

CASE NO.:
Appeal (civil) 7038 of 2001

PETITIONER:
DR.KIRPA RAM MATHUR

Vs.

RESPONDENT:
STATE OF U.P. & OTHERS

DATE OF JUDGMENT: 08/10/2001

BENCH:
M.B. Shah & R.P. Sethi

JUDGMENT:

SETHI, J.

Leave granted.

Aggrieved by the order dated 10.12.1998 (Annexure P-7) passed by respondent No.1, the appellant herein filed a writ petition in the High Court challenging the fixation of his seniority by showing respondent No.4 as senior than him. Finding no merit, the High Court dismissed the petition filed by the appellant vide the order impugned in this appeal. Alleging that the order of the High Court was against law and the Uttar Pradesh Regularisation of Ad-hoc appointments (on posts within the purview of the Public Service Commission) Rules, 1979, (hereinafter referred to as "the Rules") the appellant has contended that the order of the Government (Annexure P-7) and the impugned judgment of the High Court are liable to be set aside.

The facts leading to the filing of the present appeal are that the appellant and the respondent No.4, along with others, appeared at the interview held by the Selection Committee appointed by the respondent No.1 for the ad-hoc appointment on the post of Lecturers in Pathology in the State Medical Colleges of Uttar Pradesh. He claimed that as he was higher in merit and ranking than the respondent No.4, his appointment letter No.3496-Sec.5-RA-18-84/Medical Sec.I U.P. Govt. dated 4.5.1984 was issued and as respondent No.4 was allegedly lower in merit, letter of appointment No. 3497-Sec.5-RA-18-84/Medical Sec.I U.P. Govt. dated 4.5.1984 was issued in his favour. Issuance of letter bearing No.3496 being first in time than the letter No.3497 issued in favour of respondent No.4 is stated to be the reflection of the merit determined by the Selection Committee after the interview.

Posts for Lecturer in Pathology in the State Medical Colleges of Uttar Pradesh were advertised by the Public Service Commission of the State in January, 1989 for the purpose of regular appointment to the aforesaid post. Both the appellant as well as the respondent No.4 applied for the same and their candidature was recommended by the Public Service Commission. On 7.8.1989 the Rules were issued which applied to persons like the appellant and the contesting respondent. On 31st December, 1990, the respondent-State regularised services of both the appellant and respondent No.4. In the order (Annexure P-4) it

was mentioned that inter se seniority of the persons mentioned in the list would be decided under the Rules later on. As the name of the appellant was allegedly wrongly shown below respondent No.4, he is stated to have made a representation to the State Government which was accepted vide order No.282/Sec.I-5-93-Code-14-Medical Sec.I Govt. of U.P. Lucknow dated 21.7.1993 by placing the appellant above the respondent No.4 in the seniority list. Aggrieved by the aforesaid order, the respondent No.4 filed Writ Petition No.3609 of 1995 in the High Court which was allowed by a Division Bench on 24.4.1997 (Annexure P-6). After quashing the order dated 21.7.1993 (Annexure P-5), the High Court directed that a fresh seniority be determined in accordance with the Rules, particularly Rule 7(2) of the Rules. Consequently, order impugned in the writ petition (Annexure P-7) dated 10.12.1998 was issued which was challenged by the appellant and his petition dismissed vide the judgment impugned in this appeal.

The facts being not seriously disputed, the controversy between the contesting parties centers around the interpretation of Rule 7(2) of the Rules in the light of determination of a merit of the parties at the time of selection. Both the appellant as well as the respondent No.4 claimed that they were shown senior than the other by the Selection Committee at the time of making the selection. The appellant has contended that as the respondents have not placed before this Court the exact numbers assigned to the appellant and the respondent No.4 at the time of making selection, he having been issued appointment letter first in point of time be deemed to have secured better merit and ranking in the selection after interview. He has also contended that as the respondent-State has not complied this Court's order dated 26.2.2001, it should be presumed that the State has withheld the requisite record allegedly showing respondent No.4 better in merit and ranking. Vide order dated 26.2.2001, this Court had directed the State of Uttar Pradesh to produce the minutes of the proceedings of the Selection Committee for the year 1989. In response to the direction, affidavit of Shri R.S. Dubey, Special Secretary, Medical Education of respondent-State has been filed stating therein that:

"That in obedience of the orders passed by this Hon'ble Court on 08.01.2001 and 19.09.2001 a thorough and diligent search of the "record of the marks" obtained by the petitioner and respondent No.4, during their selection held on 29.03.1984 was made both at the level of the Secretariat and Directorate General of Medical Education but, no "records of marks" obtained by the petitioner and the respondent No.4 at their selection on 29.03.1984 was found. A close and careful perusal of the proceedings of the Selection Committee shows that the Selection Committee evolved the methodology and criteria, applied the same itself to the candidates appearing before it and itself assigned the order of merit, to the candidates; no separate marksheet perhaps was prepared.

That various seniority list were issued by the State Govt. from time to time, which invariably shows respondent No.4 to be senior to the petitioner and inspite of circulation thereof the petitioner never challenged the said seniority lists."

Our attention has been drawn to the proceedings of the Selection Committee held on March 28-29, 1984 for making adhoc appointments of lecturers in various specialities (Annexure R-1). The Selection Committee meeting was attended by Director of Medical Education and Training, U.P. (Chairman), Principal, LLRM Medical College, Meerut, Principal, MIB Medical College, Jhansi, Joint Director of Medical Education & Training, U.P. (Member Secretary). In its proceedings, the

Selection Committee has recorded as under:

"In every specialities two Technical Advisers wre called for the purpose of selection of the candidates. Their names have been mentioned against each speciality.

In order to eliminate the possibility of a handicap to a candidate who gets more than 80% of the total aggregate of 10 subjects of MBBS course, 50 marks have been allotted for the purpose. Rest of the marks are to be calculated as follows:

Ist four positions etc., have been calculated with 10 marks.

a) Total of the passing marks obtained in all the ten subjects will be made. The percentage will be thus calculated.

b) Of this 1 (one) mark perfailure per subject will be deducted. This figure will be marks obtained out of 50.

2. The rest of the pattern will be as follows:

a) MS/MD/Ph.D./Mch/MAMS - 10 marks:

1st attempt - 10
IIInd attempt -6
IIIrd attempt -3

b) Teaching experience: 10 marks, 3 marks for each year with a maximum of 10 marks.

c) Research Paper - 5 marks.

d) Interview - 15 marks.

Marks are to be rounded off upto Ist decimal place. In case one or more candidates are bracketed 2nd decimal will be considered.

The following candidates were selected by the Committee in the speciality noted below.....

XXX XXX XXX

PATHOLOGY: STATE MEDICAL COLLEGES:

1. xx xx

2. xx xx

3. xx xx

4. Dr.Rajiv Kumar Misra

5. Dr.Kripa Ram Mathur."

The minutes of the proceedings of the Selection Committee leave no doubt in our mind that the merit of the candidates appearing in the interview was determined according to the procedure prescribed and having regard to the marks obtained by each one of them, their merit was determined. After due process of selection, the appellant was

shown junior than respondent No.4.

Learned counsel appearing for the respondent No.4 submitted that Vide Annexure R-1, the Selection Committee had not determined the merit and ranking of the persons appearing before it but had only mentioned their names at random. It is contended that if the determination was on merit, the Committee must have mentioned the numbers obtained by each one of the candidates shown therein. Referring to Annexure P-5, he has contended as name of Dr.Prem Kumar Singh and Smt.Sneh Lata are mentioned as junior than the appellant and the respondent, the list cannot be held as based upon the determination of the merit. The argument cannot be accepted inasmuch as Annexure P-5 stands already quashed by the High Court vide its judgment dated 24.4.1997 (Annexure P-6). The reference to the procedure adopted for determining the merit by the Selection Committee unequivocally indicates that the selection was based upon merit and ranking to the concerned was given accordingly. Merely because the respondent-State has failed to produce the marks at this belated stage cannot make the selection process either doubtful or be termed as not based upon the comparative merits of the candidates appearing before the Selection Committee. The presumption of genuineness of the official acts done in the due course of performance of the duties is attracted in the case particularly when the appellant accepted the position of determination of the merit and ranking for a period of over 8 years as is evident from Annexure P-5, mentioning that the appellant had submitted his representation only on 25.11.1992.

While disposing of Writ Petition No.3609 of 1995, the High Court, on facts found that the seniority of the respondent No.4 had been changed by completely ignoring Sub-rule (2) of Rule 7 of the Rules. After referring to the Rule, the High Court held: "The relevant Rule 7(2) of the Rules envisages that if two or more persons are appointed together, their seniority inter se shall be determined in the order mentioned in the order of appointment. Thus, whenever, the question of determination of seniority arise, this sub-rule (2) of Rule 7 of the Rules cannot be lost sight of. It appears, may be due to inadvertence or by any reason, sub-rule (2) of Rule 7 of the Rules has not been taken into consideration and contrary to that Annexure 1C dated 21.7.1993 has been passed, which in our opinion, cannot be allowed to stand.

This legal position cannot be disputed that no employee has a right to promotion, but he has only right to be considered for promotion according to the Rules (see Syed Khalid Rizvi v. Union of India, Judgment Today 1992 (Supplementary) 169). This being so, the impugned order, determining the seniority inter se between the petitioner and the respondent No.3, is hereby quashed...."

It may be mentioned herein that the appellant was a party-respondent in that case and despite service of notice opted not to file any counter affidavit. It is also acknowledged that no appeal was filed against the aforesaid order which attained finality so far as the rival claims between the parties to the aforesaid writ petition are concerned. The High Court had found the order dated 21.7.1993 to be against facts as well as the Rules.

The official record also revealed that respondent No.4 was all along treated better in merit than the appellant and rightly placed senior to him. The appellant wants this Court to re-appreciate the merit of the persons who appeared before the Selection Committee at this belated stage afresh merely on the failure of the respondents to produce the actual marks assigned each one of the candidates. The

arguments appears to be an after-thought besides being stale at this belated stage.

We do not find any illegality in the order of the High Court impugned in this appeal and the order of respondent No.1 dated 10.12.1998 by which respondent No.4 was shown senior than the appellant. There is no merit in this appeal which is accordingly dismissed without any order as to costs.

.....J.
(M.B. SHAH)

.....J.
(R.P. SETHI)

OCTOBER 8, 2001

JUDIS