

Sudha Sahdev vs State Of Thru. Prin. Secy. Deptt Of ... on 31 January, 2025

Author: Abdul Moin

Bench: Abdul Moin

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:6900

Court No. - 5

Case :- WRIT - A No. - 1273 of 2025

Petitioner :- Sudha Sahdev

Respondent :- State Of Thru. Prin. Secy. Deptt Of Medical Edu., Govt. Of U.P. Lko. And 3

Counsel for Petitioner :- Srideep Chatterjee,Mohammad Shameem Rizvi

Counsel for Respondent :- C.S.C.,Shubham Tripathi

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the petitioner, learned Standing counsel appearing on behalf of respondent No.1 and Shri Shubham Tripathi, learned counsel appearing on behalf of respondents No.2 to 4.
2. With the consent of learned counsels for the contesting parties, the writ petition is being finally decided.
3. There is a consensus at Bar that the facts of the case have already been set forth in detail by this Court in the order dated 29.01.2025 along with the queries as have been raised by the Court.

4. For the sake of convenience, the order dated 29.01.2025 is reproduced as under:

"1. Heard.

2. Contention of the learned counsel for the petitioner is that by means of the order impugned dated 18.01.2025, a copy of which is Annexure-1 to the petition, the respondent-University has rejected the claim of the petitioner for promotion to the post of Principal Private Secretary.

3. It is contended that in one part of the order, the respondents have indicated that confidential records of 5 preceding years are only to be seen while in the operative portion of the rejection order they have indicated that 8 years confidential records are to be seen, which indicates that the respondents themselves are unsure of number of the years the records are to be seen.

4. Other contention is that considering that the respondents themselves in one part of the order have indicated that only 5 years' confidential records are to be seen consequently the records for the years 2019 to 2023 were to be seen.

5. It is further contended that as per the benchmark, which has been adopted as indicated in the order impugned, which is 'good' which as per the preceding 5 years' confidential records should be good in all 5 years. In case any entry which is below the bench mark of 'good' the same should have been communicated by the respondents to the petitioner and upon the same having not communicated, it could not have been relied upon for the purpose of rejection of claim of the petitioner for promotion more particularly when the promotion is based on seniority cum fitness.

6. Shri Shubham Tripathi, learned counsel appearing for the respondent-University prays for and is granted 24 Hours' time to seek instructions on the following aspects:-

(a) As to how many years' confidential records are to be seen;

(b) As to the benchmark which has been prescribed for consideration of promotion; and

(c) As to whether any entry which is below the benchmark for the aforesaid years has ever been communicated to the petitioner.

7. Considering that the petitioner is said to be retiring on 31.01.2025, list this case day after tomorrow."

5. Shri Shubham Tripathi, learned counsel appearing on behalf of respondent(s)-University with regard to the queries as have been raised by this Court in para 6 of the order dated 29.01.2025, on the basis of instructions sent by Deputy Registrar of the University dated 30.01.2025 and

31.01.2025, states that (i) an information was sought by the University from the SGPGI with which rules the University is governed as to the benchmark which has to be followed and it has been informed that five preceding years confidential records are to be seen;

(b) as regards the benchmark, the benchmark prescribed for the said post is "good"; and

(c) as regards the entry which was below the benchmark, it is contended that the entry which was below the benchmark of "good" was "satisfactory" for the year 2019-20 which was not communicated to the petitioner as the same was not found to be per se adverse.

6. Shri Tripathi states that five preceding years would be the years from 2019-20 to 2023-24.

7. Learned counsel for the petitioner contends that the issue in question has been considered threadbare by the Hon'ble Supreme Court in the case of R.K. Jibanlata Devi vs. High Court of Manipur and Others 2023 SCC OnLine SC 178 wherein the Hon'ble after considering its earlier judgments has held as under:

"20. In the present case the petitioner got "Good" gradings for the year 2016-17 and received "Very Good" gradings in her ACRS for the years 2017-18 and 2018-2019. It was the specific case on behalf of the petitioner which has not been denied that the ACRs grading of "Good" for the year 2016-17 was never communicated to the petitioner even till the DPC met. Therefore, as per the law laid down by this Court in catena of decisions more particularly, as observed and held by this Court in Rukhsana Shaheen Khan (supra); Sukhdev Singh (supra) and Dev Dutt v. Union of India, (2008) 8 SCC 725 uncommunicated adverse ACRs may be even with "Good" entry which can be said to be adverse in the context of eligibility for promotion is not to be relied upon for consideration of promotion.

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23. The sum and substance of the aforesaid discussion would be that as the ACR Grading of "Good" for the year 2016-17 was not communicated till the DPC met, the same is to be ignored and/or be not relied upon for consideration of promotion. Similarly, the grading for the year 2019-2020 also is to be excluded and/or be not relied upon for consideration for promotion as the same was communicated on 08.04.2021 and the petitioner was granted 15 days' time to make representation and before the representation could be made the DPC met on 09.04.2021 and considered the case of the petitioner for promotion.

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26. In view of the above and for the reasons stated above, the case of the petitioner for promotion to the post of Assistant Registrar as on 09.04.2021 is required to be considered afresh ignoring the uncommunicated ACRs for the years 2016-17 and

2019-20 and her case is required to be considered afresh taking into consideration the ACRS for the years 2017-18 & 2018-19 for which the petitioner was having "Very Good" gradings.

27. In view of the above and for the reasons stated above, present petition is allowed. The DPC proceedings dated 09.04.2021 denying the promotion to the petitioner for the post of Assistant Registrar are hereby quashed and set aside. The case of the petitioner for promotion to the post of Assistant Registrar as on 09.04.2021 i.e., the date on which the juniors came to be promoted is directed to be considered afresh ignoring the uncommunicated ACRS for the years 2016-17 and 2019-20 and thereafter the DPC/competent authority to take a fresh decision in accordance with law and taking into consideration the ACRS of remaining years, i.e., 2017-18 and 2018-19. Such an exercise be completed within a period of six weeks from today.

28. In case after fresh exercise as above the petitioner is promoted to the post of Assistant Registrar, it goes without saying that she shall be entitled to all the consequential benefits including the arrears, seniority etc. w.e.f. 09.04.2021 the day on which the juniors came to be promoted."

8. From perusal of the aforesaid judgment of R.K. Jibanlata Devi (supra), it emerges that the Hon'ble Supreme Court has held that the ACRs, which are below the benchmark and which have not been communicated, cannot be relied upon for consideration of promotion. The Hon'ble Supreme Court has further held that the case of promotion would have to be considered with effect from the date the juniors were promoted afresh ignoring the uncommunicated ACRs for the relevant years.

9. Learned Standing counsel for the respondent No.1 as well as Shri Shubham Tripathi, learned counsel for the respondent-University do not dispute the aforesaid position of law laid down by the Hon'ble Supreme Court.

10. From a perusal of the facts as emerge in the instant case, it would be apparent that the entry which was below the benchmark of "good" for the year 2019-20, which was "satisfactory", was not communicated to the petitioner and the same has been considered by the DPC. Admittedly, one of the juniors of the petitioner namely Shri Rachna Malik has been promoted while the claim of the petitioner for promotion has been rejected.

11. So far as the argument of Shri Shubham Tripathi that the entry for the year 2019-20 having not been found to be per se adverse was not communicated is concerned, the same may not detain the Court keeping in view the law laid down by the Hon'ble Supreme Court in the case of R.K. Jibanlata Devi (supra).

12. In view of the aforesaid discussion, the writ petition is allowed. The order impugned dated 18.01.2025, a copy of which is annexure 1 to the petition, is quashed. The respondent-University is directed to consider the claim of the petitioner for promotion to the post of Principal Private Secretary of the University ignoring the uncommunicated ACR for the year 2019-20. The DPC /

competent authority shall take a fresh decision in accordance with law within a period of four weeks from the date of receipt of a certified copy of this order. In case the petitioner is found fit, she would be entitled for promotion with effect from the date from which promotion has been granted to the petitioner's junior with all consequential benefits.

13. As regards the claim of the petitioner for grant of the 2nd upgradation under the NACP is concerned, it would be open for the petitioner to submit a representation in this regard to the competent authority within a period of two weeks along with certified copy of this order. In case the said representation is submitted then the competent authority shall proceed to decide the same in accordance with law and the relevant rules. Let such a decision be taken within a period of four weeks from the date of receipt of the said representation.

Order Date :- 31.1.2025 S. Shivhare