

Court No. - 8

1. Case :- WRIT - A No. - 7188 of 2007

Petitioner :- Krishna Kumar Dubey And 5 Ors.

Respondent :- State Of U.P. Thru Prin. Secy. Revenue And 2 Ors.

Counsel for Petitioner :- Pt. S.Chandra

Counsel for Respondent :- C.S.C.,I.P. Singh,Jai Shanker
Shukla,Vivek Kumar Shukla

2 Case :- WRIT - A No. - 7609 of 2011

Petitioner :- Fagu Lal Gupta S/O B.P.Gupta

Respondent :- State Of U.P. Through Prin. Secy. Revenue Lko. And
Ors.

Counsel for Petitioner :- Pt. S.Chandra

Counsel for Respondent :- C.S.C.,J.S.Shukla

Hon'ble Dinesh Kumar Singh,J.

1. Heard Mr. Pt. S. Chandra, learned counsel for the petitioners as well as Mr. Praful Kumar Srivastava, learned Standing Counsel for the respondents-State Authorities.

2. These two petitions under Article 226 of the Constitution of India have been filed, impugning the final select list of promotion to the post of Assistant Registrar Kanungo in District Sultanpur from the post of Lekhpal.

A further direction, in the nature of Mandamus, has been sought in the writ petitions for declaring the petitioners successful as Assistant Registrar Kanungos , and for promotion the said post.

3. The selection process to the post of Assistant Registrar Kanungo in District Sultanpur started by issuing Letter dated 06.08.2007 to Sub-Divisional Magistrates of the District, asking them to forward names of eight eligible Lekhpal having put in six years minimum substantive service for promotion on selection to the post of Assistant Registrar Kanungo in the District against twelve available vacancies.

4. The petitioners were working as Lekhpals, and they have put in more than six years of service. Their names were forwarded by the respective Sub-Divisional Magistrates for consideration for promotion to the post of Assistant Registrar Kanungo.

5. Pt. S. Chandra, learned counsel for the petitioners, submits that once names were forwarded by the Sub-Divisional Magistrates, they should have been arranged in order of seniority, and unless a person was declared unfit, the promotion should have been made on the basis of seniority as the criteria for promotion is seniority subject to the rejection of unfit under "The Uttar Pradesh Subordinate Revenue Ministerial (Registrar Kanungos and Assistant Registrar Kanungos) Service Rules, 1958 (for short "Rules, 1958"). It is further submitted that when the criteria for promotion is seniority subject to rejection of unfit, unless a senior candidate is declared unfit, his claim for promotion cannot be ignored, and his junior cannot be promoted, ignoring the claim of senior person. It is further submitted that without declaring the petitioners unfit for their seniority, their names for promotion have been ignored, and juniors to them have been promoted. It is further submitted that there is some circular of the Board of Revenue which provides that where the criteria for promotion is seniority subject to rejection of unfit, unless a senior candidate is declared unfit, he cannot be ignored, and a junior cannot be promoted

6. On the other hand, Mr. Praful Kumar Srivastava, learned Standing Counsel, submits that criteria for promotion to the post of Assistant Registrar Kanungo *from the post of Lekhpal* is not the seniority. Once the District Magistrate prepares the select list, the seniority comes into play under the Rules. It is further submitted that the criteria for promotion is selection, and not seniority subject to rejection of unfit. It is further submitted that the petitioners, having participated in the selection process, cannot maintain these petitions

on the ground that they, being seniors, have not been promoted, though juniors to them have been promoted. It is further submitted that the petitioners never challenged the process of selection, rather they participated in every stages of the selection process, and once they were unsuccessful, they came and filed the present petitions in the year 2007, which remained pending for sixteen long years before this Court.

7. The controversy, involved in these petitions, is a very narrow i.e. whether the promotion to the post of Assistant Registrar Kanungo from the post of Lekhpal is based on seniority subject of rejection of unfit or it is merit promotion based on selection.

8. To decide the said controversy, this Court would require to consider the relevant Rules.

9. The service condition of Registrar Kanungo and then Assistant Registrar Kanungo are governed under the Rules, 1958.

10. Rule-7 of the Rules, 1958 provides sources of recruitment to the post of Assistant Registrar Kanungo, which reads as under:-

SOURCECES OF RECRUITMENT-Recruitment to the cadre of Registrar Kanungo shall be made by promotion of permanent Assistant Registrar Kanungao of atleast three years standing and the land Records Clerks of atleast 3 years sanding appointed from amongst Lekhpals and to the cadre of Assistant Registrar Kanungo by promotion of Lekhpals of atleast six years standing.

Note:- A Supervisor Kanungo, who through age or infirmity is unfit to carry out the field duties of a Supervisor Kanungo, shall also be eligible for appointment as Registrar Kanungo."

11. Thus, the Lekhpals having put in at-least six years substantive service are eligible for consideration for promotion to the post of Assistant Registrar Kanungo. Rule-7 of the Rules, 1958 lays down the eligibility for consideration.

12. Rule-8 of the Rules, 1958 are in respect of method of recruitment to the post of Registrar Kanungos and Assistant Registrar Kanungos.

It would be apt to take note of Rule-8 of the Rules, 1958, which reads as under:-

"8. METHOD OF RECRUITMENT-(1) For purpose of recruitment of Registrar Kanungos under rule 7, selection shall be made on the basis of seniority subject to the rejection of the unfit from and the amongst permanent Assistant Registrar Kanungos and the Land Records Clerks appointed from amongst Lekhpals who have put in not less than three years service as such on the first day of January of the year in which the selection is made

(i) (a) A common gradation list of permanent Assistant Registrar Kanungos and Land Records Clerks appointed from amongst Lekhpals shall be maintained according to their date of confirmation on their substantive posts for the purpose of their selection to the post of Registrar Kanungo, provided that, if in two cases the date of confirmation is the same seniority shall be determined according to the dates of their substantive appointments as Lekhpals and if their date of substantive appointment is also the same, seniority shall be determined in accordance with their age.

(ii) (a) For purpose of recruitment of Assistant Registrar Kanungos Selection shall be made on the basis of seniority subject to the rejection of the unfit from amongst the Lekhpals who have been nominated under clause (b) of this sub rule.

Note:- A candidate who is rejected as unfit will be held unfit for that occasion only and his case will be duly considered at every subsequent selection.

(b) The collector shall, in September each year, ascertain the likely, number of vacancies in the district cadre of Assistant Registrar Kanungo and ask each sub Divisional officer in his district to nominate after the winter tour, a certain number of Lekhpals, to be fixed by their, who have put in not less than six years service as Lekhpals on the first day of January of the year in which the nomination is made, have passed the junior high school (with English) or and equivalent or higher examination as Assistant Registrar Kanungos. Provided that preference shall be given to those with better educational qualification and record of service.

(c) The Collector will consider the case of all the candidates nominated under clause (b) and may, at his discretion, interview at the headquarters of the district such of them as he may consider necessary.

(d) In selecting the candidates for promotion regard shall be had to:-

- (1) record of previous service,*
- (2) integrity,*
- (3) character, and*
- (4) ability*

Preference being given to those with better educational qualification and record of service.

(e) The collector shall prepare a list containing the names of Lekhpals whom he has selected for promotion. The number of candidates on the list shall be as indicated in clause (f) below:-

(f) The names of Lekhpals selected under clause (G) above shall be brought on a list to be maintained by the collector of his district. The name of listed candidates shall be arranged according to the date of their selection provided that the Lekhpals selected on the same date shall rank inter se according to their respective position on the gradation list of the Lekhpals. The number of Lekhpals on the list shall be approximately two thirds of the number of vacancies likely to occur in the district cadre of Assistant Registrar Kanungos over a period of three years but shall not be less than two thirds of the number of Assistant Registrar Kanungos sanctioned for the district."

13. Sub-rule (ii)(a) of the Rule-8 of the Rules, 1958 provides that for purposes of recruitment of Assistant Registrar Kanungos **Selection** is to be made on the basis of seniority subject to rejection of unfit from amongst the Lekhpals who have been nominated under clause (b) of this sub-rule (ii). Clause (b) of sub-rule (ii) of the Rule-8 of the Rules, 1958 empowers the Collector to prepare a select list of the eligible Lekhpals who have been nominated by the respective Sub-Divisional Magistrates having put in six years service as Lekhpal on the first day of January of the year in which nomination is made, and passed the junior high school with English. Clause-(c) of sub-rule (ii) of Rule-8 of the Rules, 1958 provides that preference shall be given to those with better educational qualification, and have good record of service. The same provision prescribes the four factors to be considered while

preparing the selection list, which are (i) record of previous service; (ii) integrity; (iii) character and (iv) ability.

14. After the select list is prepared by the Collector having regard the four factors, mentioned above, names of selected persons would be arranged in order of seniority position and then the persons would be appointed/promoted to the post of Assistant Registrar Kanungo in order of seniority. Thus, the seniority comes into play after the selection list is prepared under clause (b) of sub-rule (ii) of Rule-8 of the Rules, 1958 having regard to the factors under clause (c) of sub-rule (ii) of Rule-8 of the Rules, 1958.

15. In these two writ petitions, I do not find that there is any averment that the petitioners' names were included in the select list prepared under clause (b) of sub-rule (ii) of Rule-8 of the Rules, 1958.

16. Mr. Praful Kumar Srivastava, learned Standing Counsel, submits that the petitioners' names did not find place in the selection list prepared under clause (b) of sub-rule (ii) of Rule-8 of the Rules, 1958 and, therefore, their claim for promotion on the ground that they were senior to those who were selected, has no basis. I, therefor, find that the submission advanced by Mr. Pt. S. Chandra, learned counsel for the petitioners, that the promotion to the post of Assistant Registrar Kanungo from the post of Lekhpal is on the basis of seniority subject to the rejection of unfit does not borne out from reading of the Rules, 1958. In view thereof, ***both the writ petitions are hereby dismissed, having no merit and substance.*** However, it is directed that in future promotions claim of the petitioners shall be considered as per their merit.

[D.K. SINGH, J.]

Order Date :- 11.7.2023

MVS/-