



2026:004:1100114-02H

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 1459 of 2013

Ram Kishore Vishwakarma

.....Appellant(s)

Versus

District Judge And Another

.....Respondent(s)

Counsel for Appellant(s)	:	Sanjeev Kumar Tyagi, Sudhanshu Srivastava
Counsel for Respondent(s)	:	Ashish Mishra, Manish Goyal

Court No. - 21

**HON'BLE MAHESH CHANDRA TRIPATHI, J.
HON'BLE KUNAL RAVI SINGH, J.**

1. Heard Shri Prajjwal Tyagi, learned counsel holding brief of Shri S.K. Tyagi, learned counsel for the appellant-petitioner and Shri Fuzail Ahmad Ansari, learned standing counsel for the respondents-opposite parties.
2. This intra-court appeal has been preferred against the judgment and order dated 03.09.2013 passed by the learned Single Judge in WRIT - A No. 45929 of 2013 (Ram Kishore Vishwakarma vs. Dist. Judge and Another), whereby the writ petition challenging the order dated 15.01.2013 passed by respondent No.1 - District Judge, Banda, was dismissed.
3. The brief facts of the case are that the petitioner was initially appointed as a Class-IV employee in the Judgeship at Banda on 06.05.1983. Thereafter, under the 20% promotional quota, he was promoted to the post of Routine Grade Clerk in Class-III on 22.04.1997. The petitioner claimed that he ought to have been promoted to the post of Grade-II Clerk in Class-III in January, 2001 on the basis of seniority, but he was arbitrarily denied promotion due to incorrect fixation of his seniority. The petitioner further claimed that he made a representation before the authorities, which was examined by a Committee, and initially the Committee, vide report dated 15.01.2001, found the claim set up by the petitioner to be sustainable. Accordingly, it was asserted that the next

promotional post had been denied to the appellant-petitioner in an arbitrary manner.

4. Thereafter, the petitioner again made representations seeking correction of seniority and also claimed arrears and increments. Ultimately, he was promoted to Grade-II in Class-III vide order dated 30.10.2004. However, despite being accorded promotion w.e.f. 30.10.2004, he was not granted the same pay scale and monetary benefits which had already been extended to his juniors from 24.01.2001. Subsequently, he claimed arrears and increments for the period from 24.01.2001 to 01.11.2004 in the year 2012, which claim was rejected vide order dated 27.08.2012 and duly approved by the competent authority on 15.01.2013. Thereafter, WRIT - A No. 45929 of 2013 was preferred. The learned Single Judge dismissed the same vide judgment and order dated 03.09.2013, which is reproduced hereinunder:

"1. Heard learned counsel for the petitioner and Sri Manish Goyal, learned counsel for the respondents.

2. The question of seniority was determined finally by the respondent as long back in 2001. The grievance of the petitioner that despite of his seniority, he was not given promotion from the date of occurrence of vacancy therefore payment of salary and other benefits from the date the vacancy occurred and he should have been granted.

3. Learned counsel for the petitioner could not show as to what legal right he has to claim promotion as and when the vacancy occurred. In absence of any provision shown to this Court, I do not find that petitioner has any legal right to seek a writ of mandamus to respondents to fill in vacancy particularly when it is well settled that employer has always a right to keep the post vacant. (See: State of Haryana Vs. Subash Chander Marwaha, AIR 1973 SC 2216, Jitendra Kumar and others Vs. State of Punjab and others (1985) 1 SCC 122 and Shankarsan Dash Vs. Union of India 1991 (3) SCC 47).

4. Reliance is placed on a decision of this Court in Civil Misc. Writ Petition No.17231 of 2001 (Kamta Singh Vs. District Judge, Banda and others) decided on 2.11.2007. Having gone through the same, I do not

find any such principle applied which may help the petitioner, as discussed above.

5. Dismissed."

5. Learned counsel for the appellant-petitioner has vehemently submitted that the petitioner claimed benefits on the Grade-II post w.e.f. 24.01.2001 to 01.11.2024 but in arbitrary manner, his rightful claim was denied, whereas other juniors were accorded benefits in view of the seniority list dated 15.01.2001. He further submits that even the objections regarding the initial seniority list dated 15.01.2001 were considered by the Committee and the petitioner's objections were accepted and his claim was found to be correct. He submits that the case of the petitioner was not properly considered by the department. Eventually, he challenged the order dated 27.08.2012 approved on 15.01.2013, in WRIT - A No. 45929 of 2013, which was dismissed by the learned Single Judge in an arbitrary manner without appreciating the facts and law, whereas the petitioner had been discriminated as other similarly situated employees, including one Kamta Prasad, were granted promotion along with consequential monetary benefits.

6. He further submits that while rejecting the claim of the petitioner, the respondents also failed to consider Rule 8 of the U.P. Government Servants Seniority Rules, 1991, as well as the provisions of the U.P. Subordinate Civil Courts Ministerial Establishment Rules, 1947 and the U.P. Subordinate Civil Courts Inferior Establishment Rules, 1955.

7. Per contra, Shri Fuzail Ahmad Ansari, learned Standing Counsel for the respondents-opposite parties, has vehemently opposed the appeal and submitted that only a tentative seniority list was prepared on 15.01.2001 and, moreover, the same was not approved by the competent authority, namely, the learned District Judge. It has been submitted that the gradation list was finalized and approved for the first time on 30.10.2004, which was accepted by the petitioner voluntarily, and at no point of time he worked on the promotional post w.e.f. 15.01.2001. As such, there was no justification for granting any financial upgradation along with interest. He further submitted that the appellant-petitioner raised the grievance for

the first time only on 31.01.2011, which was rejected on 27.08.2012 and approved by the learned District Judge on 15.01.2013, which order was challenged in the aforesaid writ petition. He submits that the learned Single Judge, for cogent reasons, rightly dismissed the writ petition vide order dated 03.09.2013, which is proper, valid and sustainable in the eyes of law, and therefore no interference is warranted in the present intra-court appeal.

8. We have heard the rival submissions advanced by learned counsel for the parties and perused the record. Before appreciating the controversy involved in the present matter, it would be apt to glance at the reliefs prayed for before the learned Single Judge in WRIT - A No. 45929 of 2013, which are reproduced hereinbelow:

"(i) call for the records and to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 27.08.2012 approved on 15.01.2013 by respondent no.1 (contained in Annexure No.1 to this writ petition);

(ii) issue a writ, order or direction in the nature of Mandamus commanding the respondents to release the increments and arrears of salary of IInd grade in class III from 24.01.2001 to 01.11.2004 with 9% interest;

(iii) (issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iv) award the cost of the present writ petition to the petitioner."

9. The claim and counter-claim have been set up on the basis of eligibility. The appellant-petitioner claimed that he was entitled to the benefit of the promotional pay scale of Grade-II in Class-III w.e.f. 24.01.2001, whereas the respondents contended that the gradation list was finally approved only in the year 2004 and promotion to the post was accorded on 30.10.2004. However, it is equally undisputed that the appellant-petitioner had not actually worked on the promoted post during the aforesaid period. Mere existence of vacancies or subsequent correction of seniority does not automatically confer a right to claim

retrospective promotion with all monetary benefits, particularly when the promotion itself was granted only on 30.10.2004 in accordance with the finalized gradation list.

10. The record further reveals that the seniority/gradation list was finalized on 30.10.2004 after due publication and inviting objections from all concerned employees. The appellant-petitioner never challenged the said gradation list at the relevant point of time. Even after his promotion on 30.10.2004, no immediate challenge was raised by him regarding denial of retrospective monetary benefits. For the first time, the grievance came to be seriously agitated several years thereafter, culminating in the filing of the writ petition in the year 2013.

11. In matters relating to seniority and service benefits, promptness is of utmost importance, as stale claims cannot ordinarily be entertained after a long lapse of time. Entertaining such delayed claims adversely affects settled rights and service structure. The appellant-petitioner has failed to furnish any satisfactory explanation for the inordinate delay and laches in approaching the competent forum.

12. We further find that the learned Single Judge rightly observed that no employee can claim promotion merely from the date of occurrence of vacancy unless such right flows from the statutory rules. The employer always retains the discretion to fill or not to fill vacancies in accordance with administrative exigencies and the prescribed procedure. In the present case, no provision of law has been demonstrated which entitled the appellant-petitioner to claim automatic retrospective promotion with consequential monetary benefits from 24.01.2001.

13. Moreover, once the appellant-petitioner accepted the promotion granted on 30.10.2004 and allowed the gradation list to attain finality without challenge for several years, he cannot subsequently seek to reopen the entire issue after an inordinate delay. The claim raised by the appellant-petitioner was, therefore, rightly rejected by the learned Single Judge.

14. In view of the discussions made hereinabove, we find that the impugned judgment and order has been rendered by the learned Single

Judge for cogent and justifiable reasons. In an intra-court special appeal, no interference is ordinarily warranted unless palpable infirmity or perversity is noticed on a plain reading of the impugned judgment and order. In the facts and circumstances of the instant case, we do not find any such palpable infirmity or perversity warranting interference with the impugned judgment and order.

15. Accordingly, the special appeal, being devoid of merit, is dismissed.

(Kunal Ravi Singh,J.) (Mahesh Chandra Tripathi,J.)

May 12, 2026
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