

2023 PLRonline 0338

Supreme Court of India

JUSTICE Abhay S. Oka JUSTICE Rajesh Bindal

Rajendra Prasad v. State of Uttar Pradesh & Ors.

CIVIL APPEAL NO.5610 OF 2023

4th September 2023

Petitioner Counsel: ROHIT KUMAR SINGH

Respondent Counsel: VISHWA PAL SINGH, SHWETANK SAILAKWAL

**Uttar Pradesh Subordinate Offices Ministerial Group “C” Posts of the Lowest Grade (Recruitment by Promotion) Rules, 2001 - R.5, R.8
Constitution of India, 1950 - Art.142, Art.226, Art.309 - For the last eight years, though there are vacancies, Group “C” posts have not been filled from the source of recruitment as provided in Rule 5 of the said Rules. In the bargain, the case of the appellants and other similarly situated persons has not been considered - A fit case to exercise our jurisdiction under Article 142 of the Constitution of India by directing the respondents to grant promotion to four candidates (three having the High School examination qualification and one having the qualification of passing the Intermediate examination) who are immediately below the candidates promoted in the process of 2014 in the merit list - Those who are appointed pursuant to this direction shall be treated as promoted on the date on which the order of promotion is issued - They will get seniority on the basis of their actual date of appointment. We make it clear that the selected four candidates will not be entitled to any monetary relief except payment of salary and other perquisites as admissible to Group “D” posts from the date on which the appellants or any other candidates, as the case may be, are appointed in terms of this judgment.**

Cases Cited :

JUDGEMENT

ABHAY S. OKA, J.

1. Leave granted.

FACTUAL ASPECTS

2. In this case, we are concerned with the recruitment to the ministerial Group “C” posts in the subordinate offices in accordance with the Uttar Pradesh

Subordinate Offices Ministerial Group “C” Posts of the Lowest Grade (Recruitment by Promotion) Rules, 2001 (for short, ‘the said Rules’). The said Rules have been framed in the exercise of powers conferred by the proviso to Article 309 of the Constitution of India. Rule 5 of the said Rules provides that recruitment to 20% of the vacancies of the ministerial Group “C” posts of the lowest grade shall be made by promotion through the Selection Committee from those who have been substantively appointed in Group “D” posts. Out of the 20%, 15% quota is for Group “D” employees who have passed the High School examination from the Board of High School and Intermediate Education, Uttar Pradesh, or any other examination equivalent thereto, subject to a condition that the candidate must have completed five years of service on the first day of the year of recruitment. The remaining 5% quota is for Group “D” employees who have passed the Intermediate examination from the Board of High School and Intermediate Education, Uttar Pradesh, or any other equivalent examination.

3. In the year 2010, the Promotion Committee prepared a seniority list of Group “D” employees working in the Collectorate, Sitapur, Uttar Pradesh for promotion to Group “C” posts in terms of the said Rules. On 4th December 2014, the District Magistrate, Sitapur promoted respondent nos.5 to 11. The contention of the appellants is that though they were senior to some of the selected candidates, they were not selected. A representation was made by the appellants about the denial of promotion to them. Initially, the appellants approached the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow by way of a writ petition under Article 226 of the Constitution of India. The High Court did not entertain the writ petition on the ground that the remedy of approaching the Uttar Pradesh State Public Services Tribunal, Lucknow (for short, ‘the Tribunal’) was available. The Tribunal found irregularities in the process. Thereafter, there was a remand by the High Court and ultimately, the prayer of the appellants was rejected. Being aggrieved by the rejection, a writ petition was filed by the appellants before the High Court. By the impugned judgment, the writ petition was dismissed on the ground that Rule 5 of the said Rules only prescribes the source of recruitment and the criteria and procedure for promotion have been prescribed by Rule 8 of the said Rules. The High Court held that those who obtained higher marks were promoted.

4. On 29th July 2019, this case came up before this Court and following was the order passed on that day:

“Application for deletion of respondent no.13 is allowed.

Mr. Pradeep Kant, learned Senior Counsel appearing on behalf of the petitioners submitted that under Rule 5 of the Rules of 2001 (Exhibit P-1), there is a promotional quota in making appointments to the clerical grade in Group ‘Gha’ which comprises of: (i)15% from amongst employees who have passed the High School Examination; and (ii)5% from employees who have passed the Intermediate Examination.

In the present case, it has been submitted that a combined list has been prepared as a result of which the 15% quota earmarked for those who had

passed the High School Examination is effectively obliterated. Issue notice, returnable in six weeks.”

5. After this case was fully heard on 25th April 2023, this Court passed the following order:

“The submissions are fully heard.

We direct the respondent-State Government to file an affidavit giving details of the promotion granted to the ministerial group ‘C’ posts of the lowest grade in subordinate office in terms of Rule 5 of the Uttar Pradesh Subordinate Offices Ministerial Group ‘C’ Posts of the Lowest Grade (Recruitment of Promotion) Rules, 2001. The details of the processes conducted from 2015 till date shall be incorporated. The affidavit shall specifically state that how many candidates belonging to category of 15% specified in Rule 5(1) were appointed. The affidavit to be filed within ten days.

Needless to add that the State will have to bring on record total number of vacancies in Group ‘C’ posts of the lowest grade so that the number of posts against 20% can be determined.

List the matter on 9th May, 2023 as part-heard.”

6. Pursuant to the aforesaid order dated 25th April 2023, an affidavit has been filed by Mr Gaurav Ranjan Srivastava, an Officer of the first respondent-State of U.P. The said affidavit discloses the following factual details:

- i. In the year 2014, there were five posts under the 15% quota for the candidates who had passed the High School examination and two posts under the quota for those candidates who had passed the Intermediate examination;
- ii. Those employees who ranked from serial nos.1 to 7 i.e. respondent nos.5 to 11 were promoted but the appellants were not promoted;
- iii. After the year 2015, the Selection Committee was not constituted for granting promotion in respect of the 20% quota as per Rule 5 of the said Rules; and
- iv. At present, 19 posts are vacant.

7. Thus, the posts available for the 20% quota are 3.8, which can be rounded off to 4. Therefore, three candidates who hold the qualification of the High School examination and one candidate who holds the qualification of the Intermediate examination can be considered against the said four posts forming part of the 20% quota. The process of promotion has not been conducted from 2015.

8. The provision regarding promotion, as contained in Rule 5 of the said Rules, ensures that Group “D” employees who possess basic educational qualifications have some incentive for performing well. A promotional avenue has been made available to the Group “D” employees. Now, for the last eight years, though there are vacancies, Group “C” posts have not been filled from the source of recruitment as provided in Rule 5 of the said Rules. In the bargain, the case of the appellants and other similarly situated persons has not been considered.

9. This is a fit case to exercise our jurisdiction under Article 142 of the

Constitution of India by directing the respondents to grant promotion to four candidates (three having the High School examination qualification and one having the qualification of passing the Intermediate examination) who are immediately below the candidates promoted in the process of 2014 in the merit list. Those who are appointed pursuant to this direction shall be treated as promoted on the date on which the order of promotion is issued. They will get seniority on the basis of their actual date of appointment. We make it clear that the selected four candidates will not be entitled to any monetary relief except payment of salary and other perquisites as admissible to Group “D” posts from the date on which the appellants or any other candidates, as the case may be, are appointed in terms of this judgment.

10. Necessary action shall be taken by respondent no.1-State of Uttar Pradesh within a period of two months from today.

11. We make it clear that as this direction is issued under Article 142 of the Constitution of India, this decision shall not be treated as a precedent. The Appeal is accordingly allowed. There will be no order as to costs.