

(2019) 04 UK CK 0165

Uttarakhand High Court

Case No: Writ Petition (S/B) No. 580 Of 2018

State Of Uttarakhand & Another

APPELLANT

Vs

R.P. Upadhyaya

RESPONDENT

Date of Decision: April 29, 2019

Hon'ble Judges: Ramesh Ranganathan, CJ; Narayan Singh Dhanik, J

Bench: Division Bench

Advocate: Anil Kumar Bisht, I.D. Paliwal

Final Decision: Allowed

Judgement

Ramesh Ranganathan, CJ

1. In this Writ Petition, the order passed by the Public Services Tribunal in Claim Petition No. 1/DB/2017 dated 17.5.2018 is under challenge. The

jurisdiction of the Tribunal was invoked by the respondent herein seeking a direction to quash the order dated 5.2.2016 whereby the petitioner's

representation was rejected; a direction was sought to the respondents to consider the case of the petitioner strictly in terms of the policy decision

dated 25.11.2004, the DPC/selection proceedings dated 19.1.2005, and as per the fact shown in the recommendation dated 17.3.2005 made by the

Labour Commissioner, U.P; to direct the respondent to review the order dated 21.2.2006 by which the petitioner had been promoted to the post of

Labour Enforcement Officer with effect from the date he took charge since W.P. No. 33890 of 2000 had been dismissed by the Allahabad High

Court; a direction to promote the petitioner to the post of Labour Enforcement Officer w.e.f. 27.5.1986; to direct the respondent to place the

petitioner's name in the seniority list dated 3.1.2008 on the basis of his appointment date i.e. 27.5.1986; and to issue a consequential order fixing his pay as per rules.

2. Facts, to the limited extent necessary, are that the petitioner was initially appointed to the post of Welfare Assistant in the Welfare Department in

Uttar Pradesh on 22.3.1973, and was posted in Dehradun. Consequent on the Uttar Pradesh Hill Sub Cadre being created, the petitioner was allotted

thereto. The seniority list of employees working in the U.P. Hill Sub Cadre was prepared and, after the State of Uttarakhand came into being, the

respondent-claim petitioner was allotted to the State of Uttarakhand.

3. It is the case of the respondent-claim petitioner that promotion of Welfare Assistants was pending in the office of Labour Commissioner, U.P. since

1977; writ petitions were filed in the Allahabad High Court; a policy decision was taken by the State of U.P, on 25.11.2001, to promote Welfare

Assistants; a copy of the said Government Order was also forwarded to the respondent-claim petitioner; he, along with others, were promoted by the

State of Uttarakhand vide order dated 21.2.2006 subject to the result of W.P. No. 33890 of 2000 in which the respondent-claim petitioner was a party

respondent; a selection committee meeting was held by the Government of U.P. on 19.1.2005 to consider the names of Welfare Assistants for

promotion; the name of the petitioner, along with others, finds place in the selection list dated 19.1.2005; the petitioner's promotion as Labour

Enforcement Officer was recommended w.e.f. 27.5.1986 by the selection committee in its proceedings dated 19.1.2005; proceedings dated 17.3.2005

were issued by the State of U.P, requesting the Principal Secretary, Government of Uttarakhand, to pass suitable orders to promote the petitioner as

per the recommendations of the selection committee dated 19.1.2005; the Labour Commissioner, Uttarakhand had promoted the petitioner to the post

of Labour Enforcement Officer vide letter dated 21.2.2006; W.P. No. 33890 of 2000 was dismissed by order dated 26.2.2014; and in view of the

recommendations of the Labour Commissioner, U.P, to promote the respondent-claim petitioner w.e.f. 27.5.1986, the State of Uttarakhand should

have promoted the respondent-claim petitioner from that date.

4. The petitioner herein raised an objection, before the Tribunal, that, since the claim petitioner's promotion as Labour Enforcement Officer was subject to the result of W.P. No. 33890 of 2000 and, since the said Writ Petition was not decided on merits, the petitioner could not claim promotion from a date from which his case was recommended for promotion by the Government of Uttar Pradesh; when the respondent-claim petitioner submitted a representation to the Labour Commissioner, Uttarakhand to review his order dated 21.2.2006, the said representation was rejected on the ground that W.P. No. 33890 of 2000 was disposed of on 26.2.2014 without any directions; and the Claim Petition was not maintainable in view of the judgment of Supreme Court in State of Uttarakhand v. Umakand Joshi, 2012 (1) UD 583, and the judgment of this High Court in Dr. Kamaljeet Singh v. State of Uttarakhand, 2018 (1) UD 337.

5. In the order, impugned in the Writ Petition, the Public Services Tribunal observed that a recommendation was made by the State of U.P. which was acted upon by the State of Uttarakhand, as is evident from the order dated 21.2.2006; the petitioner had been promoted to the post of Labour Enforcement Officer on the basis of the Office Order dated 25.11.2004 issued by the Government of Uttar Pradesh, on the recommendations of the selection committee, and as echoed by the Labour Commissioner, U.P. vide letter dated 17.3.2005; these letters and recommendations formed the nucleus of the order dated 21.2.2006; and the same was subject to the result of W.P. No. 33890 of 2000.

6. The Tribunal, thereafter, observed that the petitioner ought to have been promoted to the post of Labour Enforcement Officer from the date as suggested by the Labour Commissioner, U.P. i.e. from 27.5.1986; no order, adverse to the petitioner, was passed in W.P. No. 33890 of 2000; and a similar order, as was passed by the Allahabad High Court in W.P. No. 8233 of 2006 dated 30.5.2013, should be passed in this case also. While taking note of the fact that the respondent-claim petitioner had retired from service on 20.11.2010, the Tribunal directed the petitioner herein to give the respondent-claim petitioner promotion as Labour Enforcement Officer w.e.f. 27.5.1986, and in addition to grant the claim petitioner consequential

benefits including seniority, promotion and ACP on a notional basis for the purpose of retiral benefits.

7. W.P. No. 33890 of 2000 was filed before the Allahabad High Court seeking a direction to quash the order dated 10.5.2000 by which notional

promotion had been given to the respondents 4 to 17 therein (including the claim petitioner herein). When the Writ Petition was pending on the file of

the Allahabad High Court, the Labour Commissioner, U.P, by proceedings dated 17.3.2005, recommended that the claim petitioner be promoted w.e.f.

27.5.1986. The order of promotion issued by the Labour Commissioner, Uttarakhand dated 21.2.2006 is to the effect that the promotion of the claim

petitioner would take effect from the date on which he assumed office as Labour Enforcement Officer. W.P. No. 33890 of 2000 was dismissed as

infructuous, by the order of the Allahabad High Court dated 26.2.2014, more than three years after the petitioner retired from service on 30.11.2010.

In the said order, a Division Bench of the Allahabad High Court noted that, during the pendency of the Writ Petition, both the petitioners therein had

died; meanwhile two others had filed an application to implead themselves as petitioners 3 and 4; and these two individuals had also been promoted as

Labour Enforcement Officers. In such circumstances, the Writ Petition was dismissed as infructuous.

8. While it is no doubt true that no order, setting aside the order of promotion of the respondents therein, was passed by the Allahabad High Court, the

fact remains that the order in W.P. No. 33890 of 2000 dated 26.2.2014 was passed more than three years after the petitioner retired from service on

30.11.2010. In the order, impugned in this Writ Petition, the Public Services Tribunal had also relied on an order of the Allahabad High Court in W.P.

No. 8233 of 2006 dated 30.5.2013 filed by some other individuals, who the claim petitioner claimed were persons similarly situated to him. A learned

Single Judge of the Allahabad High Court, in his order in W.P. No. 8233 of 2006 dated 30.5.2013, took note of the submission of the Counsel for the

petitioner therein that the recommendations of the Departmental Promotion Committee dated 19.1.2005 referred to the date of promotion of the

petitioners therein to the post of Labour Enforcement Officers; this date should be taken as the date for fixation of seniority, and for promotion to the

post of Assistant Labour Commissioner; and the dates of appointment of the opposite parties were during the years 1983-84. Having noted that there was no dispute between the parties regarding these dates, the learned Single Judge of the Allahabad High Court observed that, since promotions were long due and the department was suffering because of lack of officers, promotions be made to the post of Assistant Labour Commissioner within one month considering them to have been promoted to the post of Labour Enforcement Officer on those dates (during the year 1983-84).

9. This order in W.P. No. 8233 of 2006 is dated 30.5.2013, which was also passed more than two and half years after the respondent-claim petitioner retired from service on 30.11.2010. There was no adjudication, in the order of learned Single Judge, in W.P. No. 8233 of 2006 dated 30.5.2013, as to why the date of promotion of the Labour Enforcement Officers should be treated as from 1983-84. The dates from which the employees therein, were directed to be treated to have been promoted as Labour Enforcement Officers, was based on the consent of the parties to the writ proceedings before the Allahabad High Court. The said judgment of the learned Single Judge of the Allahabad High Court, an order not passed on merits but based on the consent of the parties, would not bind the Government of Uttarakhand which was not even a party thereto.

10. The claim petitioner was promoted by the Labour Commissioner, Uttarakhand only on 21.2.2006. He accepted the promotion without demur, and continued to discharge the functions of a Labour Enforcement Officer till he retired from service on 30.11.2010. Nearly seven years after he retired from service, the claim petitioner invoked the jurisdiction of the Public Services Tribunal by way of a Claim Petition filed in the year 2017; and yet, without examining the question of undue delay and laches on the part of the claim petitioner in invoking its jurisdiction, the Tribunal has chosen to grant relief relying on the order of the Allahabad High Court, an order passed more than two and half years after the claim petitioner had retired from service.

11. By the order impugned in the Writ Petition, the Tribunal had, in effect, directed that the respondent-claim petitioner be treated as having been

promoted in the year 1986; and he be granted notional fitment for the purpose of retiral benefits. Such a relief could not have been granted, that too on

the basis of the aforesaid orders of the Allahabad High Court which were not orders on merits but were based on the consent of the parties therein,

and to which the Government of Uttarakhand was not a party.

12. Consequently, the impugned order passed by the Tribunal is set aside and the Writ Petition is allowed. However, in the circumstances, no costs.