

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3984 OF 2012

State of Uttarakhand and another ... Appellants
 Umakant Joshi versus ... Respondent(s)
 with

CIVIL APPEAL NO. 3982 OF 2012

Sudhir Chandra Nautiyal ... Appellant(s)
 Umakant Joshi and others versus ... Respondents

CIVIL APPEAL NO. 3983 OF 2012

Surendra Singh Rawat ... Appellant(s)
 Umakant Joshi and others versus ... Respondents

JUDGMENT

G. S. Singhvi, J.

1. Whether the Uttarakhand High Court could ordain promotion of respondent No.1 - Umakant Joshi to the post of General Manager with effect from 16.11.1989, i.e., prior to formation of the State of Uttaranchal (now known as the State of Uttarakhand) with the direction that he shall be

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considered for promotion to the higher posts with effect from the dates persons junior to him were promoted is the question which arises for consideration in these appeals, one of which has been filed by the State of Uttarakhand and the Director of Industries, Dehradun and the other two have been filed by Sudhir Chandra Nautiyal (hereinafter described as, 'Appellant No.1') and Surendra Singh Rawat (hereinafter described as, 'Appellant No.2') respectively against order dated 4.6.2010 passed by the Division Bench of that High Court in Writ Petition No.324 of 2008.

2. The service profile of Appellant No.1:

2.1 On being selected by the Uttar Pradesh Public Service

Commission (for short, 'the Commission'), appellant No.1 was appointed to

Class-I post in the Industries Department of the Government of Uttar Pradesh with effect from 7.2.1994.

2.2 After formation of the State of Uttaranchal, in terms of Section 3 of the Uttar Pradesh Reorganisation Act, 2000 (for short, 'the Act'), the Central Government issued order dated 20.12.2000 under Section 73 thereof and tentatively allotted appellant No.1 along with large number of other officers/employees of the State of Uttar Pradesh including respondent No.1 to the new State of Uttaranchal. They were finally allotted to the new State vide order dated 17.5.2006.

2.3 Appellant No.1 was promoted as Joint Director of Industries on ad-hoc basis in the State of Uttarakhand with effect from 17.1.2004. He was regularly promoted on that post on 23.7.2007. After two years, he was promoted as Additional Director, Industries.

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3. The service profile of Appellant No.2:

3.1 Appellant No.2 was appointed in the U.P. Industries (Subordinate) Service in 1979. He opted for Hill Sub-Cadre formed by the State of Uttar Pradesh in 1992. His name was included in the separate seniority list of the officers of that cadre and on formation of the State of Uttaranchal, he was treated as an employee of the new State.

3.2 Appellant No.2 was promoted to U. P. Industries Class-I Service in 1996. He was further promoted to the post of Deputy Director/General Manager (Grade-I) with effect from 19.1.2004.

4. The service profile of Respondent No.1:

4.1 In response to an advertisement issued by the Commission in 1981 for recruitment to Class-II posts in the pay scales of Rs.550-1200 and Rs.450-900, respondent No.1 applied for the post of Manager (Marketing) in the pay scale of Rs.550 - 1200. He was selected by the Commission for that post but was offered appointment on the lower post of Manager, Handloom in the pay scale of Rs.450-900.

4.2 After joining the service, respondent No.1 filed Writ Petition No.9728 of 1986 in the Allahabad High Court and prayed for issue of a mandamus for his appointment on the post for which he had applied. In

compliance of an interim order passed by the High Court on 2.3.1987, respondent No.1 was appointed as Manager (Marketing) with effect from the date of initial appointment, i.e. 23.4.1984. The writ petition was finally allowed by the High Court vide order dated 1.12.1995 and a direction was issued to the State Government to give consequential benefits to respondent No.1. Thereafter, seniority of respondent No.1 was fixed among Class-II officers at serial No.48A.

4.3 While he was working as Manager (Marketing) in the Directorate of Industries, Uttar Pradesh, respondent No.1 earned adverse remarks in the Annual Confidential Reports for the years 1987-88, 1988-89, 1989-90 and 1991-92. Four departmental inquiries were also initiated against respondent No.1 between July 1996 and March 1997. These inquiries culminated in the issuance of order dated 23.1.1999 whereby punishment of reduction to the minimum of the pay scale was imposed on respondent No.1. As a sequel to this, an adverse entry was made in the Annual Confidential Report of respondent No.1 for the year 1995-96 casting reflection on his integrity.

4.4 Respondent No.1 submitted representation dated 14.1.2000 to the State Government for reconsideration/review of the order of punishment. He also filed writ petition in the Allahabad High Court for quashing the order of punishment.

4.5 While the representation and the writ petition filed by respondent No.1 were pending consideration, Parliament enacted the Act and the Central Government allotted the services of respondent No.1 to the new

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State. Thereafter, respondent No. 1 made representation dated 23.12.2000 to the Government of the new State for review of the order of punishment.

4.6 The Allahabad High Court transferred the pending writ petition to the High Court of Uttaranchal (now Uttarakhand), which disposed of the same by relegating respondent No.1 to the alternative remedy of filing an application before the State Public Services Tribunal (for short, 'the Tribunal').

4.7 During the pendency of the matter before the Tribunal, the Government of Uttarakhand considered the representations made by respondent No.1 and proposed that the punishment order may be withdrawn.

The Governor of Uttarakhand approved the proposal. Thereafter, the State Government issued order dated 17.1.2005, which was described as an Office Memorandum for withdrawal of the order of punishment. The relevant portion of that order is extracted below:

"Office Memorandum

After due consideration of the representation dated 14.01.2000 and 23.12.2000 submitted by Sh. Uma Kant Joshi against the punishment given vide Office Memorandum No.4482/181-81(R)/96 dated 23.01.1999 by Secretary, Small Scale Industry Government of U.P. to Sh. Uma Kant Joshi the then Manager (Marketing and Economic Survey) District Industry Centre, Kotdwar, Pauri Garhwal, present incharge General Manager, District Industry Centre, Udham Singh Nagar, the Governor hereby accords approval to withdraw the said punishment order dated 23.01.1999 upon its merit.

Sd/-
Sanjeev Chopra
Secretary"

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4.8 After about 7 months, the State Government issued order dated 11.8.2005 and expunged the adverse entry recorded in the Annual Confidential Report of respondent No.1 for the year 1995-96.

4.9 The Tribunal took cognizance of the aforementioned two orders and disposed of the petition filed by respondent No.1 as infructuous. Soon thereafter, he submitted a representation to the Government of Uttar Pradesh for promotion to the post of Deputy Director/General Manager, Industries with effect from 16.11.1989, i.e. the date on which persons junior to him were promoted. The same was forwarded to the Government of Uttarakhand, which issued an order dated 11.10.2006 and promoted respondent No.1 to Class-I post. However, his prayer for retrospective promotion was not entertained.

5. After about 2 years, respondent No.1 filed Writ Petition No.324 of 2008 and prayed for issue of a direction to the respondents (State of Uttarakhand and Director, Directorate of Industries) to give him the benefit of the time scale and the selection grade respectively with effect from the date of completion of 8 years and 14 years service and notional promotion to Class-I post from 1989. In support of his claim, respondent No.1 relied upon the orders passed in favour of Shri R.K. Khare, who was promoted to

Class-I post with effect from 16.11.1989. He also relied upon orders dated 22.1.2001 passed by the Governments of the States of Uttar Pradesh and

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Uttarakhand whereby large number of officers including Shri S.C.

Chandola, who were senior to Shri R.K. Khare were promoted to Class-I posts with effect from 16.11.1989.

6. In the reply affidavit filed on behalf of the State of Uttarakhand and the Director of Industries, an objection was taken to the maintainability of the writ petition on the ground of non impleadment of the State of Uttar Pradesh as party respondent. On merits, it was pleaded that respondent No.1 cannot claim parity with Shri R.K. Khare because the latter was not allotted to the State of Uttarakhand. As regards Shri S.C. Chandola, it was averred that he was appointed on a Class-II post on 16.9.1976 and was assigned seniority at serial No.16, whereas respondent No.1 was appointed on 23.4.1984 and his seniority was fixed at serial No.49. It was further averred that at the time of allotment to the State of Uttarakhand, Shri S.C. Chandola was holding Class-I post in the pay scale of Rs.10,000-15,200, whereas respondent No.1 was holding a post in the pay scale of Rs.8,000-13,500.

7. The Division Bench of the High Court took cognizance of orders dated 17.1.2005 and 11.8.2005 and held that once the order of punishment was withdrawn and there was no adverse material in the record of respondent No.1, he was entitled to be promoted to Class-I post with effect from the date his junior Shri R.K. Khare was promoted. The Division

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Bench accordingly directed that respondent No.1 be promoted to the post of General Manager with effect from 16.11.1989 and his case be considered for promotion to the higher posts from the dates persons junior to him were promoted.

8. Before proceeding further, we may notice some other facts which have bearing on the decision of these appeals.

8.1 In exercise of the powers conferred upon it by Rules 18 and 39 to

41 of the Civil Services Classification, Control and Appeal Rules, 1930, the Government of United Province had made the United Provinces Industries Service Class-I Rules, 1937 for regulating appointment to the posts of Director/Deputy Director, Member, Harcourt Butler Technological Institute, Heads of Sections of Harcourt Butler Technological Institute and Glass Technologist. After independence, the Governor of Uttar Pradesh made the Uttar Pradesh Industries Service Rules, 1993 (for short, 'the 1993 Rules') for regulating recruitment on various posts which were categorized in two groups, i.e., Group 'A' and Group 'B'. Prior to this, the Government of Uttar Pradesh had issued G.O. dated 4.2.1989 in terms of which only those members in the feeder cadre were treated eligible for promotion who had completed 7 years' service as on 1st July. By another G.O. issued on 31.3.1993, the State Government decided that time scale shall be granted to an employee on completion of 8 years' satisfactory service.

8.2 By virtue of Section 3 of the Act, the new State of Uttaranchal was formed. Sections 73 and 74 of the Act, which relate to services other than All India Services read as under:

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"73. Provisions relating to other services - (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal:

Provided that every direction under this sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

74. Other provisions relating to Services - (1) Nothing in this section or in Section 73 shall be deemed to affect on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Uttar Pradesh or to the State of Uttaranchal the previous approval of the Central Government under Section 73 shall not be varied to his disadvantage except with the previous approval of the Central Government.

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(2) All services prior to the appointed day rendered by a person,-

(a) If he is deemed to have been allocated to any State under Section 73, shall be deemed to have been rendered in connection with the affairs of that State;

(b) If he is deemed to have been allocated to the Union in connection with the administration of the Uttaranchal, shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service.

(3) The provisions of Section 73, shall not apply in relation to members of any All-India Service."

8.3 On 7.11.2002, adoption and modification orders were issued in relation to Uttar Pradesh Industries Service Rules, 1993 and Uttar Pradesh Industries (Senior Group 'A') Service Rules, 1991.

8.4 On the recommendations of the Commission, Shri R.K. Khare was appointed as Survey Officer in the pay scale of Rs.450-950 with effect from 27.12.1974. He was appointed as Assistant Development Officer (Small Engineering Industries) with effect from 3.11.1976 in the pay scale of Rs.550-1200 on ad hoc basis. Subsequently, the State Government issued G.O. dated 11.10.1977 and conveyed sanction of the Governor to the appointment of Shri R.K. Khare as Assistant Development Officer (SEI). On 22.3.1980, he was appointed as ad hoc Class-I officer in the pay scale of Rs.800-1450. The ad hoc appointment of Shri R.K. Khare was regularized with effect from 16.11.1989 under the Uttar Pradesh Regularization of Ad hoc Appointments (on Posts within purview of Public Service Commission) Rules, 1988.

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8.5 By an order dated 22.1.2001, the Government of Uttar Pradesh promoted 19 Class-II officers, who were senior to Shri R.K. Khare to Class-I posts on notional basis with effect from 16.11.1989.

9. S/Shri J.L. Gupta and Subodh Markandeya, learned senior counsel

appearing for appellant Nos. 1 and 2 and Ms. Rachana Srivastava, learned counsel appearing for the State of Uttarakhand argued that the impugned order is liable to be set aside because while granting relief to respondent No.1, the High Court completely ignored that he was guilty of laches and that the persons who were going to be adversely affected by retrospective promotion of respondent No.1 had not been impleaded as party respondents. Learned counsel further argued that the Uttarakhand High Court did not have the jurisdiction to direct promotion of respondent No.1 to Class-I post with effect from a date prior to formation of the new State and even the Allahabad High Court could not have issued a mandamus for promotion of respondent No.1 de hors his service record. Learned counsel emphasized that in exercise of power under Article 226 of the Constitution, the High Court cannot, except in exceptional circumstances, issue direction for promotion of an officer/official and the case of respondent No.1 did not fall in that category. Ms. Srivastava pointed out that even though Shri R.K. Khare was junior to respondent No.1 in the seniority list of Class-II officers, his promotion to Class-I post with effect from 16.11.1989 did not give a cause to respondent No.1 to seek intervention of the Uttarakhand High Court for promotion with effect from that date because till then, he continued to be an employee of the State of Uttar Pradesh.

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10. Shri Pramod Swarup, learned senior counsel appearing for respondent No.1 defended the directions given by the High Court and argued that once the order of punishment was withdrawn and the remarks recorded in the Annual Confidential Report of respondent No.1 casting adverse reflection on his integrity were expunged, he became entitled to be considered for promotion to Class-I post with effect from a date persons junior to him, namely, Shri R.K. Khare and others were promoted. Learned senior counsel emphasized that after having issued order dated 22.1.2001 for promotion of Shri S.C. Chandola to Class-I post with effect from 16.11.1989, it is not open to the Government of Uttarakhand to contend that the High Court did not have the jurisdiction to issue direction for retrospective promotion of respondent No.1.

11. We have considered the respective submissions. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K. Khare to Class-I posts with effect from 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No.1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and the punishment imposed vide order dated 23.1.1999. Once the order of

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punishment was set aside, respondent No.1 became entitled to be considered for promotion to Class-I post with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9.11.2000. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R.K. Khare with effect from 16.11.1989 and other officers, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No.1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent No.1.

12. In view of the above, we hold that the writ petition filed by respondent No.1 in 2008 in the Uttarakhand High Court claiming

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retrospective promotion to Class-I post with effect from 16.11.1989 was misconceived and the High Court committed jurisdictional error by issuing direction for his promotion to the post of General Manager with effect from 16.11.1989 and for consideration of his case for promotion to the higher posts with effect from the date of promotion of his so called juniors.

13. In the result, the appeals are allowed, the impugned order is set aside and the writ petition filed by respondent No.1 is dismissed.

14. However, it is made clear that this Court has not expressed any opinion on the merits of the entitlement of respondent No.1 to claim promotion to Class-I post with retrospective effect and, if so advised, he may avail appropriate remedy by filing a petition in the Allahabad High Court. It is also made clear that we have not expressed any opinion on the legality or otherwise of order dated 17.1.2005 issued by the Government of Uttarakhand withdrawing the order of punishment passed against respondent No.1 and the writ petition, if any, pending before the Uttarakhand High Court against that order shall be decided without being influenced by the proceedings of these appeals.

.....J.
[G.S. Singhvi]

.....J.
[Sudhansu Jyoti Mukhopadhaya]

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New Delhi,
May 28, 2012.

ITEM NO.1A

COURT NO.2

SECTION X

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

CIVIL APPEAL NO(s). 3984 OF 2012

STATE OF UTTARKHAND & ANR

Appellant (s)

VERSUS

UMAKANT JOSHI

Respondent(s)

WITH
CIVIL APPEAL NO. 3982 OF 2012
CIVIL APPEAL NO. 3983 OF 2012

[HEARD BY HON'BLE G.S.SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA]

Date: 28/05/2012 These Appeals were called on for Judgment today.

For Appellant(s)

Ms. Rachana Srivastava, AOR(Not present)

Mr. Sudarshan Singh Rawat, Adv.

Mr. Chander Shekher Ashri, AOR(Not present)

For Respondent(s) Mr. Rameshwar Prasad Goyal,AOR(Not present)

Ms. Rachana Srivastava, AOR (Not present)

Hon'ble Mr. Justice G.S. Singhvi pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya.

For the reasons recorded in the Non-Reportable Judgment which is placed on the file, the appeals are allowed, the impugned order is set aside and the writ petition filed by respondent No.1 is dismissed.

However, it is made clear that this Court has not expressed any opinion on the merits of the entitlement of respondent No.1 to claim promotion to Class-I post with retrospective effect and, if so advised, he may avail appropriate remedy by filing a petition in the Allahabad

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High Court. It is also made clear that we have not expressed any opinion on the legality or otherwise of order dated 17.1.2005 issued by the Government of Uttarakhand withdrawing the order of punishment passed against respondent No.1 and the writ petition, if any, pending before the Uttarakhand High Court against that order shall be decided without being influenced by the proceedings of these appeals.

(Parveen Kr.Chawla)
Court Master

(Phoolan Wati Arora)
Court Master