

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10764/2013

(Arising out of Special Leave Petition(Civil)No.10515/2010)

State of U.P. & Ors.

.....Appellant(s)

Vs.

Sher Bahadur Singh

.....Respondent(s)

O R D E R

1. Leave granted.

2. Short issue which arises for consideration is as to whether High Court could direct the appellant to consider the case of the respondent from the date when the vacancy arose? This issue has arisen under the following circumstances.

3. The respondent herein was appointed as Clerk in the Collectorate at Barabanki, State of U.P. in the year 1962. He attained the post of Administrative Officer in the said Collectorate, to which he was promoted on 13.8.1996. Next promotion is to the post of Senior Administrative Officer. No meeting of Departmental Promotion Committee (DPC) was held for considering the cases of promotion to this post between the period from July 1997 to January 2000 due to ban on promotions imposed by the State Government. In the meantime, the respondent retired from service w.e.f. 29th February 2000, on attaining the age of superannuation. When the ban was lifted, meeting of DPC was convened some time in the year 2001 and the eligible persons were considered for promotion to the post of Senior Administrative Officer. On the basis of the recommendation of the DPC, appellant/Government issued orders dated 13.06.2001 promoting 38 persons. The case of the respondent was not considered as by that time respondent had retired from service.

4. The respondent filed O.A. before the Central Administrative Tribunal (CAT) challenging his non-consideration which was allowed by the CAT directing the appellants herein to consider the case of the respondent for notional promotion on the post of Senior Administrative Officer w.e.f. July 1997. The reason given by the Tribunal was that when the post fell vacant in the month of June, 1997 the respondent had become entitled to be considered for the promotion in that year. Even if the DPC was not held and he was not promoted because of ban imposed by the Government and he retired in the meantime, the respondent was entitled to notional promotion, particularly when the persons junior to him stood promoted. The appellants challenged that order of the Tribunal by filing the Writ Petition before the Allahabad High Court which has been dismissed by the impugned judgment dated 13.11.2009 observing that it is obligatory on the

part of the State Government to consider the case of the respondent/claimant also for notional promotion, along with others in case juniors to the respondent were considered and promoted to the next higher post. It is this judgment which is under challenge before us.

5. Notice was issued to the respondent who was duly served. However, the respondent has not put in appearance. To await the appearance, matter was adjourned on a couple of occasions. Even thereafter the respondent remained unrepresented. Therefore, we have no option but to hear the counsel for the appellants in the absence of the respondent.

6. We are of the opinion that the orders of the Tribunal as well as High Court suffer from grave legal infirmity. The general principle cannot be disputed that when juniors are considered for promotion ignoring the senior who was otherwise eligible, the senior has a right to be considered from the date juniors got promotions. It is also trite that even when an employee has no right to get promotion, it is the fundamental right to be considered for promotion. However, what is missed by the courts below is that promotion cannot be given from the date when the vacancy arises. No employee has right to claim the promotion from the date of occurrence of vacancy. There may be various reasons because of which convening of DPC would take some time. It is only when the DPC considers the cases of eligible persons for promotion and makes its recommendations, that the promotions orders are issued which would normally take some time. Promotion is to take effect from the date of such orders or when the incumbent who is recommended assumes charge of the higher post. In the present case, there was a ban imposed by the State Government on promotions. It is because of this reason that DPC could not be convened. However, by the time DPC held its meeting on lifting of the ban, the respondent had retired from service. A person who has retired from service on the date of convening of the DPC could not be considered for promotion. This aspect is totally glossed over by the High Court.

7. Matter can be looked into by another angle. The rationale given by the High Court is that the persons junior to the respondent have been promoted and the respondent is ignored. However, what is missed is that so-called junior persons are promoted vide order dated 13.06.2001. Therefore, they get promotion on 13.6.2001 date on which the respondent was no longer in service. Therefore, the persons promoted could not be treated as "juniors" to the respondent who had become an ex-employee on the date. Matter would have been different if these persons were given the promotion from back date i.e. July 1997 when the respondent was in service. However, that has not happened. Giving the direction to consider the case of the respondent for notional promotion from 1997 when all others are promoted only in the year 2001 itself is, ex facie, wrong.

8. We, thus, allow this appeal and set aside the orders of the CAT as well as the High Court.

.....J.

(K.S. Radhakrishnan)

.....J.

(A.K. Sikri)

November 22, 2013
ITEM NO.41

COURT NO.8

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10515/2010

(From the judgement and order dated 23/11/2009 in WP No.1706/2009 of The
HIGH COURT OF JUDICATURE AT ALLAHABAD, BENCH AT LUCKNOW)

STATE OF U.P. & ORS.

Petitioner(s)

VERSUS

SHER BAHADUR SINGH

Respondent(s)

(With appln(s) for permission to place addl. documents on record and prayer
for interim relief and office report)

Date: 22/11/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN
HON'BLE MR. JUSTICE A.K. SIKRI

For Petitioner(s) Mr. Vinay Garg,Adv.
Mr. Upendra Mishra,Adv.
Mr. Tamnaya Agarwal,Adv.
Mr. M.R. Shamshad,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

| (NARENDRA PRASAD)
| COURT MASTER

| | (RENUKA SADANA)
| | COURT MASTER

(Signed "Non-Reportable" order is placed on the file)