

Neutral Citation No. - 2024:AHC:143483

A.F.R.

Court No. - 4

Case :- WRIT - A No. - 17005 of 2018

Petitioner :- Raj Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Anil Kumar Srivastava

Counsel for Respondent :- C.S.C.,Mukesh Kumar
Kushwaha,Pranjal Mehrotra

Hon'ble Ajit Kumar,J.

1. Supplementary counter affidavit filed today is taken on record.
2. Heard Sri Anil Kumar Srivastava, learned counsel for the petitioner, Sri Pranjal Mehrotra, learned counsel for the respondent Nos. 2 to 4 and learned Standing Counsel for the State respondent.
3. Petitioner, who is working as Storekeeper Grade-1 with the respondent establishment, is aggrieved by the order dated 27th April, 2017 passed by the respondent No.- 2, whereby his claim for promotion on the post of Junior Engineer (Mechanical) has been rejected on the ground that in respect of the post falling in the category of Junior Engineer 5% posts meant for the purpose of promotion from amongst employees falling in the category of Draftsmen/ Dresser/ Clerks/ Laboratory Assistant, who required diploma certificate in Engineering and who have completed five years of his regular service, whereas petitioner had already diploma certificate to his credit prior to entering into the service and secondly he would not come in the category of employees mentioned under the rules.

4. The submission advanced by learned counsel for the petitioner is two fold: *Firstly*, the controversy that a candidate should have acquired the requisite qualification whether during service period or had the requisite qualification prior to entering into the service is no more *res integra* in the light of the Division Bench judgment of this Court in the case of **Madhavendra Singh v. State of U.P. and others, 2016 (2) ADJ 259 (DB)**; and *secondly*, the argument advanced by learned counsel for the petitioner is that post of Storekeeper falls within the category of Group - C employee and since the posts of Draftsmen/ Dresser/ Clerks/ Laboratory Assistant also fall in group 'C' category the post of Storekeeper shall also be taken to be in group 'C' category.

5. Earlier when the Court had heard this matter on 21st August, 2024 upon these very above arguments already advanced by learned counsel for the petitioner the Court had issued following direction:

"1. The submission advanced by learned counsel for the petitioner is that the controversy regarding petitioner having diploma certificate prior to any Government service is no more res integra in view of the judgment of Division Bench of this Court in the case of Manvendra Singh vs. State of U.P. and others (Misc. Bench No.5874 of 2020). However, the respondents have refused to accord promotion to the petitioner on the post of Junior Engineer only on the ground that the petitioner was not a Group C employee belonging to the clerical cadre. He submits that post of Storekeeper is Group C post and therefore falls in clerical cadre.

2. Another argument advanced by learned counsel for the petitioner is that the basic requirement for promotion is that a candidate should fall in Group C category and should have a diploma certificate in Engineering and so the basic post is however of no relevance. According to him person falling in Group C category should be given promotion if he has diploma certificate.

3. Meeting the argument above, Sri Mehrotra, learned counsel for the respondent has taken the Court to the relevant paragraph nos.9 and 10 of the supplementary counter affidavit in support of his argument that the petitioner was having a lesser pay scale as presentee Storekeeper whereas for the purpose of direct recruitment on the same post the pay scale is Rs.5200-20,000/-. Sri Mehrotra

has sought to urge that the petitioner was not falling in the category of the post in the requisite pay scale to have received promotion.

4. In order to appreciate the argument of Sri Mehrotra, learned counsel for the respondent, it is necessary to go through the pay scale of Draftsmen/Dresser/Clerks/Laboratory Assistant in the establishment.

5. Upon a pointed query Sri Mehrotra, learned counsel for the respondent seeks time to have instruction in the matter.

6. Let the affidavit be filed on behalf of the Corporation giving in the details of payscale of Draftsmen/Dresser/ Clerks/Laboratory Assistant of the establishment in question. The affidavit shall also disclose as to whether the post of Storekeeper and Assistant Story Keeper fall in Group C category or not, on the next date fixed.

7. List this case immediately after fresh on 04.09.2024.”

6. A supplementary counter affidavit has been filed today in which vide paragraph 5 it has been clearly stated that the pay-scale of Draftsmen is Rs.4000-100-6300, the pay-scale of Clerk is Rs.3285-85-5700, the pay-scale of Storekeeper is Rs.3050-75-3950-8-4590 and the pay-scale of Laboratory Assistant is Rs.- 3050-75-4590. Paragraph 5 of the supplementary counter affidavit is reproduced hereunder:

“5. That the Government Order No. 1409/23-1-2007-12 Setu/07 dated 27.08.2007 provides the full list of posts falling under the regular establishment of the Uttar Pradesh State Bridge Corporation Limited. As per the said list, at serial no. 17 the post Draftsmen (Cartographer) is on the pay scale of Rs. 4000-100-6300; at serial no. 39 the post of Clerk (Office Assistant Grade - 2) is on the pay scale of Rs. 3285-85-5700; at serial no. 41 the post of Storekeeper is on the pay scale of Rs. 3050-75-3950-80- 4590; and at serial no. 43 the post of Laboratory Assistant is on the pay scale of Rs. 3050-75-4590.

Copy of the Government Order No. 1409/23-1-2007-12 Setu/ 07 dated 27.08.2007, is being filed herewith and marked as Annexure No.2 to this affidavit.”

7. Further vide paragraph 7 of the supplementary counter affidavit post of Storekeeper is taken to be falling in the category of

group 'C' employees. Paragraph 7 of the supplementary counter affidavit is reproduced hereunder:

“7. That it is further submitted that the post of Storekeeper falls within Group – C, with the basic pay of Rs. 3050-4590, which is fixed from time to time as per the recommendations of the Pay Commission.”

8. In view of this above admitted position, it can be safely concluded that post of Storekeeper falls in group 'C' category and so the posts of Storekeeper like that of Lab Assistant, Draftsmen, can be considered for promotion as Junior Engineer within 5% of quota as provided for under the relevant service rules.

9. One of the arguments advanced by learned counsel for the respondents is that petitioner was appointed on temporary basis in the year 2002 on the post of Storekeeper grade - II. Admittedly petitioner has been promoted in the year 2018 on the post of Storekeeper Grade - I. A person in any establishment is promoted only when he acquires a permanent status on the lower post. The order of appointment which has been relied upon in support of his argument, is of the year 2002 and subsequently petitioner's service are claimed to have been confirmed on 19th February, 2007, which shows that appointment has been made against a substantive vacancy. The appointment order was on the temporary basis being on probation and not a stop gap arrangement or ad hoc appointment. It is admitted to the learned counsel for the respondent that petitioner was promoted in the year 2018 on a substantive vacancy.

10. In such above view of the matter only point is to be considered as to whether petitioner would be entitled to be promoted in the event he had qualification prior to his entering into service. As I have already observed in the earlier part of this judgement that controversy is no more *res integra* in view of the Division Bench of this Court in the case of **Madhavendra Singh**

(*supra*) I see no justification for denial of promotion to the petitioner. It is relevant to quote paragraphs 5, 6, 7 & 8 of the said judgment:

“5. In pursuance of an order passed by this Court on 18 November 2015, a counter affidavit has been filed by the Principal Secretary in the PWD in which, it has been stated as follows:

"That the petitioner has not obtained diploma in civil engineering with the prior permission of the department hence in accordance with Rule 5(2) of the Rules, 2014 is not eligible for promotion. Rule 5 (2) of the U.P. Public Works Department Junior Engineer (Civil) (Group-C) Service Rules, 2014 specifically provides that in order to be eligible for promotion under 5% quota, a candidate must have completed 10 years of service on group C post and have completed diploma in civil engineering after the prior approval/permission of the department. Petitioner had obtained diploma in civil engineering prior to his appointment in group C post and without approval/permission of the department, hence is not in accordance with Rules, 2014 and is not entitled for promotion as per the policy of the government."

Now Rule 5 of the Rules insofar as is material provides as follows:

“भाग – तीन भर्ती

भर्ती का 5 सेवा में अवर अभियन्ता (सिविल)के पदों पर भर्ती निम्नलिखित स्रोतों से की जायेगी:-

(एक) पंचानबे प्रतिशत आयोग के माध्यम से सीधी भर्ती द्वारा।

(दो) पांच प्रतिशत विभाग में मौलिक रूप से नियुक्त समूह "ग" के कर्मचारियों में से, जिन्होंने विभाग से अनुज्ञा प्राप्त करने के पश्चात नियम 8 में विहित अर्हताएं अर्जित की हों और भर्ती के वर्ष के प्रथम दिवस को दस वर्ष की मौलिक सेवा पूर्ण कर ली हो, पदोन्नति द्वारा आयोग के माध्यम से।"

6. Rule 5 provides for 95% of the posts being filled up by direct recruitment. The remaining 5% of the posts are to be filled up by promotion from in service candidates who were substantively appointed as Group-C employees. The condition is that such candidates must fulfil the required educational qualifications as prescribed in Rule 8 after obtaining the permission of the department and should have completed 10 years of substantive service on the first day of the year of recruitment.

7. In our view, the requirement that a candidate should have fulfilled the required educational qualifications as prescribed by

Rule 8 after obtaining the permission of the department covers those in service candidates who have acquired the qualifications during their employment with the State Government. This is intended to ensure that a candidate who is duly employed with the State obtains the educational qualifications only after seeking and obtaining the permission of the prescribed authority. Obviously, the object and purpose is not to exclude from consideration in service candidates who have already obtained educational qualifications prescribed prior to their date of entry in service. In other words, Rule 5 (2) is not intended to act as an exclusion of in service candidates who otherwise fulfil the requirement of holding the prescribed qualifications, where the qualifications had already been acquired prior to entry in service. If the Rule is construed in the manner it has been interpreted by the State Government, it would become manifestly arbitrary since it would operate to exclude in service candidates who fulfil all the required norms including the prescribed qualifications, only on the ground that the qualifications had been obtained prior to the date of entry in service. This is evidently not the object and purpose which is sought to be achieved by the Rule.

8. Hence, as we have interpreted the Rule, it would not exclude the petitioner from being considered for promotion merely on the ground that he had not obtained the educational qualifications prescribed with the permission of the department. There was no occasion for the petitioner to obtain the permission of the department for the simple reason that he had acquired a three year diploma in 1988, much prior to his appointment in the clerical cadre of the PWD in 1999. We, consequently, hold that the petitioner shall not be excluded from the eligibility list for the reasons which had weighed with the authorities. We clarify that it would be open to the authorities to duly verify that the petitioner does fulfil the prescribed qualifications. Subject to this verification and the petitioner meeting the required norms as prescribed in Rule 5 (2), the name of the petitioner shall be included in the eligibility/select list in accordance with law. This exercise shall be completed within a period of one month from the date of receipt of a certified copy of this order. In the view which we have taken in interpreting Rule 5 (2), it has not been necessary for the Court to strike down the provisions contained in the Rule.”

11. Thus upon a bare reading of the aforesaid paragraphs it is clear that a candidate if is already having requisite qualification to his credit prior to entering into the service and, he is equally entitled to be considered for promotion on the post of Junior Engineer within 5% quota provided under the relevant rules.

12. Even otherwise the legal principle to be evolved in the case would be, one must have requisite academic qualification of the concerned trade to make him eligible for post on which promotion has to be made and if a candidate possesses requisite qualification as in the present case petitioner possesses the requisite academic qualification being diploma in engineering for promotion on the post of Junior Engineer (Mechanical), such a candidate definitely deserves to be promoted. The experience is only counted *qua* service rendered by an employee in a feeding cadre. If a clerk, who falls in group 'C' category can be promoted considering his clerical experience as sufficient, then any other employee including a storekeeper, who falls in Group 'C' cadre would be entitled to promotion unless of course, working experience in a particular trade is required, but this is not the case of respondent that experience of a particular trade was required under the rules.

13. Still further I do not find substance in the argument of Sri Mehrotra that post of Storekeeper being not mentioned under the rules, Storekeeper cannot claim promotion. This has nothing to do with the object sought to be achieved and has no rationale. If a clerk can be promoted as Junior Engineer for having diploma in concerned trade, the denial of this opportunity to Storekeeper, just for he being not clerk is highly discriminatory. Rules of promotion are to be construed liberally as promotional avenues are meant to avoid stagnation of employees and regular promotion not only boosts up the moral of work force at lower level but otherwise also improves the total environment *qua* work culture in any establishment. In industries it seen as a tool to ensure that no industrial unrest takes place amongst the workers. So based on the principle of Article 14 of the Constitution and on sound principle of service jurisprudence governing the healthy employer and employee relationship, it is a must that employees falling in same or similar

cadre are given further same opportunity to advance their career in service.

14. Applying the above principles to the case in hand I find that petitioner was appointed against the substantive vacancy and was also having diploma in concerned trade and also requisite period of service in group 'C' cadre and so definitely he deserved to be considered for promotion on the post of Junior Engineer (Mechanical).

15. In view of the above, the order passed by the authority rejecting the claim of the petitioner dated 27th April, 2017 (Annexure -1 to the writ petition) cannot be sustained in law.

16. Thus writ petition succeeds and is accordingly, allowed. The order passed by the authority dated 27th April, 2017 is hereby quashed.

17. Respondents are directed to pass appropriate order regarding promotion of the petitioner within 5% quota for promotion on the post of Junior Engineer (Mechanical) and give notional benefits including seniority in the event any of his juniors was promoted, with effect from the date of promotion of such junior person.

18. Appropriate order shall be passed within a period of one month from the date of production of certified copy of this order.

Order Date :- 4.9.2024

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