

PETITIONER:
U.P.STATE TOURISM DEVELOPMENT CORPORATION LTD.

Vs.

RESPONDENT:
I.B. MISRA & ORS.

DATE OF JUDGMENT 18/01/1995

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
RAY, G.N. (J)

CITATION:
1995 SCC Supl. (1) 589 JT 1995 (1) 565
1995 SCALE (1) 255

ACT:

HEADNOTE:

JUDGMENT:
S.C. AGRAWAL, J.:
1. Leave granted.
2. These appeals relate to appointment on the post of General Manager in the U.P. State Tourism Development Corporation (hereinafter referred to as 'the Corporation') which is a company registered under the Companies Act and is an undertaking of the Government of Uttar Pradesh. The said appointment is governed by Rule 19 of the U.P. State Tourism Development Corporation Rules, 1981 (hereinafter referred to as 'the Rules'). The post of General Manager is a class one post in the Corporation. I.B. Misra, respondent No. 1, joined the Corporation on the post of Manager Grade-II in 1978. In March, 1984 he was promoted as Manager Grade-I. He was selected for appointment on the post of Project Officer by the Corporation in 1989 but as he was not appointed on the said post he filed a Writ Petition No. 4733 of 1991 which is pending before the Lucknow Bench of the Allahabad High Court. While the said Writ Petition was pending a vacancy occurred on the post of General Manager in the Corporation and respondent No. 1 filed Writ Petition No. 677 of 1992 giving rise to these appeals in the Allahabad High Court, Lucknow Bench, wherein he prayed that direction, order or a writ of mandamus be issued directing the respondents in the said Writ Petition to hold selection for the said post of General Manager in accordance with the Rules. It appears that the said post of General Manager is being filled by having on deputation officers in the State services of the Government of Uttar Pradesh. The High Court by its judgment dated March 24, 1994 allowed the said Writ Petition filed by respondent No. 1 and issued a writ in the nature of mandamus commanding the respondents in the said Writ Petition to make selection on the post of General Manager in accordance with observations made in the said judgment within a period of four months and it was further directed that the deputation of the present incumbent

holding the post of General Manager in the Corporation would come

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to an end after the expiry of four months. Review Petition filed by the appellant against the said judgment was dismissed by the High Court by order dated May 30, 1994. These appeals have been filed by the appellant against the said order dated March 24, 1994 and May 30, 1994 passed by the High Court.

3. The question arising for consideration in these appeals relates to the interpretation of Rule 19 of the Rules which reads as under:-

"Rule 19. Sources of Recruitment:

Appointment to various posts under the Corporation shall be made by the appointing authority by any one of the following methods:-

(a) By direct recruitment.

(b) By promotion of the Corporation employees through a departmental test or an interview or selection by any other manner prescribed by the Managing Director from time to time.

(c) By deputation from Government or any other Central/State Corporation and other statutory body.

(d) By employment on contract basis.

(e) From any other source as approved by the Board.

All class I posts in the Corporation shall be selection posts and will be filled by selection or by deputation. Such of those Corporation employees who are eligible in terms of qualifications, age and experience, may also compete for selection.

Fifty percent of the class II posts will be filled by open market selection and 50 percent reserved for the employees of the Corporation.

If however, it is found that sufficient number of employees are not available for filling in the quota by promotion on the basis of merit, the Corporation may, fill those posts also by open market selection. There will thus be no rigidity about quota for direct recruitment or by promotion and there will not be any accumulation or carry over to subsequent years.

Promotions within the various posts falling under class III will be made fifty percent by promotion from within the Corporation employees, provided, suitable candidates are available, and fifty percent by promotion from open market selection. In all the cases of promotions the criteria of merit-cum-seniority for holding the higher posts will apply and no person shall have a right to be promoted on the basis of seniority alone. Class III posts at the lowest stage will be filled 15 percent by promotion from Class IV provided suitable candidates with requisite qualifications are available from amongst the Class IV employees and rest by open market. The Corporation may fill these posts also- by open market on the non availability of the sufficient number of employees of filling in the quota for promotion.

Notwithstanding anything contained in the above rules regarding source of recruitment the Board will have full powers to modify the source of recruitment or the stipulated percentages for direct recruitment/promotion and the Board's decision shall, in such cases, be final."

4. The said Rule, in clauses (a) to (e), prescribes five methods for making appointments on the various posts under the Corporation. But in so far as Class I posts

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are concerned, it is specifically mentioned that the said posts shall be selection posts and must be filled either by selection or by deputation. In other words, appointment on Class I posts is restricted to two methods only, i.e., (i) by selection or (ii) by deputation. The employees of the Corporation who are eligible in terms of qualifications, age and experience can also compete for such selection. In the matter of appointment Class I posts differ from Class II and Class III posts. As regards Class II posts the Rule postulates that 50 per cent posts have to be filled by open market selection and 50 per cent have to be reserved for the employees of the Corporation by promotion on the basis of merit. Insofar as Class III posts are concerned, the Rule lays down that 50 per cent posts are to be filled by promotion from within the Corporation employees on the basis of meritcum-seniority and 50 per cent from open market selection. But 15 per cent of Class III posts at lowest stage are to be filled by promotion from Class IV employees and rest from open market. It would thus appear that while appointment by promotion is envisaged on Class II and Class III posts, there is no provision for appointment by promotion on Class I posts.

5. On behalf of respondent No. 1 it was urged before the High Court that ever since 1981 the post of General Manager has been filled by deputation of officers in State services and no appointment has been made by selection even though Rule 19 makes provision for appointment on Class I post by selection. It was also urged that the persons who have been appointed by deputation on the post of General Manager ever since 1981 did not possess the qualifications required for the post of General Manager and, in this connection, reliance was placed on the qualifications that were mentioned in the advertisement inviting applications for the post of General Manager when the said post was advertised in the year 1987. The said qualifications were as follows:-

"Graduate in any discipline or three years diploma in Hotel Management from a recognised Institute with minimum 15 years experience as Senior Manager in hotel industry"

6. It was also urged on behalf of respondent No. 1 that on the proper construction of the Rules, the Corporation should first consider suitable candidates for appointment by process of selection and, only if no candidate was found suitable, the Corporation could resort to the mode of appointment by deputation and it was not permissible for the Corporation to completely ignore the mode of appointment by selection and to continue making of appointments on the posts of General Manager by deputation.

7. On behalf of the appellant it was submitted that advertisement which was issued in year 1987 was for an additional post of General Manager which was proposed to be created in connection with the policy to expand the chain of hotels in the State of Uttar Pradesh as a part of tourism promotion but the said proposal to establish a chain of

hotels was not approved by the Government and the post was not created. It has been submitted that for the post of General Manager a person with high administrative capacity is required and for that reason the post has been filled by taking on deputation officers from different departments of the Government who were working on various responsible positions involving high level of

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administrative abilities.

8. While construing the provisions of Rule 19 the High Court has held:-

"In nutshell, we are of the view that rule 19 should be read to the extent that Class-I posts must be filled by promotion from amongst the eligible officers of the Corporation on the basis of seniority merit. only when no suitable candidate would be available for promotion to the said post from amongst the eligible officers of the Corporation, the appointment may be made on deputation from amongst the persons qualified for the said post on certain qualifications, which may be laid down by the Corporation, failing which the appointment can be made by direct selection from amongst the candidates called for interview"

9. In taking the said view the High Court has placed reliance on the decision of this Court in Gujarat Housing Board Engineers Association & Anr. v. State of Gujarat & Ors., JT 1993 (6) S.C. 469. We find it difficult to endorse the said view of High Court. As pointed out earlier, Rule 19 makes a distinction between the appointment on Class I posts on the one hand and Class II and Class III posts on the other. While in respect of Class II and Class III posts provision has been made for appointment by promotion from amongst the employees of the Corporation, there is no such provision for appointment by promotion in respect of Class I posts and appointment on Class I posts can only be made by two modes, namely, by selection or by deputation. The employees of the Corporation who are eligible in terms of qualifications, age and experience can, however, compete for selection. In these circumstances, we are unable to appreciate how the High Court could construe Rule 19 as providing that Class I posts should be filled by promotion of eligible officers of the Corporation on the basis of seniority-cum-merit and that only if no suitable candidate would be available for promotion from amongst the eligible officers of the Corporation that the appointment should be made on deputation and failing this from amongst the candidates competed. The High Court appears to have carved out a third mode of appointment on the post of General Manager [which is a Class I post] namely, by promotion, though Rule 19 does not provide for such mode of appointment. In our opinion, such a construction is not permissible.

10. The decision in Gujarat Housing Board Engineers Association & Anr. v. State of Gujarat (supra) on which reliance has been placed by the High Court in coming to the aforesaid conclusion stands on a different footing. In that case, in clause (1) of Regulation 3 of the Gujarat Housing Board Services Classifications of and Recruitment Regulations, 1981, there were three modes for appointment to the post of Assistant Housing Commissioner (Technical), now Superintendent Engineer namely, (i) by promotion of employees working as Executive Engineer in Board's Higher Services on the basis of seniority-cum-merit; (ii) by calling

Executive Engineer on deputation from State Building and Communication Department (iii) by direct selection from amongst the candidate called for interview. In clause (3) of Regulation 3 of the said Regulations, it was expressly provided : "If a suitable candidate is not available for appointment by promotion from among the Executive Engineers of the Housing Board, a panel of names of Executive Engineers having at least 4 years standing experience from the

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State B & C Department may be called for with a proviso that no departmental inquiry should be pending against him. One of the vacancy will be selected by the Board and the selected candidate will be appointed by the Board."

11. This Court construed clause (1) of Regulation 3 in the light of clause (3) of the said Regulation to hold that the post must be filled by promotion of eligible Executive Engineers of the Housing Board on the basis of seniority-cum-merit and it is only if no suitable candidate is available from amongst the Executive Engineers of the Housing Board that the appointment should be made on deputation from amongst the Executive Engineers of the State Building and Communication Department and failing this, the appointment can be made by direct selection amongst the candidates called for interview. The language used in Rule 19 of the Rules is, however, different from that used in Regulation 3 of the Gujarat Housing Board Services Classifications of Recruitment Regulations, 1981 which was considered by this Court in Gujarat Housing Board Engineers Association & Anr. v. State of Gujarat (supra). There is no provision in Rule 19 of the Rules providing for promotion as a mode of appointment. Moreover, in Rule 19 there is no provision similar to clause (3) of Regulation 3 of the said Regulations and it is left to the Corporation to make appointment on Class I post either by selection or by deputation. The fact that ever since 1981 no appointment has been made by selection and all appointments on the post of General Manager have been made on deputation would not justify construing Rule 19 in the way the High Court has construed it.

12. It is no doubt true that as a result of appointments that have been made on the post of General Manager by deputation the other mode of appointment, namely, by selection, as provided in Rule 19, has been rendered otiose. Shri R.K. Jain, the learned senior counsel appearing for the appellant, has submitted that the Corporation has preferred appointment on the post of General Manager by deputation in order to secure officers having high level of administrative ability from the State Government because for the post of General Manager a person with high administrative capacity is needed and further more an officer appointed on deputation, if he is not found suitable for the job, can be sent back at any time but this may not be possible if regular appointment is made by selection. Having regard to the aforesaid submissions made by Shri Jain we are unable to hold that the Corporation has been acting arbitrarily in making appointments on the post of General Manager by deputation and in not resorting to the process of selection for making such appointment.

13. The High Court has observed that the present policy of making appointment on the post of General Manager by deputation would result in impairing the efficiency of the person holding a post just below the post of General Manager because he knows that he would never be appointed on the post of General Manager and would have to stagnate on that

post for ever. The High Court has pointed out that avenue of promotion is one of the methods by means of which a person shows his skill and efficiency. These observations are in consonance with the law laid down by this Court. In Council of Scientific and Industrial Research & Anr. v. K. G.S. Bhatt & Anr., 1989 (4) SCC 635, 571

it has been observed :-

"A person is recruited by an Organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance among both nonmanagerial employees and their supervisors. There cannot be any modern management must less any career planning, manpower development, management development etc. which is not related to a system of promotions."

Similarly in Dr. Ms. O.Z Hussain v. Un of India, 1990 Supp. SCC 688, it has been said :-

"This Court has on more than one occasion, pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and the service ineffective. Promotion is thus a normal incidence of service"

14. But this does not justify reading into Rule 19 the requirement that appointment on the post of General Manager should be made by promotion and if no suitable person was available appointment may be made by deputation. That is a matter which appertains to the promotion policy to be adopted by the Corporation. It is expected that the Corporation while revising its promotion policy will keep in view these observations.

15. In the result the appeals are allowed, the judgment dated March 24, 1994 and the order dated May 13, 1994 passed by the High Court are set aside and the Writ Petition filed by respondent No. 1 is dismissed. But in circumstances of the case, there is no order as to costs.

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