

Neutral Citation No. - 2024:AHC-LKO:29566-DB

Court No. - 2

Case :- SPECIAL APPEAL No. - 50 of 2024

Appellant :- Malti Devi

Respondent :- State Of U.P. Thru. Prin. Secy. Bal Vikas Evam
Pustahar U.P. Lko. And Others

Counsel for Appellant :- Devendra Gupta, Prashant Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

- (1) Heard Shri Prashant Shukla, learned Counsel representing the appellant and Shri Anil Kumar Singh 'Visen', learned Standing Counsel representing the respondents/State.
- (2) This *intra Court* appeal under Chapter VIII Rule V of the Allahabad High Court Rules, 1952 challenges the judgment/order dated 01.02.2024 passed by the learned Single Judge in Writ-A No. 5123 of 2015, which has been dismissed by observing that no interference is required in the order dated 08.06.2015 passed on the representation of the writ petitioner/appellant herein, which was impugned by the appellant/writ petitioner in the said writ petition.
- (3) We may note that by means of the order dated 08.06.2015, which was challenged by the appellant/petitioner before the learned Single Judge, her claim for promotion from the post of Anganbari Karyakatri to the post of Supervisor (Mukhya Sevika) has been rejected by the competent authority/respondent.

- (4) The brief facts necessary to decide the present controversy revolves around the fact that the appellant/writ petitioner belongs to Scheduled Caste Category and was appointed as Aanganwadi Worker on 01.12.1983. Since the name of the appellant/writ petitioner was not included in the list of eligible candidate(s) for consideration of promotion to the post of Supervisor (Mukhya Sevika) and junior to her was given promotion to the post of Supervisor (Mukhya Sevika), the appellant/writ petitioner preferred a representation 14.07.2011 to the competent authority. Apparently, as no heed was paid to her said representation, she approached this Court by filing Writ Petition No.1157 (S/S) of 2015, which was disposed of by the learned Single Judge vide judgment/order dated 25.03.2015, granting liberty to her to prefer a fresh representation and the Director, Bal Vikas Seva Evam Pusthahar, U.P. was directed to examine and decide the said representation.
- (5) Pursuant to the aforesaid judgment/order dated 25.03.2015, the appellant/writ petitioner preferred representation dated 06.04.2015, which came to be decided by the Director, Bal Vikas Seva Evam Pusthahar, U.P vide order dated 08.06.2015, rejecting her claim for promotion to the post of Supervisor (Mukhya Sevika). Thus, feeling aggrieved, the appellant/writ petitioner filed Writ-A No. 5123 of 2015, which came to be dismissed by the learned Single Judge vide impugned

judgment/order dated 01.02.2024. It is this judgment/order dated 01.02.2024, which has been assailed in this appeal.

- (6) Learned Counsel representing the appellants has mainly challenged the impugned judgment/order passed by the learned Single Judge on two counts; firstly, the promotion of the persons junior to the writ petitioner/appellant to the post of Supervisor (Mukhya Sewika) pertains to the year 2010 and not to the year 2006, however, the learned Single Judge has failed to consider this aspect of the matter; and, secondly, while considering the candidature of the appellant/writ petitioner for promotion to the post of Supervisor (Mukhya Sewika), quality point marks obtained by the appellant/writ petitioner based on her graduation, were not included and had it been included, she would have scored thirty marks, however, the learned Single Judge has failed to consider this aspect of the matter. In this context, the learned Counsel has relied upon Annexure No.4, which is the rules and provisions of Uttar Pradesh Bal Vikas and Pushtahar Subordinates Service Rules, 1992, as amended in the year 1998 and 2006.
- (7) Learned Standing Counsel on instructions contends that as per High School Certificate, date of birth of the appellant/writ petitioner is 20.08.1966. She was engaged on the post of Anganbadi Karyakatri on honorarium on 01.12.1983 and at that relevant time, she was aged about 17 years 3 months 12 days.

(8) Learned Standing Counsel drawing our attention to Government Order dated 20.04.2005, which prescribes the calculation of the age of candidates for promotion from the post of Anganbadi Karyakatri to Mukhya Sewika, contends that Government Order dated 20.04.2005 provides that in such cases where Anganbadi Karyakatris below the age of 18 years, have been selected on honrarium, their service would be counted from the date of completion of 18 years of age. It is, thus, contended that while calculating the period of service in view of the aforesaid Government Order, the appellant/writ petitioner has completed only 21 years of service on the post of Anganganbadi Karyakatri as on 01.07.2006, which is a cut off date prescribed under U.P. Bal Vikas Evam Pushtahar (Adhinasth) Sewa Niyamavali, 1992 as amended from time to time, for consideration of promotion from the post of Anganbadi Karyakatri to Mukhya Sewika and after due scrutiny of the candidature of various candidates including that of the appellant as per the rules, the appellant/writ petitioner obtained 25 quality point marks (21 marks for length of service plus 1 marks for her High School plus 2 marks for Intermediate plus 1 marks for Graduation), whereas the last selected candidate, who also belonged to Scheduled Cast also obtained the same 25 marks equal to that of the writ petitioner. It is submitted that although the marks obtained by the two candidates were equal, however, the last selected candidate is elder than the writ

petitioner/appellant, hence that was given the promotion to the post of Mukhya Sevika. In this backdrop, his submission is that the writ petition filed by the petitioner/appellant, seeking prayer to promote her to the post of Mukhya Sevika, has rightly been dismissed by the learned Single Judge vide the impugned judgment.

- (9) Having regard to the submissions advanced by the learned Counsel for the parties and going through the record available before us in this writ petition, what we find is that the appointment to the post of Mukhya Sevika is governed by the U.P. Bal Vikas Evam Pushtahar (Subordinate) Service Rules, 1998 (hereinafter referred to as '**Service Rules, 1998**'), according to which, 50% posts of Mukhya Sevikas are to be filled in from amongst Anganwari Workers who are having High School pass or any equivalent qualification to their credit. As per Rules, such High School passed Anganwari Workers are to be considered for promotion to the posts of Mukhya Sevikas, who have completed 10 years of continuous service on the first day of recruitment year and have not attained the age of 45 years. Service Rules, 1998 also provides that selection for promotion of Anganwari Worker to the post of Mukhya Sevika shall be conducted by a Selection Committee and the Selection Committee shall prepare a merit list of the eligible candidates by awarding 10 marks for 10 years eligibility service and thereafter the candidate concerned has to be given 1 mark for

each completed year of service subsequent to completion of 10 years. Rules also provide that every such candidate shall be awarded 3 marks for having passed High School or any higher examinations in first division, 2 marks if the candidate has passed said examinations in second division and 1 mark if the candidate has passed the said examinations in third division.

(10) Thus, in view of the scheme of the Service Rules, 1998 regulating promotion of Anganwari Workers to the posts of Mukhya Sevikas, the length of service rendered by an Anganwari Worker assumes importance as the same plays a significant role not only in determining the eligibility but also in determining the merit for the purposes of selection for promotion.

(11) Apparently, the appellant-petitioner had worked ever since her appointment to the post of Anganwari Worker on 16.11.1983 at Madhopur Block Malihabad district Lucknow. As per her High School Certificate, her date of birth is 20.08.1966, meaning thereby that the appellant had joined as Anganwari Worker at the age of 17 years and 3 months. The Government Order dated 20.04.2005, which is in respect of selection process to be done from Angawari Worker to Mukhya Sevika for the year 2004-2005, provides that in such cases where Anganwari Worker have been selected on honorarium when they are below 18 years of age, their service will be counted from the date of completion of

18 years of age. Thus, in view of aforesaid Government Order dated 20.04.2005, the services rendered by the appellant/writ petitioner prior to attaining the age of 18 years would not be reckoned for the purpose of promotion from Angawari Worker to Mukhiya Sevika. The cut off date as mentioned in Service Rules, 1998 and 2006 is 01.07.2006 and by that relevant time, the appellant/ writ petitioner, apparently, completed 21 years of service and as such, in view of the Service Regulation, 1998 and looking into the length of service, the appellant/writ petitioner was awarded 21 marks towards length of service. As appellant/writ petitioner had passed High School in 3rd Division, Intermediate in 2nd Division and Graduation in 3rd Division, she was awarded qualify marks as 1, 2 and 1, respectively, towards her educational qualification as per the Service Rules, 1998, meaning thereby the appellant/writ petition has obtained a total of 25 quality marks.

(12) When we examine the judgment and order passed by the learned Single Judge, which is under challenge before us in this Special Appeal, what we find is that learned Single Judge has, while agreeing with the reasoning given by the Director in his order dated 08.06.2015 rejected the claim of the writ petitioner/ appellant for promotion to the post of Mukhya Sevika the aforesaid relevant aspects of the matter as mentioned hereinabove but has also returned a specific finding that the petitioner/writ petitioner had not challenged those

observation/finding of the Director, wherein he has observed to the effect that last candidate promoted in the Schedule Caste Category to which the petitioner also belongs although has obtained equal marks, however, the candidate who is elder in age, has been promoted as her date of birth is 10.07.1965, whereas the date of birth of the writ petitioner is 20.08.1966. This Court on appreciation of the fact, finds that the quality points related to graduation qualification of the writ petitioner/appellant has been duly assimilated in the total quality point marks while considering the candidature of the writ petitioner/appellant for promotion and further the date of birth as mentioned in the High School Certificate has been taken into consideration, while considering the age of the writ petitioner juxtaposed to the age of the last promoted Scheduled Caste Candidate. Thus, we find ourselves to be in agreement with the order passed by the learned Single Judge as there is no illegality or infirmity in the impugned judgment/order.

(13) The Special Appeal is, accordingly, **dismissed**.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date : 10.04.2024
Ajit