

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 7447/2006**

% **24th January, 2017**

CHHOTY LAL PAROPKARI Petitioner

Through: Mr. U.S. Chaudhary and Mr. Vipin
Chaudhary, Advocates.

versus

DIRECTOR OF EDUCATION, GNCTD AND ANR. Respondents

Through: Mr. Satyakam, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, petitioner/Chhotey Lal Paropkari seeks appointment to the post of Upper Division Clerk (UDC) with effect from 4.3.1979 along with all consequential benefits. Petitioner claims that petitioner worked for five years as a Lower Division Clerk (LDC) before 4.3.1979 and since five years of his service were completed on 4.3.1979, petitioner deserved to be promoted as UDC with effect from 4.3.1979 with all consequential benefits including calculation of pension.

2. It is seen that the petitioner retired from service on 31.12.2003, and petitioner was granted pensionary benefits taking the petitioner as appointed to Upper Division Clerk with effect from 6.3.1981, and that the petitioner has been granted pension taking the petitioner as appointed as Upper Division Clerk with effect from 6.3.1981. Petitioner however claims that instead of the petitioner getting pensionary benefits taking the petitioner to be Upper Division Clerk from 6.3.1981, the date of 6.3.1981 should be taken retrospectively as 4.3.1979.

3. The recruitment rules in question have been annexed by the petitioner as Annexure P-1 and which shows that besides five years of service for appointment of a Lower Division Clerk as an Upper Division Clerk, there has to be categorization of the candidate as fit or unfit. Also, the appointment from the post of Lower Division Clerk to Upper Division Clerk has to be made on the recommendation of the Departmental Promotion Committee (DPC) i.e. fitness of the petitioner for appointment to the post of Upper Division Clerk has to be seen, and counsel for the petitioner concedes that this is by means of examination of ACRs of a candidate, including the petitioner, for five years prior to the promotion of a candidate from the post of Lower Division Clerk to Upper Division Clerk.

4. The facts of the present case show that as on 6.3.1981 a Staff Promotion Committee meeting was held and ACRs of the petitioner were perused from the years 1975-76 to 30.4.1980 and accordingly recommendation was made for promotion of the petitioner from Lower Division Clerk to Upper Division Clerk. The Director of Education in terms of the DPC meeting dated 6.3.1981 passed its order on 7.6.1982 directing the Managing Committee of the respondent no. 2/school to give promotion to the petitioner to the post of Upper Division Clerk. This order dated 7.6.1982 of the Director of Education reads as under:-

“DIRECTORATE OF EDUCATION : DISTT. NORTH: ZONE VII
No.F-2-8(17)/82-Zone-VII/1222 Dated:07/06/82
To
The Manger,
DCM (BOYS) Sr. Sec School,
Kishan Ganj, Delhi.
Sub:- Representation of Sh. Chotey Lal Paropkari, LDC regarding Promotion to the post of UDC.

Sir,
With reference to your letter no. HS/599 Dt.13/02/82 on the above noted subject, I am directed to convey the order of the D.E. that recruitment rules for the post of UDC as applicable in the case of Delhi Admn, Employees also apply for the employees of the Aided Schools in terms of provision of rule 102 of Delhi School Education Rule, 1973. Recruitment Rules in the case of Delhi Admn.'s provide for filling up of these post by promotion on the basis of seniority subject to the rejection of unfit.

Sh. Chotey Lal Paropkari the senior most LDC has not been found to be unfit. It would, therefore, not be necessary to consider the candidature of anyone below him in the order of seniority. Equity and fairness, therefore, would demand that he should be promoted as recommended by the majority of the DPC.

The selection Committee constituted vide this office letter No. 326 Dt. 12/02/82 is not necessary.

Yours faithfully

5. The management of the respondent no.2/school challenged this order dated 7.6.1982 of the Director of Education in C.W. No. 3687/1982 and which writ petition was dismissed by a learned Single Judge of this Court vide his judgment dated 28.8.2003 and consequently the petitioner became entitled to the benefit of the order of the Director of Education dated 7.6.1982. Some of the observations made by the learned Single Judge who dismissed C.W. No. 3687/1982 vide judgment dated 28.8.2003 are however relevant as regards the issue as regards the date from when petitioner should get promotion from Lower Division Clerk to Upper Division Clerk and these relevant observations read as under:-

“On the other hand it was contended by Mr. Chaudhary, counsel appearing for respondent no. 4 that the rule for promotion to the post UDC at the relevant time was not seniority-cum-merit but seniority-cum-fitness and no other person was eligible when respondent no. 4 became eligible for promotion in terms of the relevant rules governing the post of UDC. It was contended that petitioner no. 3 who was a peon was appointed to the post of LDC to work temporarily against the sanctioned post of UDC which was lying vacant. It was further contended that the authority cited by the counsel for the petitioner was inapplicable to the facts of this case as no other person was eligible and therefore, there could not be an occasion to have comparison between respondent no. 4 and petitioner no. 3. My attention was invited to page 149 of the paper book by the counsel for respondent no. 4 whereas in the resolution no. 13 passed in the meeting of DCM (Boys) Senior Secondary School held on 16.3.79, it was mentioned that respondent no. 4 had been penalized in the case of embezzlement when he was working as Peon. The work of respondent no. 4 as LDC was satisfactory and the reason for denying him promotion on was that post of UDC carries greater responsibility. It was contended before me that element of prejudice for which respondent no. 4 has already suffered in

the year 1969 came in the way of respondent no. 4 from being promoted to the post of UDC.

I have given my careful consideration to arguments advanced by counsel for the parties. Respondent no. 4 has not filed writ petition either challenging his non-promotion in the year 1979 when according to respondent no. 4 he became eligible for promotion nor respondent no. 4 has filed any proceedings after he was denied promotion. This writ petition has been filed by petitioner no. 1 an aided recognized school. Petitioner no. 2 is the Society which is running the school. Petitioner No. 3 Amar Singh is the person who was also denied the promotion to the post UDC in view of the impugned order passed by Director of Education. It is an admitted fact that certain proceedings were initiated against respondent no. 4 for embezzlement by some amount for which he was punished by withholding five increments and back wages.”

(underlining added)

6. It is therefore seen that the learned Single Judge who decided C.W. No. 3687/1982 by dismissing the writ petition filed by the Managing Committee of the school, only upheld the order dated 7.6.1982 of the Director of Education which was challenged in the writ petition, however the learned Single Judge disentitled any claim of the petitioner to the benefit of promotion to the post of Upper Division Clerk from 1979 on the ground that the denial of promotion to the petitioner from 1979 was not challenged by the petitioner and consequently the sequitur is that entitlement of the petitioner to promotion would only be in terms of the DPC meeting dated 6.3.1981 and as approved by the Director of Education vide its order dated 7.6.1982 and which has been reproduced above.

7. Learned counsel for the petitioner argued that since the petitioner has complied with the requirement of the recruitment rule for

being given promotion to Upper Division Clerk with effect from 4.3.1979, and therefore pensionary benefits should be calculated taking the petitioner as Upper Division Clerk from 4.3.1979, however, the argument is incorrect because not only this aspect has been rejected in terms of the observations made by the learned Single Judge in his judgment dated 28.8.2003 in C.W. No. 3687/1982, but also, as per the Recruitment Rule it is a Departmental Promotion Committee who has to consider fitness of a candidate as per his ACRs and there is no ACRs of the petitioner available in this writ petition for five years prior to 4.3.1979, for this Court to consider that petitioner should be categorized as fit for appointment in terms of five years ACR period prior to 4.3.1979.

8. Since the petitioner has already been granted the benefit of the order of the Directorate of Education dated 7.6.1982 and petitioner being accordingly granted promotion to the post of Upper Division Clerk in terms of the Departmental Promotion Committee meeting dated 6.3.1981, and accordingly pension has already been granted to the petitioner, petitioner hence cannot claim any benefit of revision of monetary benefits taking the petitioner as promoted to the post of Upper Division Clerk with effect from 4.3.1979.

9. Dismissed.

JANUARY 24, 2017/AK.

VALMIKI J. MEHTA, J