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(2015) 33 LCD 1959 : (2015) 31 SCT 879

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

DIVISION BENCH

AWADH BIHARI — Appellant

Vs.

STATE OF U.P. THROUGH ITS SECY.(REVENUE) DEPTT.CIVIL SECTT. &
OTHERS — Respondent

(Before : Narayan Shukla and Akhtar Husain Khan, JJ.)

Service Bench No. 938 of 2015

Decided on : 06-07-2015

- Uttar Pradesh Government Servants (Seniority) Rules, 2007 - Rule 8A
- Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 - Section 3(7)

A. Service Law — Pay Parity — Seniority — Promotion — Reservation — Stepping Up of Pay — Petitioner claimed pay parity with a junior employee (Ram Lal) who received promotion with reservation benefit — Supreme Court in *U.P. Power Corp. v. Ramesh Kumar Singh* (2012) SCC 1 declared Section 3(7) of U.P. Public Services (Reservation) Act, 1994 and Rule 8-A of U.P. Government Servants Seniority Rules, 2007 ultra vires, unless promotion was on dictum of *Indra Sawhney* or without aid of said ultra vires provisions — Ram Lal's promotion would likely be set aside under the Supreme Court ruling, negating claim of parity — Even if Ram Lal's promotion were to stand, petitioner is not entitled to parity under Rule 22-B(3) of Financial Hand Book, Vol.-II, Part 2 to 4, as stepping up of pay to eliminate anomaly applies when a senior is promoted earlier to an identical post and the junior's pay, fixed under sub-rule (1), exceeds the senior's — This implicitly requires the senior to have been promoted earlier than the junior; here, petitioner was promoted subsequent to Ram Lal, thus not meeting conditions for stepping up. (Paras 3,

4, 6, 7, 8)

Counsel for Appearing Parties

Komal Prasad Tiwari, Advocate, for the Appellant;

Cases Referred

- [Indra Sawhney Vs. Union of India, \(1992\) Sup \(3\) SCC 217](#)
- [M. Nagaraj Vs. Union of India, \(2006\) 8 SCC 212](#)
- [U.P. Power Corporation Vs. Ramesh Kumar Singh, \(2012\) 7 SCC 1](#)

JUDGMENT

1. Heard Mr. Komal Prasad Tiwari, learned counsel for the petitioner as well as learned Additional Chief Standing Counsel.
2. The petitioner is aggrieved with the office memorandum dated 27 April 2015 issued by the Secretary, Secretariat Administration Department, State of U.P. The petitioner had claimed the parity of pay scale of one Mr. Ram Lal, who had been given promotion by giving benefit of reservation.
3. The controversy of giving promotion to the reserved category candidates over and above to the general category candidate has been set at rest by the Hon'ble Supreme Court in the case of **U.P. Power Corporation v. Ramesh Kumar Singh, reported in 2012 (7) SCC page 1**. The Hon'ble Supreme Court has declared Section 3(7) of the Uttar Pradesh Public Services (Reservation for Scheduled Casts, Scheduled Tribes and Other Backward Classes) Act, 1994 and Rule 8-A of the U.P. Government Servants Seniority Rules, 2007 ultra vires as they run counter to the dictum of the decision of **M. Nagaraj v. Union of India (2006) 8 SCC 212** with further observation that any promotion that has been given on the dictum of **Indra Sawhney v. Union of India 1992 (Supp (3) SCC 217** and without the aid or assistance of Section 3(7) and Rule 8-A shall remain undisturbed.
4. In terms of the aforesaid judgment of the Hon'ble Supreme Court now the person, who has succeeded to get promotion under the benefit of reservation Rules has to go back saving the promotion made on the dictum of Indra Sawhney's case and without the aid or assistance of Section 3(7) and Rule 8-A.
5. It is not the case of the petitioner that Shri Ram Lal is entitled to maintain the promotion under the saving clause.
6. In view of the facts as discussed in the order impugned, we are of the view that once Shri Ram Lal has to go back under the strength of the judgment of the Hon'ble Supreme Court, there is no reason for this Court to grant the said benefit to the petitioner. Thus, we do not find error in the order impugned.

7. Apart from above, even if promotion of said Ram Lal remains undisturbed, the petitioner is not entitled to parity with said Ram Lal in view of sub-rule (3) of Rule 22-B of Financial Hand Book, Vol.-II, Part 2 to 4. Sub-rule (3) of Rule 22-B of Financial Hand Book, Vol-II, Part 2 to 4 reads as under:-

"(3)(i) If as a result of fixation of initial pay under sub-rule (1) there arises an anomaly, namely, that the rate of pay admissible to a Government servant on the higher post would exceed that of another Government servant senior to him in the lower grade or scale and promoted earlier to another identical post the pay of the latter shall with effect from the date of promotion or appointment of the former be stepped up by the Government to an amount admissible to the former as pay fixed under sub-rule (1) subject, however, to the following conditions:

(a) the junior and the senior Government servants belong to the same cadre and the posts to which they have been promoted or appointed are identical and in the same cadre;

(b) the time-scale of pay for the lower and higher posts in which the junior and the senior Government servants are entitled to draw their pay is identical;

(c) the anomaly referred to above must have arisen as a direct result of the application of sub-rule (1) and not for any other reasons;

Explanation 1.-If the Government servant is allowed a higher pay to start within a time-scale regard being had to his having been previously in any other employment under Government, and subsequently upon his promotion or appointment to the higher post, there is fixation made of initial pay under sub-rule (1), the anomaly resulting vis-a-vis the rate of pay admissible to the senior Government servant on the higher post shall not be deemed for purposes of this sub-rule to arise as a direct result of the application of this rule.

Explanation 2.- If a Government servant has, on account of getting advance increment in his lower post, received more pay from time to time, than the senior Government servant appointed or promoted earlier to the higher post and subsequently there is fixation of pay under sub-rule (1) in the case of the former, then also the initial fixation of pay under sub-rule (1) shall not be deemed, for purposes of this sub-rule to arise as a direct result of the application of sub-rule (1).

(d) the senior Government servant shall draw his next increment on completion of the requisite qualifying service with effect from the date of such stepping up of his pay.

(ii) The provisions of this rule shall apply also in case of promotion to an ex cadre post if the Government servant has been appointed in the time-scale of pay pertaining to the higher ex cadre post without any condition being attached to the effect that while working on the higher ex cadre post he shall draw any deputation allowance or special pay in addition to the pay in the time-scale for the lower post;

Note 1.- The provisions of this rule shall not apply to cases of appointment from an ex cadre post to a cadre post.

Note 2.- In cases of appointment/promotion from one ex cadre post to another ex cadre post where the official opts to draw pay in the scale of the ex cadre post, the pay in the second or subsequent ex cadre posts should be fixed under F.R.22-B (1) with reference to pay in the cadre post only.

(iii) The pay of a Government servant on reversion to his old lower post or to some other post in the same time-scale of pay shall be such as he will have actually drawn if he had not been promoted to the higher post. If the pay of a Government servant has already been fixed under Fundamental Rule 27, then, on reversion, his pay will be re-fixed under Fundamental Rule 27 giving to him also the benefit of this service rendered in the higher post according to Fundamental Rule 26(g);

(iv) If a Government servant is reverted from a higher post to such lower post, the time-scale of pay of which is higher than that of the post in which he drew his pay before being appointed to the higher post, then, in that case, the pay admissible to him on such intermediary post shall be fixed according to this rule."

8. Since the petitioner has been promoted subsequent to said Ram Lal, he cannot claim parity with him.

9. With the aforesaid observation the writ petition is dismissed.