of Rs. 350-700/- vide appointment order dated 16.5.1983. He was promoted as Law Officer-II w.e.f. 23.1.1996.
3. By this writ petition the Petitioner has prayed to quash the order dated 16.1.2003 passed by the Chairman, U.P. Pollution Control Board, Lucknow and for a direction to treat him as senior to Shri Surya Nath Pandey- Respondent No. 4 serving as Law Officer-I and posted at Head Office of the Board at Lucknow. The Petitioner has also prayed for a direction to grant him promotion as Law Officer-II w.e.f. 30.3.1989 and Law Officer-I w.e.f. 23.1.1996, when Shri Surya Nath Pandey, a person junior to the Petitioner was promoted. By an amendment application, allowed on 10.5.2006 by the Court, the Petitioner has prayed for quashing the order dated 10.11.2004 issued by the Chairman, U.P. Pollution Control Board promoting Shri Surya Nath Pandey as Chief Law Officer of the Board and to give him promotion as Chief Law Officer with

effect from the date Shri Surya Nath Pandey was allowed promotion.

4. It is submitted by the Petitioner that whereas he was appointed after advertisement and selections as Law Assistant on 16.5.1983, Shri Surya Nath Pandey-Respondent No. 4 was appointed as Legal Assistant on ad hoc basis on 3.11.1977, and continued in ad hoc capacity, until he was regularised under Rule 4 (1) of the U.P. Regularisation of Ad hoc Appointment (On the Posts Outside the Purview of the Public Service Commission) Rules, 1979. The seniority of Shri Surya Nath Pandey under Rule 7 has to be treated as below the persons appointed regularly in accordance with the relevant service rules, or as the case may be the regular prescribed procedure. Since Shri Surya Nath Pandey was regularised on the recommendation of the Selection Committee dated 4.1.1989 under the Rules of 1979 as amended in 1984. He is thus junior in service to the Petitioner.

5. The Petitioner made representations dated 23.11.1989; 5.6.2000 and 23.4.2002 for treating him to be senior to Shri Surya Nath Pandey. Since no satisfactory reply was received by him, he filed Writ Petition No. 37316 of 2002; Ashok Kumar Singh v. State of U.P. in which an order was passed on 23.1.2002 to decide his representation within six weeks. The Chairman of the U.P. Pollution Control Board considered and rejected the representation on 16.1.2003, giving rise to this writ petition.

6. The Petitioner submits that the Chairman of the Board has erred in law in finding that the appointment of Shri Surya Nath Pandey-Respondent No. 4 and other officers prior to the enforcement of the Service Regulations in 1995 was made under the Draft Service Regulations 1981 approved by the Board, and that since the services of Shri Pandey were regularised under Rule 4 (1) (iii) of the Regularisation Rules, 1979 and Regulation 4 (15) and 23 of the Draft Service Regulations 1981, Shri Pandey and Shri P.P. Srivastava promoted as Law Officer-II on 30.3.1986, will be treated to be senior to the Petitioner. He submits that the Regularisation Rules of 1979 are special Rules and that under Rule 7 seniority of a person appointed under these rules will be counted with effect from the date, when he is regularised. The person getting benefit of regularisation will be treated to be junior to all those persons, who were regularly appointed prior to their regularisation. Rule 7 of the Regularisation Rules of 1979 are quoted as below:

7. Seniority--(1) A person appointed under these rules shall be entitled to seniority only from the date or orders of appointment after selection in accordance with these rules and shall, in all cases, be placed below the persons appointed in accordance with the relevant service rules, or as the case may be, the regular prescribed procedure, prior to the appointment of such persons under these rules.

(2) If two or more persons are appointed together their inter se seniority shall be determined in the order mentioned in order of appointment.

7. The Petitioner further submits that the Draft Service Regulations were never adopted and sanctioned by the State Government. The Service Regulations

regulating service conditions of the employee of the Board were made for the first time in the year 1995 vide U.P. Pollution Control Board Service Regulations 1995. The U.P. Government Servants Seniority Rules, 1991 are general rules, which are to be read along with the Regularisation Rules of 1979 for the purposes of determining the seniority. The Chairman acted illegally in finding that the seniority was settled and could not be re-opened. The Petitioner has also challenged the findings of the Chairman of the Board in para 6 of the order dated 16.1.2003 deciding his representation in which it was held that the Petitioner's representation made after 6 years of promotion of Shri Surya Nath Pandey as Law Officer-II, was barred by time. Shri Surya Nath Pandey was illegally promoted and that the Petitioner had represented against his promotion as soon as he had acquired the knowledge about it. In any case his representations dated 23.11.1989; 9.6.2000 and 23.4.2002 were pending and were not decided for several years.

8. The Petitioner relied upon The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, in support of his submission that where initial appointment is only ad hoc and not in accordance with the Rules and made as a stop gap arrangement, the appointment on such post cannot be taken into account for considering the seniority.

9. Shri H.N. Tripathi appearing for the Board as well as Shri Surya Nath Pandey submits that the writ petition was admitted subject to the objections that the Petitioner has remedy to approach the U.P. State Public Service Tribunal for claiming the same relief. The State Government has deep and pervasive control in the affairs of the Board. In Writ Petition No. 1078 (SB) of 1996 decided on 8.10.1996 and in Writ Petition No. 7469 of 1999 decided on 24.9.1999, it was held that the employees of the Board are the employees within the control of the State Government and can raise their grievances in the U.P. State Public Services Tribunal.

10. Shri H.N. Tripathi submits that the U.P. Pollution Control Board was established on 3rd February 1975 for the purposes of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. In order to carry out the objects and purposes of these Acts, the employees were appointed in the Board in various cadres by making advertisement in the newspapers and calling for applications from the employment exchanges. For the appointment on the post of Legal Assistant an advertisement was made on 9.10.1976 in daily newspapers "National Harald" published from Lucknow along with other posts. Shri Surya Nath Pandey-Respondent No. 4 was selected on the post of Legal Assistant and was appointed on 3.11.1977. He was initially appointed in the pay scale of Rs. 300-500/- and later on after merger of the pay scales, he was placed in the pay scale of Rs. 350-700/-. Two other Legal Assistants namely Shri C.B. Singh and Shri P.P. Srivastava were appointed by the Board in the year 1980 and 1981 respectively. The Petitioner was appointed on 16.5.1983 as Legal Assistant in the pay scale of Rs. 350-700/- with certain conditions. The Condition No. 9 of the appointment letter

dated 16.5.1983 of the Petitioner made it clear that in the seniority he shall be placed later on in comparison to Legal Assistants, who were already working in the Board. The Petitioner accepted the conditions and joined. He is, therefore, stopped from claiming seniority over the Legal Assistants, who were working prior to his appointment. Shri Tripathi submits that Shri Surya Nath Pandey-Respondent No. 4 was regularised on 21.1.1989 and that counting his 7 years continuous experience in the Board, he was promoted on the post of Law Officer-II. At that time the Petitioner did not challenge his appointment. He made a highly belated representation against the promotion of the Respondent No. 4, who were later on promoted on 23.1.1996 on the post of Law Officer-I in accordance with and on the basis of his experience and continuous service in the Board.

11. Shri Tripathi further submits that in the year 1981 the Draft Service Regulations duly approved by the Board regulating service conditions of the employees were made. The service conditions of the employees of the Board continued to be governed by the Draft Service Rules. The U.P. Pollution Control Board Service Regulations were notified in the Official Gazette on 30.11.1995. The appointment of the Petitioner was made as per the Draft Service Rules, 1981, which were in existence in the year 1983. In view of the Regulation 3(j), which provides that substantive appointment means an appointment not being an ad hoc appointment on a post in the cadre of service made after selection in accordance with the Regulations, and if there are no Regulations in accordance with the procedure prescribed for the time being by the Board.

12. The writ petition is pending in the Court for last 7 years and has been amended. Affidavits have been exchanged. Thus it will not be proper for us to relegate the Petitioner to the alternative remedy of approaching the U.P. State Public Service Tribunal.

13. The facts as they have emerged from the pleadings and the documents annexed to the writ petition would show that the U.P. Pollution Control Board was constituted on 3rd February, 1975. The Draft Service Regulations were made by the Board to regulate service conditions of its employees in the year 1981. Prior to 1981, in order to carry out the functions under the Water and Air Pollution Act the Board required the services of several employees, and thus under the orders passed by the Board from time to time employees including Legal Assistants were appointed, after making advertisements in the daily newspapers and inviting applications. Shri Surya Nath Pandey was appointed after making advertisement on 9.10.1976 in daily newspaper "National Harald" published from Lucknow. Both the posts of Technical Assistants and Legal Assistants were clubbed together. The applications were invited from the Law Graduates for the post in the pay scale of Rs. 300-500/- and from those Law Graduates, who have three years, experience in the pay scale of Rs. 350-700/-. The appointment letter dated 3.11.1977 issued to Shri Surya Nath Pandey provided that his appointment was provisional and that his regular appointment will

be made, after he is selected by the Selection Committee. If he is not selected by the Selection Committee, his services shall be dispensed with. Shri Surya Nath Pandey-Respondent No. 4 was appointed prior to the enforcement of the U.P. Pollution Control Board Service Regulations 1995. Though he was regularised under the Regularisation Rules of 1979, as amended in 1985, his appointment cannot be treated as dehors the rules, as there were no rules or Regulations made by the Board for regular appointment at that time. His appointment also cannot be said to have been made without making any advertisement and selections. He was given promotion on the post of Law Officer-II, and was formally regularised on 21.1.1989 on the recommendations of the Regularisation Committee under the Rules of 1979. He was promoted shortly thereafter on 30.3.1989 on the basis of his experience and continuous service in the Board. The Regulations of 1995 provided for promotion to Law Officer, Grade-II from amongst substantively appointed Legal Assistants, who have completed 7 years service as such on the first day of the year of recruitment, the Chairman being the appointment authority. The substantive appointment in the Regulations of 1995 made on November 30th, 1995 under Regulation 3(j) is defined as follows:

(j). "Substantive Appointment" means an appointment not being an ad hoc appointment, on a post in the cadre of the services made after selection in accordance with these Regulations and if there are no Regulations, in accordance with the procedure prescribed for the time being by the Board.

14. Shri Surya Nath Pandey-Respondent No. 4 was appointed by following the procedure prescribed by the Board at the time, when he was appointed. Since there were no rules or Regulations in force and the Board required the services of a Law Assistant, he was appointed after making advertisement in the newspapers. In the absence of the service rules a condition was put in his appointment letter that his appointment is provisional and that his regular appointment will be made on the recommendation of Selection Committee. The Respondent No. 4 therefore cannot be treated to be appointed dehors the procedure for appointment prescribed by the Board at the relevant time in the year 1977. His regularisation on 21st January, 1989 on the recommendation of the Selection Committee under the Regularisation Rules of 1979 as amended in 1984, would thus regularise his service from the date of his initial appointment, made in accordance with the then prevalent procedure for appointment.

15. In our opinion Rule 7 in the U.P. Regularisation of Ad hoc Appointments (On the Posts Within the Purview of the Public Service Commission) Rules, 1979, will be applicable to the appointments, which are made under the relevant service rules on ad hoc basis. Where there are no rules for making ad hoc appointment, Rule 7 will not be applicable.

16. The appointment of Shri Surya Nath Pandey-Respondent No. 4 was not in violation of the then prevalent procedure for appointment, and that he cannot be

denied the benefit of the service rendered on the post. There are no allegations that Shri Surya Nath Pandey was not qualified and eligible, or there was any break in his services to deny him the benefit of services rendered by him.

17. In the absence of the rules regulating the service conditions of the employees, the draft rules, which are subsequently accepted, could be made applicable for appointment and for other service conditions.

18. During the pendency of the writ petition Shri Surya Nath Pandey-Respondent No. 4, who may be now be at the verge of retirement as he had disclosed his age as 52 years in the affidavits filed on 30th July, 2003 has been promoted as Law Officer-I, and thereafter as Chief Law Officer. At the time the Petitioner was appointed, the Respondent No. 4 had already put in 6 years of regular services, and continued to receive his promotions regularly. He has been treated as seniormost in the cadre, throughout the period of his service w.e.f. 3.11.1977, for last 34 years.

19. Shri Surya Nath Pandey-Respondent No. 4, against whom the Petitioner is claiming seniority on the ground that he was initially appointed on provisional basis, was not appointed in accordance with the then prevailing procedure prescribed by the Board for appointment. By that time the Board had not framed any Regulations, and had resorted to employment by making advertisements giving opportunity to all concerned for carrying out essential statutory functions. Since there were no rules made by the Board for recruitment, it cannot be said that Shri Surya Nath Pandey-Respondent No. 4 was not substantively appointed or that his appointment was de hors to any procedure, which will not give him benefit of service rendered, until he was recommended by the Selection Committee under the Regularisation Rules, 1979 for regularisation. He was validly appointed in accordance with the procedure prescribed by the Board at that time and thus benefit of his services until his regularisation cannot be denied to him for any purposes including seniority.

20. The writ petition is dismissed.