

CASE NO.:
Appeal (civil) 3666 of 2006

PETITIONER:
STATE OF U.P. & Ors.

RESPONDENT:
MAQBOOL AHMAD

DATE OF JUDGMENT: 25/08/2006

BENCH:
C.K. Thakker & Markandey Katju

JUDGMENT:
JUDGMENT
[ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 26616 OF 2004]

C.K. THAKKER, J.

Delay condoned.
Leave granted.

This appeal is filed against an order dated April 22, 2004 passed by the High Court of Judicature at Allahabad, Lucknow Bench in Writ Petition No. 8268 of 1993.

The facts in nutshell may now be stated.

Pursuant to common selection held by the Uttar Pradesh Public Service Commission ("U.P.P.S.C." for short) in 1970, several persons were selected for appointment to the post of Assistant Engineer in various departments. The respondent herein opted for Irrigation Department whereas some selectees preferred to go to other departments including Public Works Department (PWD). The respondent joined the Irrigation Department on September 30, 1970. He initially worked at Lucknow and thereafter at Jaunpur. He continuously remained in Irrigation Department upto 1977. On November 4, 1977, with the approval of U.P.P.S.C., he was relieved from the Irrigation Department and joined Public Works Department without any break in service. It was the case of the respondent that since he was appointed in 1970 as Assistant Engineer and was not promoted as Executive Engineer, as per the policy of the Government, he was entitled to selection grade after completion of 16 years of service and supertime scale after completion of 18 years of service. The respondent was, therefore, entitled to selection grade from 1986 and supertime scale from 1988. He also stated that the Government of U.P. had issued Government Order (GO), dated October 15, 1968, wherein it was stated that where employees working in one department have been allocated to other department, the services rendered by them earlier would be counted for fixation of pay and they will be treated in continuous service of the Government. The respondent-workman, therefore, applied to the authorities to grant him selection grade and supertime scale to which, according to him, he was entitled as he could not be promoted. The prayer of the respondent was, however, rejected on the ground that since he came by way of transfer in PWD in the year 1977, his case could be considered for supertime scale provided he was not promoted within a period of 18 years from that date, i.e. from December, 1977. Since, the respondent was

promoted as Executive Engineer in January, 1995, that is, before completion of 18 years from December, 1977, he was not entitled to supertime scale. His claim was, therefore, negatived.

Being aggrieved by the said action, the respondent approached the High Court by filing a petition. Before the High Court, it was contended by the respondent herein that selection by the Uttar Pradesh Public Service Commission was common for Assistant Engineers in all Departments of the Government. After the common selection was held, some persons were allocated to Irrigation Department and some persons were sent to PWD. The respondent also asserted in his petition that several Assistant Engineers who were selected after him and had not been allocated to Public Works Department initially but were sent at a subsequent stage were held entitled to such benefit. In the writ petition itself, the respondent herein (petitioner before High Court) had given two names of such officers. He stated that one Shiv Kumar Shukla was appointed as Assistant Engineer in Government Polytechnic and thereafter was sent to Public Works Department and yet he was held entitled to selection grade as well as supertime scale. Likewise, one R.K. Chaudhary was initially appointed as Assistant Engineer in Irrigation Department in 1973 and was subsequently allocated to Public Works Department and yet he had been granted the benefit of selection grade as also supertime scale but the similar benefit was not allowed to the petitioner. The action was thus arbitrary, discriminatory and violative of Articles 14, 16, 23 and 39(d) of the Constitution.

Though counter affidavit was filed by the respondent State in the High Court and averments made in the writ petition were denied, there is no whisper regarding the two cases referred to by the petitioner in the petition.

In affidavit-in-rejoinder, the petitioner further stated that several persons were granted supertime scale on completion of 18 years of service from the date of joining in the Irrigation Department considering their services rendered in other departments including Public Works Department and by adding that period. The welfare State could not be permitted to adopt double standard for its employees. The petitioner was, therefore, entitled to the similar benefits.

The High Court on the basis of the pleadings of the parties and considering the facts of the case, observed that common selection was held by Uttar Pradesh Public Service Commission for Assistant Engineers. After they were selected by PSC, options were exercised by the employees either to go to Irrigation Department or to Public Works Department and the persons junior to the respondent herein (petitioner before the High Court) opted for PWD. They thereafter went to Irrigation Department and yet were held entitled to get selection grade or supertime scale since there was stagnation for 16 or 18 years and could not be promoted. There was, therefore, no reason to deprive the respondent herein of similar benefit to which others were held entitled and the benefit could not be denied to similarly situated employee. Accordingly, the petition was allowed and the authorities were directed to grant benefit of selection grade to the respondent herein. Hence, the present appeal.

We have heard the learned counsel for the parties.

The learned counsel for the State submitted that the relevant date for the purpose of grant of selection grade and supertime scale was the date of appointment of an employee in the Public Works Department. Admittedly, the respondent was appointed in PWD in 1977. He was, therefore, entitled to selection grade after 16 years and supertime scale after 18 years. But by the time he could claim supertime scale, he was already promoted and hence, the High Court committed an error of law in granting the benefit in his favour and the decision deserves to be set aside.

The learned counsel for the respondent, on the other hand, supported the order passed by the High Court contending that the High Court after considering the facts and circumstances as also grant of benefits in favour of other employees had passed the order which requires no interference.

Having heard the learned counsel for the parties, we are of the view that the High Court has not committed any error which deserves interference by this Court. As stated by the High Court in the impugned judgment and is not disputed before us that selection was made by the U.P.P.S.C. It was common selection for both the departments, namely, Irrigation Department as well as Public Works Department. The respondent herein joined Irrigation Department on September 30, 1970. Up to November 4, 1977, he continued with the Irrigation Department and on approval of U.P.P.S.C., he was shifted to Public Works Department in November, 1977. There was no break of service and it remained continuous all throughout. In these circumstances, in our opinion, the respondent was right in submitting before the High Court as well as before us that there was no reason to deprive him of the selection grade or supertime scale as per the Government Order. Ultimately, the policy decision is based on equitable principle that if an employee does not get promotion, not because of his fault, but because there were no sufficient vacancies available which resulted in his stagnation in the cadre to which he was initially appointed, it would be reasonable that he should not suffer and is allowed certain additional benefits. In such cases, an employee is deprived of promotion as the employer is unable to promote him due to limited posts/vacancies in the higher cadre. To avoid stagnation, heart-burning, demoralization of employees and to provide boosting, a policy decision has been taken by the Government. Keeping in view, the said object, it was decided by the State Government that if an employee has to remain in one and the same cadre for 16 and 18 years, he would be granted selection grade as also supertime scale. In our opinion, therefore, the High Court was right in holding that it would be totally immaterial whether the employee continuous to work in the cadre of Assistant Engineer either in Irrigation Department or in Public Works Department. The fact remains that he could not be promoted because of non availability of promotional avenue and hence there was no reason to deprive him of selection grade or supertime scale to which he was otherwise entitled.

But, there is an additional factor also in favour of the respondent. It is not in dispute by and between the parties that along with respondent, several other persons were also selected and appointed as Assistant Engineers. Some of them preferred Public Works Department, but

thereafter were transferred to Irrigation Department. It was stated by the respondent that those persons were junior to him and yet they were granted selection grade and supertime scale in the Irrigation Department though they were initially appointed in the Public Works Department. Names of certain persons were also placed on record before the High Court by the respondent. The said fact had not been disputed by the learned counsel for the appellant before the High Court or before this Court. In our opinion, therefore, on that consideration also, the High Court was right and justified in allowing the claim of the respondent and in granting benefits in his favour.

For the foregoing reasons, we see no ground to interfere with the order passed by the High Court. The appeal deserves to be dismissed and is hereby dismissed with costs.

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