

Ashutosh Pandey And 5 Others vs State Of U.P. Thru. Prin. Secy. Revenue, ... on 31 January, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:6955

AFR

Reserved

Writ A No.9913 of 2023

Ashutosh Pandey & Others

...Petitioners

Versus

State of U.P. & Others

.....Respondents

with

Writ A No.4808 of 2024

Siddhant Kumar & Others

...Petitioners

Versus

State of U.P. & Others

.....Respondents

Hon'ble Alok Mathur, J.

1. Heard Dr. Lalita Prasad Mishra, and Sri Jaideep Narain Mathur, Senior Advocate assisted by Sri Avinash Singh Vishen on behalf of the petitioners, Sri Kuldeep Pati Tripathi, learned Additional Advocate General for the State of U.P..

2. It has been submitted on behalf of petitioners that in pursuance of advertisement dated 11/01/2016 issued by the U.P Public Services Commission for appointment to various posts including the post of Naib-Tehsildar the petitioners had applied and appeared in the recruitment exam and were declared selected. In the select list prepared by the Public Service Commission the names of the petitioners find mention at serial No. 33, 35, 108, 115, 152 and 186 respectively. It has been submitted that the appointment letters to the petitioners were issued on the various dates between 03/09/2019 and 04/03/2021. It was submitted that the anomaly was committed by the State as appointment letters were issued randomly to the candidates whose documents stood verified. This resulted in issuance of appointment letters randomly permitting persons much lower in the select list prepared by the U.P Public Service Commission to join much prior to other candidates whose verification was completed subsequently. The petitioners duly joined on the post of Naib Tehsildar with much delay and after completion of the period of probation petitioner No.s 1, 3, 4, 5 and 6 were confirmed by order dated 20/04/2022 which was corrected on 05/09/2023 while petitioner No. 2 was confirmed by order dated 19/06/2023.

3. The respondents proceeded to prepare a gradation list of all the selected candidates on 18/09/2020 which did not include petitioners as they had joined the service between 03/07/2020 and 07/04/2021. It is submitted that subsequently on representation having been made by the petitioners the names were included.

4. In the meanwhile, before the petitioners had joined the services, the Board of Revenue, on the basis of the Seniority list prepared on 18/09/2020, sent a proposal to the State Government for relaxation of 6 months in qualifying service of the incumbents who had joined the service on or before 31/12/2019 as per the provisions of Rule 6 of Tehsildar Service Rules, 1966 (Second Amendment) 1999 and Rule 4 of Relaxation in Qualifying Service for Promotion Of Uttar Pradesh Government Servant Rules (1st Amendment) rules, 2013 and the State Government duly granted the relaxation by its order dated 14/08/2023. It is relevant to note that the State Government while granting relaxation had imposed certain conditions and the most relevant for the present case being condition No. 4 which provided that the Board of Revenue will ensure that under no circumstance person who is junior be granted the relaxation in eligibility condition ignoring the claim of any person who is senior in any manner whereby the senior may be deprived of his being excluded due to eligibility condition. The Board of Revenue proceeded to promote 141 Naib Tehsildar to the post of Tehsildar by order dated 16/08/2023.

5. It has further been submitted that the new provisional Seniority list has been issued by the Board of Revenue on 28/12/2023 where the name of the petitioners finds mention in accordance with the select list prepared by the U.P Public Service Commission. Another proposal dated 10/11/2023 has been sent by Board of Revenue to the State Government for promotion to the post of Tehsildar after

granting relaxation to the persons who had joined the service till 01/07/2020. The petitioners have not been included said proposal as they have joined after 01/07/2020. The Board of Revenue have proceeded to include even the members of 2017 batch for promotion, who were junior to the petitioners having been recruited in the subsequent recruitment year, without considering the claim of the petitioners, and when this fact came to the knowledge of the petitioners they have preferred the instant writ petition with the following prayers:-

"(a) to issue a writ, order or direction in nature of mandamus commanding the opposite parties to 1st consider and promote the petitioners as Tehsildar from the date from which persons placed below the petitioners in the select list/merit list of 2016 batch have been promoted as such with effect from 16/08/2023 before considering and promoting any other person belonging to Naib tehsildar selection 2016 having taken place below the petitioners in the select list/merit list of that selection below the petitioners and before considering and promoting any selective subsequent batch of batches after 2016 batch.

(b) To issue a writ, order or direction in nature of mandamus commanding the opposite parties to promote the petitioners and to treat them as Tehsildars with effect from 16/08/2023 with all consequential benefits.

(c) To issue a writ or direction in nature of mandamus commanding the opposite parties to grant relaxation in the 4 years of eligibility of service as Naib tehsildar for promotion to the post of tehsildar either of 250% or more than 50% as on one 723 if required at all."

6. The apprehension of the petitioners is that the respondents will proceed to consider and promote persons of 2017 batch only because of the fortuitous circumstance that they had joined the service before the petitioners. It has further been vehemently submitted that the cut-off date for joining having been fixed by the Board of revenue is illegal and arbitrary in as much as it adversely discriminates the petitioners and is based on the decision for which the respondents themselves were responsible. It was the action of the respondents in issuing delayed appointment letters in a staggered manner without adhering to the principle of seniority, and such appointment letters were issued with the gap of more than one half years for which the respondents themselves were responsible, and the such actions of the respondents the petitioners cannot be held be responsible and denied promotion on the basis of seniority.

7. In Writ A No.9913 of 2023 an interim order was passed on 23/01/2024 restraining the respondents from promoting anyone of 2016 batch who are below the petitioners in the select list as well anyone from subsequent selection on the post of Tehsildar. Against the interim order Special Appeal was preferred by petitioners of writ A No.4808 of 2024 (of 2017 batch) being Special Appeal Defective No. 388 of 2024. The special appeal was disposed of with the request of the writ Court to take up the matter, if possible, on the next day, if not then at the earliest say within one week to dispose of the application for impleadment and other applications which may have been filed by the appellants.

8. Against both the aforesaid orders a Special Leave Petition was preferred before the Hon'ble Supreme Court being Special Leave Petition (Civil) diary No. 44243/2024 which was disposed of on 14/10/2024 with a direction to this Court to consider the application for impleadment and other pending applications for variations/vacation/ modification of the interim order dated 23/01/2024 and take appropriate decision thereon for the continuance of the interim orders on the same terms.

9. Apart from the above a writ petition has also been filed by the 7 applicants' of 2017 batch being Writ A No.4808 of 2023 seeking the following prayer:-

"(a) mandamus directing the opposite party No. 1 to 4 to grant relaxation in qualifying service as per proposal dated 10/11/2023.

(b) Mandamus directing the opposite party No. 1 to 4 to promote the petitioners and trade them as Tehsildars with effect from 01/01/2024 on the post of tehsildar."

10. The petitioners of writ A No.4808 of 2024 also moved an application for impleadment in writ A No.9913 of 2023 and pressed the applications for vacation of the interim order. This Court on 02/08/2024 has recorded that the counsel for the applicant has submitted that they have themselves filed writ "A" No. 4808 of 2024 which is already connected with the present petition, and it is further stated that all the possible pleadings have already been made by the applicants not only in the application but also in the connected matter. Therefore, they have been heard extensively as petitioners of writ A No.4808 of 2024 and as intervenors in writ A No. 9913 of 2023 and both the writs are being decided finally by means of the present order.

11. Sri Jaideep Narain Mathur, Senior Advocate assisted by Sri Avinash Singh Vishen have been heard in support of the affidavits filed in writ A No. 9913 of 2023 as well as in writ A No.4808 of 2024. The main thrust of the arguments was that the respondents should be directed to proceed with the exercise for promotions to the post of Tehsildar by firstly granting relaxation I eligibility conditions as per the proposal of the respondents dated 10/11/2023 where the names of the petitioners were also included and further proceeded to consider their name for promotion to the post of Tehsildar considering the fact that the petitioners are eligible in as much as they have completed the eligibility criteria laid down under the rules. It was vehemently prayed that the interim order restraining the respondents from proceeding with the promotion be vacated.

12. It was further contended that as per Rule 6 of the Uttar Pradesh Subordinate Revenue (Tehsildar) Service Rules, 1966 the eligibility for promotion to the post of Tehsildar would include such employees who have completed at least 5 years of service on the substantive post on 1st of July of the year in which the recruitment is taking place, but in case sufficient number of candidates are not available then such candidates who have been confirmed and they have completed 4 years of service can be considered.

13. The respondents have contended that there is acute shortage of Tehsildars in the State of U.P. in as much as against total sanctioned strength of 766 posts only 386 Tehsildars are working, and 380 posts are vacant due to the fact that candidates having minimum qualifying service of 4 years in the

feeding cadre are not available.

14. To overcome the aforesaid difficulty, the respondents resorted to relax the period of qualifying service utilising the provisions of the U.P Government Servant Relaxation in Qualifying Service for Promotion Rules, 2006 as amended in 2013 (hereinafter referred to as the relaxation rules). According to Rule 2 of the said rules have effect notwithstanding anything contained in any other service rule made by the Governor, while rule 4 provided for relaxation in the minimum length of service up to 50% which can be done by the concerned administrative department in consultation with the Personnel Department excluding the period of probation as laid down for the said lower post or posts.

15. Rule 4 was amended in 2013 and a proviso was added which provided that if in special circumstances the administrative department find that there is justification for granting more than 50% relaxation in the minimum length of service prescribed on the lower post or posts as the case may be for promotion, then in such situations a proper proposal shall be submitted by the administrative department through the personal department for approval before the committee consisting of Chief Secretary, Principal Secretary, Personnel department and Principal Secretary to the Government in the considered administrative department.

16. It has been contended on behalf of the petitioners that they have completed more than 3 years of service and now they would be eligible to be promoted to the post of Tehsildar in case suitable relaxation is granted in their favour. It was submitted that even the State Government while granting relaxation on the proposal sent by the Board of revenue by order dated 14/08/2023 had provided in paragraph 4 that the Board of revenue should ensure that no junior person is given relaxation ignoring the claim of a senior and ensure that no senior person in the seniority list is deprived of promotion only on this account.

17. Learned Additional Advocate General has submitted that the State Government is ready and willing to consider all the eligible candidates for promotion to the post of Tehsildar considering the fact that there are large number of vacancies in existence and there is a urgent need to fill the post of Tehsildar considering the fact that there has to be at least one Tehsildar in each Tehsil and the work of the revenue would suffer immensely in case the promotions are not made expeditiously and therefore submitted that the interim order be vacated and the respondent be permitted to make the promotions. In the counter affidavit which was filed on 24/02/2024 it was stated that only because the petitioners have not completed 3 years of qualifying service their case could not be considered for promotion.

18. Learned Additional Advocate General has further informed this Court and placed before us and also supplied a copies to the other counsels, another proposal dated 17.10.2024 which has been sent by the Board of Revenue to the State Government with regard to the promotion to the post of Tehsildar from the cadre of Naib Tehsildar. It has been stated that according to Rule 6 either a person should have five years' experience on the post of Naib Tehsildar or should have worked on the said post for four years and in case such persons are not available for promotion then the requirement of eligibility condition can be relaxed so that adequate number of persons can be

promoted to the post of Tehsildar. They have further noticed the provisions of relaxation rules as amended in 2013 wherein it is provided that 50 per cent eligibility can be relaxed by the Administrative Department and in case more than 50 per cent eligibility condition of service is required to be relaxed then the matter has to be considered by a committee headed by Chief Secretary. It is in aforesaid circumstances that they have proposed to relax the eligibility condition of minimum required length of service so as to include the persons who have joined on the post of Naib Tehsildar till 31.12.2020 and accordingly 23 persons working on the post of Naib Tehsildar on the first date of the selection year 2024-25 and have completed three years and six months would be granted maximum of 50 per cent relaxation and persons who have joined between 31.12.2020 till 1.7.2021 who are 13 in number and have completed three years on the first date of the selection year 2024-25, would also be granted 50 per cent relaxation and accordingly the said proposal includes the names of 36 persons. It has been stated that in case the proposal is accepted by the Government then all the petitioners now would be duly considered for promotion to the post of Tehsildar. It was submitted that the grievance of the petitioners of writ A No. 9193 of 2023 would stand redressed and prayed for vacation of the interim order of dismissal of the writ petition.

19. We have heard the rival contentions and also perused the record.

20. The controversy in the present case has its roots in the manner in which the State Government had issued the appointment letters to the 2016 batch selected candidates after submission of the select list by the U.P Public Service Commission. Undoubtedly, the State Government has to verify the criminal antecedents of the candidates, but such verification has to be conducted and concluded in time bound manner, and in any case on completion of the said exercise appointment letters have to be issued as far as possible either together or as per the merit list. The respondents on the other hand have issued the appointment letters in a haphazard and staggered manner and according to them as and when the verification of the particular candidate was complete, appointment letters were issued. This exercise was conducted totally ignoring the place of the candidate in the merit list. Not only this but this exercise took more than 1 ½ years. Apart from this, the problem was compounded by the fact that some persons who were employed in various government or semi-Government, departments or even in the private sector had to tender their resignations and seek their relieving before they could have joined, for which further time was consumed and hence the joining was also delayed.

21. It is in the meanwhile that the recruitment of 2017 batch was completed, and the selected candidates had joined service prior to some of the persons including the petitioners who belong to 2016 batch. Considering the number of vacancies in the cadre of Tehsildar, and also considering that the said post was to be filled totally by promotion from the cadre of Naib Tehsildar and Revenue Inspectors, and also that there were various directions of the High Court directing the State to fill - up the vacancies at the earliest and considering that Tehsildar is an important post in the Tehsil to decide various issues under the provisions of the U.P Revenue Code, the respondents initiated the process for preparation of the seniority list even before all the appointment letters been issued and the procedure for appointment completed.

22. The major hindrance which was faced in making the said promotions (selection year 23-24) was that adequate number of persons were not available who had requisite eligibility as provided under Rule 6 of the Uttar Pradesh Subordinate Revenue (Tehsildar) Service Rules, 1966. They proceeded to finalise the seniority list even before the entire exercise for appointment of 2016 batch was complete, and considered 141 persons working on the post of Naib Tehsildar who had joined the service till 31/12/2019 and due relaxation was granted vide Government Order dated 14/08/2023 subsequent to which the order of promotion was passed on 16/08/2023. As the petitioners had not joined service till 31/12/2019 they were not considered for the said promotions, while more than 50 persons who were junior to the petitioners in the Select List prepared by the U.P Public Services Commission were considered and promoted to the post of Tehsildar.

23. The promotion to the post of Tehsildar has to be made in accordance with the Uttar Pradesh Government Servant Criteria for Recruitment by Promotion Rules, 1998 which provide for the promotion to be made on the basis of seniority subject to rejection of the unfit. The manner in which the respondents have proceeded to make the promotions is clearly questionable. When the State had received a select list of candidates from the U.P Public Services Commission, we see no reason as to why appointment letters were issued between September, 2019 and March 2021 in a staggered manner not adhering to the merit list, leaving it open to the whims and fancies of the respondents to issue appointment letter to certain persons earlier than the remaining candidates who may be higher in the merit list. It is due to this arbitrary action that persons lower in the merit list were able to join the service much earlier and claim promotion to the next higher post on the basis of the length of service. This has resulted in the breach of the principle of seniority.

24. At this stage, it is necessary to keep in mind that Rule 6 of the Uttar Pradesh Subordinate Revenue (Tehsildar) Service Rules, 1966 provides the eligibility conditions for promotion to the post of Tehsildar, which would be relevant to prepare the list for the prospective candidates which would be considered by the Departmental Promotion Committee. The criteria Rules of 1994 provide for the manner for consideration for promotion by the departmental promotion committee, which is seniority subject to rejection of unfit. Therefore, the fitness of each candidate before the departmental promotion committee must be considered on the basis of seniority subject to rejection of unfit, meaning thereby the person who is senior in the seniority list would have a right to be considered prior to the person who is lower in the seniority list.

25. According to Rule 9 of the Seniority Rules, the seniority list has to be prepared "as soon as may be after appointments are made to a service", while in the present case before issuance of the appointment letter to all the selected candidates of 2016 batch, and before the recruitment process could be completed by issue of appointment letters to all the selected candidates, the respondents initiated the task of preparation of the seniority list. The said action resulted in exclusion of number of candidates who by that time had not been issued appointment letters and had not joined the service, even though they were much senior to the persons who had been issued appointment letters and had joined the service. Even though this aspect of the matter pertaining to the issuance of the appointment letters is not controlled or provided for in any rules, but as a matter of prudence and propriety the respondent should have issued the appointment letters serially in order of merit.

26. The State in matter of public employment cannot resort to the pick and choose policy but has to act in accordance with rules and well-established principles of equality. Our Constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequal's are not treated as equals. Thus, any public employment must be in terms of the Constitutional scheme. The process of fair selection is undertaken to secure the best and meritorious candidates in their respective category, which is communicated to the State Government by the recruiting agency or the Public Service Commission by means of a select list. The State Government, if it chooses to act upon the select list, has to adhere to the said list in the manner it has been forwarded and does not have any right to change or alter the said list.

27. Issuing appointment letters and permitting juniors to join before the persons who are senior in the select list, has resulted in junior persons having joined earlier and were in service for period of more than one year when the appointment letters were issued to the persons senior to them. The action of the respondents has resulted in a situation where persons who are junior have a longer length of service from the date of actual joining than the persons who are senior in the select list. This action has resulted in violation of the rule of seniority which is clearly arbitrary. The action in issuing the appointment letters arbitrarily has been further compounded when seniority list was prepared when the process of issuance of appointment letters to the selected candidates of 2016 batch was underway, and of candidates had not been issued appointment letters. Further promotions were made to the post of Tehsildar from the seniority list which was prepared where the petitioners who are much senior to the persons who were permitted to join prior to them and were excluded from such consideration. In effect, the seniority which was to be maintained as per the select list came to be sacrificed at the altar of expediency and that to by statutory authority like the Board of Revenue.

28. There is no dispute with regard to the fact that subsequently a seniority list are being prepared where Naib-Tehsildars of 2016 batch has been placed higher in the seniority list than the Naib-Tehsildars of 2017 batch, and accordingly persons of 2016 batch have a right to be considered for promotion before the persons of 2017 batch.

29. Responding to the request Board of Revenue by means of order dated 14/08/2023 the State Government had issued directions to the effect that it has to be ensured that the concept of seniority has to be adhered inasmuch as the relaxation in service be not granted in such a way so as to exclude the seniors from the zone of consideration on the grounds of eligibility. The State Government not only laid down the policy to be followed by the Board of Revenue directing them to follow the principles of seniority while granting relaxation, but when it was brought to their notice that the said rule was violated and complaints were received from petitioners and other persons of 2016 batch, sought a response from the Board of Revenue by means of a letter dated 01/09/2023, but no such response is available on record.

30. Learned Additional Advocate General has produced a copy of letter dated 17/10/2024 written by the Commissioner and Secretary Board of Revenue to the State Government containing a proposal

to promote the persons who have joined on the post of Naib- Tehsildar by 31/12/2020 which according to them are 23 in number, and further 13 persons who joined subsequently by 01/07/2021 which is the 1st day of the selection year 24 - 25 years and have completed 3 years and 31/2 years respectively on the post of Naib- Tehsildar, have been sought be granted relaxation of minimum of service required for promotion. It has further been submitted that on the acceptance of said proposal the petitioners would be duly considered for being promoted to the post of Tehsildar and consequently their grievance stands redressed. Dr Lalta Prasad Mishra learned counsel for the petitioner after perusal of the said order dated 17/10/2024 submitted that he does not dispute the fact that in case the said proposal is accepted the petitioner also would be promoted to the post of Tehsildar but further submitted that a prayer has been made for promoting the petitioners from the date their juniors have been promoted needs to be considered.

31. The proposal dated 17/10/2024 has been forwarded to the State Government seeking relaxation in the service of the petitioners of writ A No. 9913 of 2023 and in case it is accepted, and the relaxation is granted the petitioners therein would be considered for promotion prior to the consideration for promotion of 2017 batch candidates, and to that extent their grievance would stands redressed. On the other hand, the claim of petitioners in writ A No. 4808 of 2024 is only to the extent of directing the respondents to proceed with the promotions, and their grievance would also stands redressed if the respondents are directed to proceed to consider and decide the issue pertaining to relaxation sought by the Board of Revenue as per the proposal dated 17/10/2024 and to further consider the case of the eligible candidates for promotion.

32. Both the contesting parties, the petitioners of writ A No. 9913 of 2023 who are of 2016 batch and the petitioners of writ A No.4808 of 2024 who are of 2017 batch are claiming promotion prior to the other. Petitioners of writ A No.9913 of 2023 are claiming themselves to be senior having been appointed as Naib-Tehsildar in the previous selection year than candidates' of 2017 batch, as the criterion for promotion is the seniority subject to rejection of unfit. On the other hand, the petitioners of writ A No.4808 of 2024 claim that they have joined the service prior to the petitioners of writ A No. 9913 of 2023 and, therefore, on the basis of length of service they are eligible for promotion and the respondents should be directed to conduct the promotions immediately. They had sought the aforesaid direction keeping in mind the proposal of the Board of Revenue dated 10/11/2023 where the petitioners of writ A No.9913 of 2023 were excluded from being granted relaxation and further promotion while the petitioners of writ A No.4808 of 2024 belonging to the 2017 batch were included.

33. Sri Kuldeep Pati Tripathi, Learned Additional Advocate General has fairly submitted that the State Government would be proceeding to consider the proposal of the Board of Revenue dated 17/10/2024, and further relaxation would be granted, and further promotions would be done only in accordance with the said proposal ignoring the previous proposal dated 10 /11/2023.

34. Dr Lalta Prasad Mishra appearing on behalf of the petitioners of writ A No. 9913 of 2023 expressed his satisfaction after being informed that all the petitioners now would be considered for grant of relaxation of the eligibility conditions and would be considered for promotion prior to the 2017 batch of the list attached with the letter dated 17/10/2024. Accordingly considering that the

previous proposal dated 10/11/2023 which was the basis of the grievance of the petitioners of writ A No. 9913 of 2023 has lost its relevance and is no longer under active consideration of the State Government having been superseded by the proposal dated 17/10/2024, therefore, we need not adjudicate on merits upon the validity of the said proposal considering that the said proposal does not exist and accordingly the grievance of the petitioners of writ A No. 9913 of 2023 to that extent stands redressed. Accordingly no direction can be issued for the State to proceed to consider the proposal of the Board of Revenue dated 10/11/2023.

35. We have also taken into account the prayer made by petitioners of 2017 batch who had only moved an application for vacation of the interim order dated 23/01/2024, and accordingly in the aforesaid substantially changed circumstances, cases made out to vacate the interim order dated 23/01/2024 to enable the respondents to grant relaxation and further to proceed to consider the proposal dated 17/10/2024 for grant of relaxation of eligibility conditions and consider the promotion to the post of Tehsildar with expedition. In the counter affidavit filed by the State Government it has been stated a fresh and order list is under preparation and then tentative seniority list was circulated in objections had been received. Till filing of the said affidavit, it seems that the seniority list was not finalised. As per settled proposition of law the respondent shall proceed for promotion only the basis of the final seniority list and not on basis of a tentative seniority list.

36. Hon'ble Supreme Court in the case of State of U.P. Vs. Vikash Kumar Singh (2022) 1 SCC 347 has upheld that grant of relaxation in the minimum length of service is at the discretion of competent authority and cannot be claimed as a matter of rights. Relevant paragraphs of the same judgment is quotes as under:-

"7. At the outset, it is required to be noted that the learned Single Judge issued the writ of mandamus commanding the competent authority to grant the relaxation as per Rule 4 of the 2006 Relaxation Rules in qualifying service and consequently has quashed and set aside the eligibility lists dated 18-3-2019 and 10-5-2019. At the outset, it is required to be noted that as such as per Rule 5(iii) of the 1990 Rules, one of the conditions to be eligible is that the Superintending Engineer must have completed 25 years of service (including at least three years' service as Superintending Engineer). It is an admitted position that the original writ petitioners did not fulfil the eligibility criteria as they did not have the qualifying service of having completed 25 years of service. Thus, the eligibility lists were prepared by the department absolutely as per Rules 5(iii) and 8(iii) of the 1990 Rules. The names of the original writ petitioners were excluded from the eligibility list of Superintending Engineer for promotion to the post of Chief Engineer on the ground that they did not fulfil the eligibility criteria as per Rule 5(iii) of the 1990 Rules. Therefore, as such, the High Court ought not to have set aside the said eligibility lists, which as such were prepared absolutely in accordance with the 1990 Rules.

7.1. The learned Single Judge thereafter while quashing and setting aside the eligibility lists dated 18-3-2019 and 10-5-2019 has issued the writ of mandamus

commanding or directing the competent authority to grant relaxation in qualifying service, which as such was permissible under Rule 4 of the 2006 Relaxation Rules. The word used in Rule 4 of the 2006 Relaxation Rules is "may". Therefore, the relaxation may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because the Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service. Therefore, the High Court has committed a grave error in issuing the writ of mandamus commanding the competent authority to grant relaxation in the qualifying service. Consequently, the High Court has also erred in quashing and setting aside the eligibility lists dated 18-3-2019 and 10-5-2019, which as such were prepared absolutely in consonance with the 1990 and 2006 Rules. The impugned judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court are not sustainable in law.

8. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the Division Bench passed in State of U.P. v. Vikash Kumar Singh [State of U.P. v. Vikash Kumar Singh, 2020 SCC OnLine All 1600] and the judgment and order passed by the learned Single Judge dated 11-12-2019 passed in Vikash Kumar Singh v. State of U.P. [Vikash Kumar Singh v. State of U.P., 2019 SCC OnLine All 6930] are hereby quashed and set aside. Consequently, the writ petition filed by the original writ petitioners being Writ Petition No. 14962 (S/S) of 2019 stands dismissed. The present appeal is allowed accordingly, however, there shall be no order as to costs. Pending applications, if any, also stand disposed of."

37. Considering that the prayer made by the petitioners of Writ A No.4808 of 2024 is for granting relaxation in qualifying service as per proposal dated 10/11/2023 and the said proposal has since been superseded by the fresh proposal dated 17/10/2024, no such directions as sought by the petitioners can be passed as the said proposal has been given up by the respondents themselves. The 2nd prayer is for a direction to promote the petitioners and treat them as Tehsildars with effect from 01/01/2024 on the post of Tehsildar also cannot be granted as it could not be demonstrated that any junior to the petitioners has been promoted with effect from that date, any other right is vested in the petitioners for being promoted with effect from 01/01/2024. Accordingly the said prayer is rejected.

38. Considering that in case the fresh proposal dated 17/10/2023 is accepted then all the petitioners of both the writ petitions would be duly considered for promotion to the post of Tehsildar and hence this Court is of the considered view that looking into the number of vacancies in the cadre of Tehsildar, and considering that persons who were duly qualified and eligible are not available and hence a decision has been taken by the respondents to relax the eligibility criteria and the proposal has already been forwarded to the State Government in this regard, and accordingly we direct the State Government to consider and decide the proposal dated 17/10/2024 expeditiously, with further direction to consider and make the promotions to the post of Tehsildar also expeditiously.

39. At this point it would be relevant to quote the rendition of Hon'ble Supreme Court in the case of Union of India Vs. Manpreet Singh, (2022) 6 SCC 105 where it has been held that employee only has the right to be considered for promotion but there is no right to be promoted, if conditions are satisfied. The relevant portion of the said judgement is quoted as under:-

"18. A mere existence of vacancy per se will not create a right in favour of an employee for retrospective promotion when the vacancies in the promotional post are specifically prescribed under the rules, which also mandate the clearance through a selection process. It is also to be borne in mind that when we deal with a case of promotion, there can never be a parity between two separate sets of rules. In other words, a right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules.

19. In the present case, the authority acting within the rules has rightly granted promotion after clearance of DPC on 17-4-2012 with effect from 1-7-2011, when the actual vacancies arose, which in any case is a benefit granted to the respondent in Civil Appeal No. 518 of 2017. In our view, this exercise of power by the authority of granting retrospective promotion with effect from the date on which actual vacancies arose is based on objective considerations and a valid classification.

20. This Court in Union of India v. K.K. Vadera [Union of India v. K.K. Vadera, 1989 Supp (2) SCC 625 : 1990 SCC (L&S) 127] has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen, and has observed that : (SCC p. 627, para 5) "5. ... We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post after a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal."

21. Similarly, this Court in Ganga Vishan Gujrati v. State of Rajasthan [Ganga Vishan Gujrati v. State of Rajasthan, (2019) 16 SCC 28 : (2021) 1 SCC (L&S) 403] has held that : (SCC pp. 52-53, para 45)

45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into

the grade. This principle emerges from the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339] . The principle was reiterated by this Court in *State of Bihar v. Akhoury Sachindra Nath* [State of Bihar v. Akhoury Sachindra Nath, 1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070] and *State of Uttaranchal v. Dinesh Kumar Sharma* [State of Uttaranchal v. Dinesh Kumar Sharma, (2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] . In *Pawan Pratap Singh v. Reevan Singh* [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , this Court revisited the precedents on the subject and observed : (Pawan Pratap Singh case [Lift Irrigation Corpn. Ltd. v. Pravat Kiran Mohanty, (1991) 2 SCC 295 : 1991 SCC (L&S) 472] , SCC pp. 281-82, para 45) '45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.' This view has been re-affirmed by a Bench of three Judges of this Court in *P. Sudhakar Rao v. U. Govinda Rao* [P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693 : (2014) 1 SCC (L&S) 690] ."

40. Regarding the prayer made in Writ A No. 9913 of 2023 for promoting the petitioners from 16/08/2023, which is the date from which the juniors to the petitioner of 2016 batch were considered and promoted, we direct the respondents to consider the grievance of the petitioners in this regard during the consideration of their promotion to the post of Tehsildar, and pass appropriate orders in accordance with law.

41. The interim order of this Court dated 23/01/2024 is hereby vacated, and the writ A No.9913 of 2023 is accordingly disposed of with the directions passed hereinabove, while writ A No.4808 of 2024 is dismissed.

42. Cost made easy.

Order Date: 31.1.2025

(Alok Mathur, J.)

RKM