



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 45732 of 2014

U.P.S.R.T.C. Thru. M.D. and Anr.

.....Petitioner(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

Counsel for Petitioner(s)	: Mangla Prasad Rai(senior Adv.), Nishant Mehrotra, Sheo Ram Singh
Counsel for Respondent(s)	: C.S.C., Dr. Rajesh Kumar Srivastav, R.s.chauhan, Sheo Kinkar Singh, Suryaprakash Sharma

Reserved on 15.9.2026
Delivered on 30.9.2026.

Along with:

1. Writ – A No. 7162 of 2014
2. Writ – A No. 13917 of 2014

Court No. - 36

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Heard Sri Sheo Ram Singh, learned counsel for petitioners and Sri Dr. Rajesh Kumar Srivastav, learned counsel for respondents in Writ Petition No. 45732 of 2014, Sri Dr. Rajesh Kumar Srivastav, learned counsel for petitioners and Sri Sheo Ram Singh, learned counsel for respondents in Writ Petition Nos.7162 of 2014 and 13917 of 2014.

2. The petitioner in Writ Petition Nos.7162 of 2014 and 13917 of 2014 and respondent no.4 in Writ Petition No.45732 of 2014 was appointed as a Chowkidar on 18.6.1977 in Jhansi region of U.P.State Road Transport Corporation. He was selected as Office Assistant (Second) on.17.11.1978 after passing a departmental examination. However

within a month on 13.12.1978, he was reverted to the post of Chowkidar since his earlier engagement was only part time.

3. On the instance of petitioner, an industrial dispute was referred on 8.8.1984 that whether reversion of said respondent on the post of Chowkidar was legal or not. Subsequently, also the petitioner approached State Government for reference of an industrial dispute and accordingly an another industrial dispute dated 8.8.1984 was referred that petitioner an Office Assistant (Second) w.e.f. 18.3.1983 was in the seniority list for promotion to Head Clerk since 14.8.1985, but still he was not promoted therefore, whether such act was illegal or not. The Labour Court passed an award dated 18.1.1985 arising out of first industrial dispute that reversion was illegal and it was directed that respondent no.4 shall be considered as Office Assistant (Second) from the date of reversion i.e. 13.12.1978.

4. A challenge to award dated 18.1.1985 at behest of the Corporation was rejected, since a Writ Petition No.18441 of 1985 was dismissed vide an order dated 21.8.1991.

5. In pursuance of order dated 21.8.1991, the petitioner continued to work as Office Assistant (Second) .

6. The second industrial dispute was finally decided by an award dated 5.10.2004 and it was directed that respondent no.4 shall be granted all consequential benefits and higher post, in terms of seniority, and order dated 21.08.1991 passed by this Court. It was further directed that on an application petitioner's claim on next promotion on the post of Office Superintendent be expedite. Operative part of the said award is reproduced hereinafter:-

“तदुसार विचाराधीन सन्दर्भ उत्तरित करते हुये वादी श्रमिक के पक्ष में निर्णीत किया जाता है। प्रतिवादी गण को निर्दिष्ट किया जाता है कि वे श्रम न्यायालय (5) उ०प्र०, कानपुर द्वारा दिए गए एवार्ड एवं उच्च न्यायालय, इलाहाबाद के आदेश निर्णय दिनांकित 21.08.91 के सापेक्ष में वरिष्ठता तथा उसके आधार पर उच्चतर पदनाम एवं अनुमन्य देय सहित अन्य हितलाभों की पुनरीक्षित दरों का पुर्ननिर्धारण करे आदेश भुगतान तथा पश्चातवर्ती भुगतान सुनिश्चित करें। वादी को पुर्नस्थापित किए जाने के पश्चात यदि कोई विभागीय अथवा अनुशासनात्मक कार्यवाही लंबित हो, जैसा कि 1993 के किसी

प्रकरण का मामला विचाराधीन प्रतीत होता है, तो नैसर्गिक न्याय के सिद्धान्तों का अनुपालन सुनिश्चित करते हुये शीघ्र अतिशीघ्र नियमानुकूल कार्यवाही सुनिश्चित करके वादी द्वारा कार्यालय अधीक्षक के पद पर नियुक्त/प्रोन्नति हेतु प्रत्यावेदन दिये जाने पर यथाशीघ्र नियमतः कार्यवाही प्रतिपक्ष द्वारा सुनिश्चित की जाय। ”

7. Aforesaid award was also challenged before this Court by the UPSRTC in Writ Petition No.39848 of 2005 which was disposed of vide an order dated 5.7.2013 with following observations and directions:

“So far as the reference to the Labour Court is concerned, admittedly there was no reference for consideration of promotion on the post of the Office Superintendent though the direction has been issued for the same. Apart from that as far as the promotion is concerned, it is administrative and managerial work which has to be decided and considered on the basis of the conduct, merit of the workman and seniority apart from other ability for promotion on a particular post, and availability of the post. Hence the same cannot be decided by the Labour Court. However, in the present case only direction was issued by the Labour Court to consider the representation of the respondent employee for promotion on the post of Office Superintendent though the reference was for to consider the promotion on the post of Head Clerk. Even without direction of any authority or award by the Labour Court if the employee is entitled for promotion in accordance with rule and is eligible for promotion on the particular post, then he is entitled for promotion and same is required to be considered by the petitioner Corporation. Hence in view of the fact and circumstances the present petition is finally disposed off. The petitioner corporation will consider the claim of the petitioner, if already no order has been passed for promotion, expeditiously preferably within a period of three months, after filing of a certified copy of this order, according to the availability of the vacancy for promotion on the post for which the petitioner is entitled, in view of the Regulation applicable to the State Transport Corporation employees.”

8. During pendency of above Writ Petition, the workmen was considered for promotion along with other and was promoted to the post of Head Clerk vide an order dated 14.8.2012 since he was working on Office Assistant (IInd) and he joined on the said post on 16.8.2012.

9. In view of an order dated 5.7.2013, passed by this Court the respondent no.4, thereafter submitted a representation on 22.7.2013

claiming promotion, on the post of Office Superintendent as well as arrears, however, it was rejected by the Managing Director vide an order dated 19.11.2013, whereby claim of promotion to the post of Office Superintendent was denied since respondent no.4 has not worked for three continuous years on the post of Head Clerk, therefore has not completed requisite eligibility for consideration for promotion on said post. Relevant part of the said order is reproduced hereinafter:

“मुख्यालय के पत्र संख्या-4721 सीईएनटी/12-19 निगम/वरिष्ठता/04-12, दिनांक 11.07.2012 द्वारा सेवा नियमावली एवं संदर्भित शासनादेश दिनांक 08.05.2012 एवं दिनांक 13.05.2012 के आलोक में अन्तिमकृत वरिष्ठता सूची जारी कर दी गयी। उक्त वरिष्ठता सूची के आधार पर दिनांक 08.08.2012 को पुनः प्रधान लिपिक के रिक्त पदों को कार्यालय सहायक प्रथम संवर्ग से प्रोन्नत कर भरे जाने की कार्यवाही सम्पन्न हुई। विभागीय चयन समिति की बैठक दिनांक 08.08.2012 में श्री पाण्डेय की प्रोन्नति पर भी विचार हुआ। चयन समिति द्वारा उपयुक्त पाए जाने पर श्री पाण्डेय की प्रोन्नति, कार्यालय आदेश संख्या-5345 सीईएनटी/12-14 निगम/चयन/05-12, दिनांक 14.08.2012 के तहत प्रधान लिपिक के पद पर कर दी गयी।

मा० उच्च न्यायालय के उक्त निर्णय दिनांक 05.07.2013 में प्रदत्त निर्देशानुक्रम में श्री आर०पी०पाण्डेय को प्रधान लिपिक से कार्यालय अधीक्षक के पद पर प्रोन्नति के प्रकरण में उपरोक्तावत् समग्र बिन्दुओं के आलोक में विवेचना करने पर यह पाया गया कि उ०प्र० राज्य सड़क परिवहन निगम कर्मचारी(अधिकारियों से भिन्न) सेवानियमावली 1981 के अनुसार अगले पद पर प्रोन्नति हेतु 03 वर्ष की अर्हकारी सेवा होना अनिवार्य है जबकि श्री पाण्डेय वर्तमान में उक्त अर्हकारी सेवा पूर्ण नहीं करते क्योंकि उनकी प्रोन्नति प्रधान लिपिक के पद पर दिनांक 14.08.2012 को हुई है, अतः ऐसी दशा में उन्हें कार्यालय अधीक्षक के पद पर प्रोन्नत किया जाना सम्भव नहीं है। मा० उच्च न्यायालय के निर्णय दिनांक 05.07.2013 के अनुपालन में श्री आर०पी० पाण्डेय, प्रधान लिपिक का प्रत्यावेदन दिनांक 22.07.2013 सम्यक् विचारोपरान्त अस्वीकृत करते हुए अन्तिम रूप से निस्तारित किया जाता है।”

10. The petitioner workmen has meanwhile initiated multiple proceedings under Section 6-H of UP Industrial Dispute Act, which led to payment of Rs.2,80,533/- in total to him, however subsequently the U.P.S.R.T.C passed an order dated 4.1.2014 to recover the said amount by deducting it from salary.

11. Above referred order dated 19.11.2013 and a subsequent order dated 4.1.2014 were challenged by the petitioner by filing Writ Petition No.7162 of 2014. In the said writ petition, following interim order was passed on 10.2.2014 by this Court :-

“ The submission of the learned counsel for the petitioner is that in pursuance of the order of this Court dated 5.7.2013 passed in

writ petition no. 39848 of 2005, the representation of the petitioner for his promotion from the post of Head clerk to Office Superintendent, came to be rejected by order dated 19.11.2013 passed by the General Manager (Personnel), U.P. State Road Transport Corporation, Lucknow with the finding that the petitioner was promoted as Head clerk only on 14.8.2012 but thereafter the Regional Manager, U.P. State Road Transport Corporation, Chitrakoot Dham, Banda has proceeded to pass another order dated 4.1.2014 whereby certain payments made to the petitioner in proceeding u/s.6-H of the U.P. Industrial Disputes Act, for execution of award passed in adjudication case no. 6 of 2001, is sought to be realised by making deduction from salary on the ground that such payments were wrongly made to the petitioner. It is contended that these payments were made to the petitioner in execution of the award which had attained finality, thus, it was not open to the respondent Corporation to be judge in its own cause in holding that such payments were wrongly made.

Prima facie, the submissions made by learned counsel for the petitioner appears to have force and the matter require consideration after exchange of affidavits.

Sri Nishant Mehrotra has accepted notice on behalf of respondents. He may file counter affidavit within a month. The petitioner shall have two weeks' thereafter to file rejoinder affidavit.

List thereafter.

Till the next date of listing, the recovery in pursuance of the order dated 4.1.2014 passed by the Regional Manager, U.P. State Road Transport Corporation, Chitrakoot Dham, Banda shall remain in abeyance.”

12. The petitioner (workmen) has also filed a Writ Petition No.13917 of 2014, whereby he has challenged an order dated 19.11.2013, which was already challenged in earlier writ petition and the petitioner has also sought a writ of mandamus that he may be considered for promotion on the next higher post i.e. Office Superintendent.

13. Petitioner (workmen) has also filed a subsequent application under Section 6-H (1) of U.P. Industrial Disputes Act, claiming Rs.2,16,270/- i.e. alleged difference of wages from 1.11.2011 to 30.9.2013. Said application was decided and an order of recovery Rs.1,68,082/- was issued against the Corporation vide an order dated 18.7.2014 which was

challenged by the U.P.S.R.T.C in Writ Petition No 45732 of 2014, wherein following interim order was passed on 1.9.2014:

“ Issue notice to the respondent no.4 returnable at an early date fixing 15.10.2014.

List on 15.10.2014.

Subject to deposit of the entire amount within a period of two weeks' from today, operation of the impugned order dated 18.07.2014 shall be kept in abeyance till 15.10.2014. The half of the amount shall be released in favour of the respondent-workman forthwith.”

14. During the pendency of these writ petitions, petitioner has already crossed age of superannuation since he has declared his age about 48 years in the year 2014.

15. The first issue for consideration before this Court is as to whether a writ of mandamus can be issued after the petitioner got retired that he be considered for promotion on post of Office Superintendent or that he be treated on the post of Head Clerk from the date his juniors were appointed.

16. All arguments raised by learned counsel for the petitioner in this regard has no legal basis since he has not been able to show that on the date of consideration for promotion he was qualified and that once an order of earlier promotion dated 14.8.2012 on the post of Head Clerk was never challenged, therefore, there is no illegality in the impugned order. This Court by an order dated 5.7.2013 has only directed to consider promotion of petitioner if eligible and entitled.

17. It is well settled that a consideration for promotion can be made only when an employee is in service and now since relationship between Corporation and respondent no.4 as employer and employee has already come to an end, a prayer for promotion cannot be considered and for that Court takes note of a judgment passed by Supreme Court in ***Government of West Bengal & Ors.Vs. Doctor Amal Satpathi & Ors, 2024 INSC 906.***

18. Second issue is in regard of order of recovery passed against the petitioner i.e. U.P.S.R.T.C

19. From perusal of orders on record, it is evident that first award was passed on 18.1.1985 and same was implemented since the petitioner was treated as Office Assistant (Second) w.e.f. 17.11.1978.

20. So far as second award dated 5.10.2004 is concerned, it was substantially modified by the judgment passed by this Court on 5.7.2013 wherein the said award was under challenge. Relevant part of it has already been mentioned above. A direction in the said award that petitioner be treated to be promoted on next higher post was set aside, since no such direction can be passed except for consideration for promotion in accordance with applicable Service Rules. Accordingly, vide an order dated 5.7.2013 passed by this Court it was directed that Corporation can consider claim of the petitioner for promotion. Meanwhile, petitioner (workmen) was considered for promotion and was promoted on the post of Head Clerk on 14.8.2012. Order dated 14.8.2012 was never challenged at behest of petitioner, therefore, said order has attained finality.

21. Petitioner thereafter has filed an application that he may now be promoted on the post of Office Superintendent, but since he was not qualified, as he has not worked for at least 3 years of qualifying service on the post of Head Clerk, therefore, prayer was rejected.

22. In aforesaid circumstances, once an order dated 14.8.2012 for promotion on the post of Head Clerk has attained finality and admittedly, petitioner has not served for 3 years as Head Clerk, he was not eligible to be considered for further promotion on the post of Office Superintendent, therefore there was no illegality in the impugned order dated 19.11.2013.

23. In aforesaid circumstances when benefit of an award dated 5.10.2004 and a subsequent judgment was passed by this Court on 5.7.2013, was considered any claim for granting arrears between 1983 to 2005, 2005 to 2008 and 2009 to 2010 was unsustainable, since it was not based on

any predetermined claim. Accordingly, arrears for aforesaid period of Rs.2,80,533/ was wrongly awarded to the petitioner/workman, however since said money has already been paid way back in the year 2013, therefore said amount cannot be recovered after retirement of the petitioner and for that Court takes note of a judgment passed by Supreme Court in **Jogeshwar Sahoo & Ors. Vs. The District Judge Cuttack & Ors. 2025 INSC 449**

24. Third issue is in regard to the order passed by Labour Court under Section 6-H (1) of Industrial Disputes Act, whereby an order of recovery of Rs.1,68,082/- was passed on 18.7.2014 against the U.P.S.R.T.C.

25. Court finds that even from a bare perusal of the application dated 10.12.2013, which is on record of Writ Petition No. 45732 of 2014, does not state all relevant facts that his claim for promotion was already been rejected and during pendency of said proceedings, an order dated 4.1.2014 was passed for recovery, which was stayed by this Court vide an order dated 10.12.2014 as well as that petitioner's claim for promotion was also rejected and said order was never placed during consideration. Accordingly, recovery of Rs.168082/ would not be justified and however since, in terms of interim order, half of the amount has already been released in favour of the petitioner, therefore, that cannot be recovered now i.e. after retirement of the workmen.

26. So far as order of recovery of rest of amount is concerned, is hereby quashed, since impugned order was passed without taking note of various events, which occurred either before the application was filed or before the impugned order was passed as well as order of recovery was also unjustified, since the Court vide an order dated 5.7.2013 has passed a direction to consider the claim of the Workmen for promotion and not a direction to grant promotion, therefore, order of recovery was passed on misreading of the said order.

27. Accordingly, (a) order dated 18.7.2014 impugned in Writ Petition No. 45732 of 2014 filed by U.P.S.R.T.C. is quashed subject to amount

already paid to the workmen during pendency of this writ petition in terms of interim order dated 1.9.2014. This writ petition is **disposed of**.

(b) Writ Petition No.7162 of 2014 filed by the workmen is **disposed of** that since no recovery can be made post retirement, therefore, though impugned order dated 19.11.2013 and 4.1.2014 may be legally justified, but in given circumstances it cannot be implemented.

(c) In Writ Petition No.13917 of 2014 filed by the workmen, prayer for promotion on the post of Office Superintendent is accordingly rejected and so far as prayer to quash the order dated 19.11.2013, is **disposed of** as per direction made in Writ Petition No.7162 of 2014.

28. All the three writ petitions are disposed of accordingly.

(Saurabh Shyam Shamsbery,J.)

September 30, 2026

SB