

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 737 of 2012

Appellant :- U.P.Cooperative Federation Throu Its.M.D.And Anr. 4366 S/S99

Respondent :- Gokaran Nath Sonkar And Ors.

Counsel for Appellant :- Anurag Kumar Singh

Counsel for Respondent :- Ajay Kr. Singh,R.C.Tiwari,Sanjay Singh

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Jaspreet Singh,J.

1. The instant intra-Court appeal has been preferred under Chapter-VIII, Rule 5 of the Allahabad High Court Rules, 1952 by the appellants assailing the judgment dated 23.07.2012 passed by the learned Single Judge in Writ Petition No.4366 (S/S) of 1999, whereby the writ petition of the respondents No.1 to 3 was allowed with a direction to the appellants to allow salary to the respondents herein with effect from 31.12.1981 upto 23.08.1989 and also revise the salary of the respondents herein within a period of four months from the date of receipt of a certified copy of the order.
2. Shri Anurag Kumar Singh, learned counsel for the appellants has primarily impugned the judgment passed by the learned Single Judge on the ground that the respondents were not eligible for promotion on 31.12.1981 as they had not completed three years of continuous service and any promotion if given would be in violation of Regulation 27(iii) of the U.P. Cooperative Societies Employees Service Regulations, 1975.
3. Learned counsel for the appellants further submits that the respondents were seeking parity of the pay given to Shri A.P. Gupta, however, the same is also misconceived for the reason that Shri A.P. Gupta had been granted promotion and having a longer length of service then the

respondents, hence, there was no justification for granting parity to the respondents and for both the reasons, the impugned order deserves to be set aside after dismissing the writ petition.

4. Shri R.C. Tiwari, learned counsel for the respondents while defending the judgment impugned submitted that the respondents (who were the petitioners before the writ Court) were regularly appointed on different dates between the year 1979-1981.

5. It is further submitted that Shri A.P. Gupta was appointed on *ad hoc* basis on 01.11.1976 and he only came to be regularized on 09.06.1988 w.e.f. 15.12.1987. It is, thus, pointed out that an *ad hoc* employee cannot get the benefit of seniority over the regularly employed person. Only upon regularization, a person is born in the cadre and in view thereof any alleged *ad hoc* promotion given to Shri A.P. Gupta on 31.12.1981 was not only illegal but despite the same, the respondents being the regularly appointed persons cannot be placed at disadvantageous position or lower in seniority or in terms of pay-scales.

6. It is in this backdrop that the respondents had instituted the writ petition which has been allowed by the learned Single Judge by means of the judgment dated 23.07.2012 and as such the learned Single Judge has noticed the aforesaid seniority and has granted the benefit to the respondents which does not require any interference.

7. It has further urged that the respondents now have attained the age of superannuation and in this view of the matter also the order impugned does not deserve any interference. Consequently, the special appeal be

dismissed.

8. The Court has heard learned counsel for the parties and also perused the material on record.

9. The record clearly establishes certain undisputed facts which are being noticed hereinafter.

(i) The respondents herein (the petitioners before the writ Court) were regularly appointed on different dates between the year 1979-1981.

(ii) Shri A.P. Gupta was appointed on *adhoc* basis on 01.07.1986 as Junior Assistance and he was given *adhoc* promotion on 31.12.1981 while he was regularized on 09.06.1988 w.e.f. 15.12.1987.

(iii) Shri A.P. Gupta has been granted higher salary than the respondents herein.

10. It is in the aforesaid backdrop that the respondents who claimed to be having been in the cadre prior to Shri A.P. Gupta and being regular appointee were entitled to a higher scale rather the authorities had provided higher pay to Shri A.P. Gupta. The justification of the Department for doing so was based on the sole reason that Shri A.P. Gupta was employed on *adhoc* basis on 01.11.1976 and since he had worked longer in terms of time coupled with the fact that he had been given *adhoc* promotion on 31.12.1981, therefore, his salary was higher.

11. It was also contended by the Department that since the respondents were appointed subsequent to Shri A.P. Gupta and had not been given the promotion by then. Accordingly, they were not entitled to seek the parity.

12. This Court finds that the aforesaid issue has been appropriately

considered by the learned Single Judge wherein it recorded a finding that a person who is appointed *adhoc* cannot be granted *adhoc* promotion unless he is regularized. It is not disputed that Shri A.P. Gupta had been regularized only in the year 1988 w.e.f. 15.12.1987 whereas the respondents were inducted as regular appointees on different dates between the year 1979-1981.

13. This apparently indicates that the induction of the respondents as regular appointees was prior in time to Shri A.P. Gupta and he could not have been granted the promotion which has been noticed by the learned Single Judge.

14. Be that as it may whether the respondents were eligible for promotion w.e.f. 31.12.1981 as they had not completed three years as contended by the learned counsel for the appellants in light of Regulation 27, pales into insignificance for the two reasons, (i) the same was not raised before the learned Single Judge as shall be evident from a perusal of the counter affidavit filed by the appellants which is brought on record as Annexure No.8. (ii) Even otherwise, the question of substantive promotion was not directly in issue but the question of granting parity and fixing the pay-scales in accordance with person who has been granted the higher pay-scale from the date when the juniors to the present respondents were extended the same benefit in light of the Articles 14 and 16 of the Constitution of India. It is not open for the appellants to contend otherwise. It is not disputed by the appellants that Shri A.P. Gupta was granted the higher scale on the basis of the alleged *adhoc* promotion w.e.f. 31.12.1981.

15. Learned counsel for the appellants could not explain as to under what

provision Shri A.P. Gupta was granted *adhoc* promotion when he himself was regularized at much later date i.e. 09.06.1988 w.e.f. 15.12.1987.

16. Even if at all Shri A.P. Gupta was appointed on *adhoc* basis and was prior in service since 01.11.1976, but there is no denial of the fact that he was regularized only w.e.f. 15.12.1987 whereas the respondents were regularly appointed persons between the year 1979-1981 and were definitely senior.

17. This Court further finds that the respondents have also attained the age of superannuation during pendency of the aforesaid special appeal which is pending since 2012. Accordingly, taking a holistic view and also taking overall facts and circumstances of the case, this Court is not inclined to interfere in the judgment passed by the learned Single Judge dated 23.07.2012 in Writ Petition No.4366 (S/S) of 1999 which is affirmed.

18. Accordingly, the special appeal is **dismissed**. No order as to costs.

Order Date :- 18.07.2023
Rakesh/-

[Jaspreet Singh, J.] [Pritinker Diwaker, C.J.]