

Chander Bhan

Vs

Hotilal Gupta and Others

Civil Appeal No. 592 of 1982

(M. N. Kania Smt. M. S. Fathima Beevi JJ)

09.10.1990

JUDGMENT

M. H. KANIA, J.

1. On the retirement of one Jagan Nath Kohli, who was holding the post of Clerk of Court (Upper Division Clerk) in the grade of Rs 130 - 300 (old scale Rs 75 - 5 - 125), one post of Upper Division Clerk (UDC)/English Clerk fell vacant in the office of the Judge, Small Causes Court, Delhi. Five officials of that court, namely, the appellant and respondents 1, 5, 6 and 7 asserted their claim to the said post. The appellant, Chander Bhan, made his claim on the footing that he was a graduate and on the basis of the rule of rotation as embodied in Rule VI in Chapter XVIII-A of the High Court Rules and Orders, Volume I referred to more particularly hereinafter. Respondent 1, Hotilal Gupta, claimed the said post on the basis of his seniority. We are not concerned with the claims of the other claimants because the contest before us is between the claims of the appellant and respondent 1. The Judge, Small Causes Court in his order dated August 10, 1971, took the view that the appellant who is a graduate and has got 2 1/2 years office experience as Lower Division Clerk (LDC), was an honest and efficient worker and was entitled to promotion in preference to respondent 1 because of the rule of rotation. The aggrieved parties filed an administrative appeal before the District and Sessions Judge, Delhi who passed his order dated July 17, 1973 and held that the rule of rotation did not apply to the establishment of the Judge, Small Causes Court. He held that respondent 1 being the seniormost official as Lower Division Clerk was entitled to the post Upper Division Clerk and accordingly appointed respondent 1 as Upper Division Clerk against the said vacancy. Being aggrieved, the appellant filed a departmental appeal against the said order to the High Court of Delhi which was heard by a learned Judge on the administrative side of that court who, by his order dated August 7, 1974, accepted the appeal of the appellant and set aside the appointment of respondent 1. He took the view that promotion in the office of the Judge, Small Causes Court, Delhi could only be made by the District and Sessions Judge, Delhi and that the said vacancy should be filled in accordance with Rule VI of the Rules framed by the erstwhile Punjab High Court, under Section 35(3) of the Punjab Courts Act 1918, for subordinate services attached to civil courts other than the High Court (hereinafter referred to as 'the said Rules').

2. Respondent 1, Hotilal Gupta challenged the correctness of the view taken by the learned Judge on the administrative side by filing a writ petition being C.W. No. 1003 of 1974 in the Delhi High Court. By an order dated August 7, 1981, the Division Bench of the Delhi High Court allowed the said writ petition, quashed the order dated August 7, 1974, passed by the learned Single Judge and upheld the order of the District and Sessions Judge, Delhi appointing respondent 1 to the said post. The Division Bench took the view that not only the initial appointments but also the appointments by promotion to the post of Upper Division Clerk in the office of the Judge, Small Causes Court

were to be made by the Judge, Small Causes Court and not by the District and Sessions Judge, and held that the rule of rotation on the basis of which the appellant had been appointed to the said post by the order of the Single Judge on the administrative side was not applicable to the said appointment. It is submitted by learned counsel for the appellant that the Division Bench of the High Court was in error in coming to the said conclusion. It was submitted by him that although the first appointment to the post of Upper Division Clerk in the office of the Judge, Small Causes Court, Delhi is to be made by a Judge of Small Causes Court, promotion to that post could only be made by the District and Sessions Judge and the rule of rotation contained in the first proviso to Rule VI of the said Rule was applicable to the appointment by promotion.

3. In order to consider the merit of the submission of learned counsel for the appellant, it is necessary to bear in mind the relevant provisions of law.

4. The relevant portion of Section 35 of the Punjab Courts Act, 1918 reads as follows :

"35. (1) The ministerial officer of the District Courts and Courts of Small Causes shall be appointed and may be suspended or removed by the Judges of those Courts respectively.

#(2) * * *##

(3) Every appointment under this section shall be subject to such rules as the High Court may prescribe in this behalf, and in dealing with any matter under this section, a Judge of a Court of Small Causes shall act subject to the control of the District Court."

5. The rules for subordinate services attached to civil courts other than the High Court were framed by the erstwhile Punjab High Court under Section 35(3) of the Punjab Court Act. A perusal of Rule II of the said Rules dealing with classification, shows inter alia that Clerks of Court to Senior Subordinate Judges and Judges of Courts of Small Causes and English and Vernacular Clerks form a joint cadre. Sub-rule (b) of Rule II of the said Rules, inter alia provides that there shall be a separate cadre for each Revenue District and a separate cadre for each Court of Small Causes. Rule III deals with qualifications and sub-rule (2) of that rule provides that no person shall be appointed to, or accepted as a candidate for, any clerical ministerial post, unless he has passed the Matriculation Examination of the Punjab University or an equivalent examination. The material part of Rule IV runs as follows :

"IV. First appointments. - First appointment shall be made as follows :

(1) By the District Judge. -

(a) Ministerial officers in his own court and in all courts controlled by the District Court other than Courts of Small Causes;

#(b) * * *(2) * * *##

(3) By the Judge of a Court of Small Causes. - Ministerial Officers and menials in his own Court."

Rule V deals with appointment and sub-rule (1) of that rule thereof runs as follows :

"V. (1) Appointment to ministerial posts shall ordinarily be made either by open competition or by selection from a list of qualified candidates or apprentices accepted by the District Judge, Judge of a Small Causes Court, or Sub-Judge to whom powers of appointment have been delegated, as the case may be. Any departure from either of these methods should be reported to the High Court for confirmation."

Rule VI, which is of central importance in this appeal runs as follows :

"VI. Promotion. - (1) Appointments to the higher grades of the ministerial establishment should ordinarily be made by seniority from lower grades, provided that official who would thus receive promotion possesses the prescribed educational qualifications and is otherwise fit to perform the duties to which he will be promoted, for which purpose tests may be imposed. The rule does not apply to such posts as that of stenographer, for which special qualifications are needed; but preference should be given to officers with such qualifications who are already working in the lower grades :

Provided that permanent vacancies in the 75 - 5 - 125 grade shall be filled by the District and Session Judges in the following rotation :

(i) By selection of merit out of graduates who have at last two years' experience in the work of the office, if there is no suitable graduate who fulfils this condition an 'outside' graduate may be appointed, but he must be one who normally resides within the jurisdiction of the District and Session Judge.

(ii) and (iii) By normal promotion in the office, i.e. the appointment of the next senior man whether graduate or non-graduate subject to this fitness :

Provided further that the rotation may be modified in very exceptional cases when the direct appointment of graduate would mean the ousting of a man, who had been officiating quasi-permanently in the post concerned for an appreciable period. What is an appreciable period will depend on the circumstances of each case. After such a modification, the rotation should be restored as soon as possible.

(2) In making promotions, preference may invariably be shown to officials who are known to be strictly honest. No promotion should be given and no recommendation for promotion made in the case of an official who does not possess and maintain a reputation for strict integrity. Efficiency without honesty is not to be regarded as constituting a claim to promotion."

6. A Notification dated October 28, 1953 was issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution and in supersession of the Notification issued earlier on February 17, 1941. The said notification sets out that subject to such general rules as may be made by the Hon'ble Judges of the Punjab High Court in that behalf appointments to the posts on the establishment of the civil courts at Delhi specified in column (1) of the Schedule thereto shall be made by the authority specified in the corresponding entry in column (2) of the said Schedule. A perusal of the Schedule shows that appointment to the posts on establishments other than process serving and menial establishment in the Small Causes Court at Delhi are to be made by the Judge, Small Causes Court, Delhi.

7. It has been pointed out in the impugned judgment that the establishment of the District and Sessions Court and that of the Court of the Small Causes constitute separate cadres. This is not disputed before us. Hence, whenever a specific mention is made regarding a particular officer of an establishment in a rule, that particular rule would normally apply to that establishment alone and the powers conferred by that rule would be conferred on the officer mentioned in the rule. Rule VI(1) speaks of appointments to the higher grades of the ministerial establishments and states that these appointments should ordinarily be made by seniority from lower grades provided that the official to be promoted possesses the qualification prescribed. The first proviso to that rule goes on to say that the permanent vacancies in the original grade of Rs 75 - 5 - 125 shall be filled in by the District and Sessions Court by rotation as set out in the said sub-rule (1) of Rule VI. The first part of Rule VI deals with appointments by promotion to the higher grade of ministerial establishment. Generally it must be held applicable to the establishment of the District and Sessions Court as well as that of the Judge of the Small Causes Court. This rule, however, does not deal specifically with the question as to who is the officer competent to promote. In view of this, the proviso can only be construed as laying down that, where the power of appointment by promotion is vested in the District and Sessions Judge, in making appointments by promotion to fill in the permanent vacancies in the said original grade of Rs 75 - 5 - 125, rule of rotation set out in the first proviso to clauses (1) of Rule VI should ordinarily be followed. It is not disputed that there is a separate cadre for the Court of Small Causes. Rules IV(3) shows that the first appointment of the ministerial officers in the Court of Small Causes is to be made by the Judge of the Small Causes Court. The notification dated October 28, 1953 referred to earlier provides that the appointments to the posts on establishment other than process serving and menial in the Court of Small Causes are to be made by the Judge, Small Causes Court, Delhi.

8. A reading of sub-section (1) of Section 35 of the Punjab Court Act and the rules and notification discussed earlier makes it clear that appointments by promotion to the posts in the entire ministerial cadre other than in the process serving and menial establishments in the Court of Small Causes have to be made by the Judge, Court of Small Causes and the first proviso to Rule VI(1) prescribing the rule of rotation has no application to such appointments. Moreover, it would be unreasonable to apply the principle of rotation to the Court of Small Causes where there is only one UDC. The principle of rotation can be made applicable to the District and Sessions Court because there are a number of posts of Upper Division Clerks. It would be irrational to apply that principle of rotation to the Court of Small Causes in which there is only one Upper Division Clerk/English Clerk.

9. In the seniority list of the establishment of the Judge of Small Causes Court, Delhi, the name of respondent 1 appears at serial 9 whereas that of the appellant appears at serial 19. Both of them satisfy the test of integrity. The only claim the appellant can have is on the principle of rotation as he is a graduate. As that principle does not apply to an appointment by promotion to the post in question, the claim of the appellant cannot be upheld. As we have already observed, none of the other respondents have pressed their claims in the High Court or here.

10. In the result, the appeal fails and is dismissed. Looking to the facts and circumstances of the case, there will be no order as to costs.

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