

Mahmood Hasan & Others vs State Of U.P. & Others on 7 January, 1997

Bench: S.P. Bharucha, G.T. Nanavati

PETITIONER:
MAHMOOD HASAN & OTHERS

Vs.

RESPONDENT:
STATE OF U.P. & OTHERS

DATE OF JUDGMENT: 07/01/1997

BENCH:
S.P. BHARUCHA, G.T. NANAVALI

ACT:

HEADNOTE:

JUDGMENT:

WITH W.P. (CIVIL) NOS. 237/92, 106/92, 263/92, 294/92, 522/92, 582/92, 512/92, 43/92, 368/92 851/92 571/92 578/92, 220/93, 309/93, 218/93, 329/92, CIVIL APPEAL NO 25 of 1997 [ARISING OUT OF S.L.P. (CIVIL) NO. 8726/92], CONTEMPT PETITION NO. 373/91 IN W.P. (CIVIL) NO. 152/89, R.P. (CIVIL) NO. 820/94 IN W.P. (CIVIL) NO. 1128/89.

J U D G M E N T Ahmadi, CJI Leave granted in S.L.P. (Civil) No. 8726 of 1992. These writ petitions, with a Civil Appeal, a Contempt Petition and a review petition have arisen out of several orders passed by this Court as well as by the High Court of Allahabad, coupled with certain acts and omissions on the part of the State of Uttar Pradesh. The main dispute relates to the seniority and promotion of employees in the clerical cadre of the Food and Civil supplies Department of the State of Uttar Pradesh. The Uttar Pradesh Food and Civil Supply Department consists of 3 wings, viz., Marketing Wing, Supply Wing and Weights and Measures Wing. The head of all the three wings is the Commissioner, Food & Civil Supplies. The channels of promotion in the Marketing Wing and in the Supply Wing from the lower rank to the higher rank are as under:

Marketing Wing	Supply Wing
Marketing Inspector	Supply Inspector

Accountant/Head Clerk	Accountant/Head Clerk
Senior Clerk	Sr. Account Clerk
Clerk	Clerk

Appointment to the post of Marketing Inspectors and Supply Inspectors are made from two sources: (i) by direct recruitment; and (ii) by promotion from the lower cadres mentioned above, in the ratio of 1:1.

To put the facts chronologically, it would be proper to refer to an order of this Court dated 20.1.1984 in a batch of special leave petitions from the judgment and order of the High Court of Allahabad dated September 29, 1983 reported as Sheo Dutt Sharma v. State of U.P. & Others 1984 (Supp) SCC 190. The petitioners in that group of petitions were promoters to the cadre of Marketing Inspectors. Although a seniority list was proposed to be prepared, promotions to the rank of Marketing Inspectors were occasionally made on temporary or on ad hoc basis during the procurement seasons, and reversions at the end of such seasons followed as a matter of course. As a large number of Marketing Inspectors were sought to be reverted in this process, they filed a Civil Miscellaneous Writ No. 6763 of 1983 in the High Court of Allahabad and obtained an interim stay from the vacation Judge and thus continued to function under Court orders as Marketing Inspectors. The Writ Petition was subsequently dismissed by a Division Bench of the High Court which held that the promotions were ad hoc and upto and inclusive of August 31, 1983 and therefore, they had no right to the post of Marketing Inspector. The High Court, however, ordered that those of the promoters who could be accommodated within the 50% quota for them in the regular posts, subject to reservations for Scheduled Castes and Backward Classes, should be so accommodated. The State of Uttar Pradesh submitted before this Court in appeal that a seniority list of clerical staff dated 10.1.1983 would be treated as the final seniority list and would be the basis for promotion to the regular post of Marketing Inspectors and that promotions for seasonal requirements would be made on ad hoc basis. This Court directed, vide order dated 20.1.1984, that such seasonal promotions must be made for specific terms and outside the quota of 50%. On behalf of the State of Uttar Pradesh, it was also submitted that individual claims of any error in the seniority list would be examined and the consequence reached on such examination would be given effect to.

The present proceedings have been initiated on behalf of the clerical staff of the Supply Wing, seeking promotion to the posts of Supply Inspectors. They allege that the State of Uttar Pradesh failed to give effect to the seniority list of the clerks and many of them had to approach the High Court and this Court for promotion to the posts of Supply Inspectors as the promotions to the post of Supply Inspectors were made without following the seniority list. One such order of the High Court was challenged by way of special leave petition No. 3491/84 entitled Saroj Kumar Tyagi and others v. State of Uttar Pradesh and others on the ground that about 100 junior persons had been promoted as Supply Inspectors in violation of the petitioners' right to seniority. By an order dated 28.1.1985, this Court directed by way of an interim measure that promotions may be made of those clamoring for promotion after exhausting the list of Head Clerks dated April 1, 1976 and thereafter accommodating such of the petitioners as could be accommodated. The final judgment in the matter was, however, made on 4.12.1987. A sympathetic view was taken for those who had been working as Supply Inspectors for quite some time, although, perhaps, they would not have been entitled to such promotion according to seniority exception for two petitioners therein namely Saroj Kumar and

Prabhu Dayal who were entitled to promotion on the basis of their seniority. They all were allowed to continue as Inspectors of supply not on the basis of their seniority but on the sole consideration that they had been continuing in the promotional post for quite a long period and it would be inappropriate to revert them. However, this Court clarified that such continuation in the higher post would not confer any seniority.

Simultaneously, litigation was also on in the High Court for promotion to the post of Senior Accounts Clerk from that of Clerk and to the post of Supply Inspector from that of Head Clerk/Accountant. The High Court of Allahabad in Writ Petition (Civil) No. 4063 of 1986 entitled Ram Dayal & Ors. v. State of U.P. passed an order dated 5.9.1988 directing the State of U.P. to take steps to promote the petitioners before the High Court as Supply Inspectors within a period of four weeks from the date of production of certified copy of that order before the appropriate authority.

Still others filled a writ petition before this Court, being Writ Petition No. 1128 of 1989 and Writ Petition No. 490 of 1990 and by an order dated 1st October, 1991, this Court directed to promote 15 of the petitioners to the post of Supply Inspectors. The contention of the petitioners in the said two petitions was that certain promotions to the post of Supply Inspectors had been made in violation of the rule of seniority and the petitioners therein had been adversely affected. By the order dated 1.10.91, this Court directed that the petitioners therein - 15 clerks be promoted w.e.f. the date on which the juniors were promoted to the next higher posts of Supply Inspectors with all benefits accruing to them, if necessary, by creating supernumerary posts.

On 23rd October, 1990, in a writ petition filed by the Association of Head Clerks/Accountants this Court directed the State Government to consider the case of the workmen concerned in that writ petition in the light of the relevant rules and orders and to accord them whatever relief was available according to law.

Soon thereafter the writ petition No. 1131 of 1991 was filed by Mahmood Hasan and others. The other petitions were also filed in quick succession. The case of Mahmood Hasan may be treated to be the principal case and the records of this case may be adverted to for the purpose of the facts. Mahmood Hasan and others in this writ petition have given lists of Supply Clerks who were promoted pursuant to the orders of this Court on 1.10.1991, as well as those promoted by the order dated 4.12.1987, and those by order of the High Court dated 5.9.1988. All the three lists also show the respective date of appointment of each clerk. The list of petitioners along with the dates of their initial appointments, their positions in the seniority list and the names of the District Supply Offices they respectively belong to, have been given in the form of a table. The purpose of the petitioners is to show that the present petitioners were senior to those who obtained promotion under various orders of this Court and the High Court. It may be clarified here, of course, that all the petitioners herein are not enbloc senior to all those who have obtained promotion by various orders of this Court and the High Court. The situation is that petitioners are senior to one or other of those who already stand promoted by those orders. Apart from those promoted under judicial orders, many have been promoted otherwise by orders of the State Government. According to the petitioners, some of these promotions were also made without following the seniority rule. A list of 153 such persons who were promoted to the detriment of the petitioners herein, has also been submitted by

the petitioners. The petitioners further add that the eight employees who were promoted vide order dated 4.12.1987 came in service by virtue of an illegal order appointing them as Senior Accounts Clerk/Accounts Clerk and their appointments were declared illegal by the State Government itself, vide order dated 21.3.1980 bearing No. 1300/29.288/76 (T.C.). However, this order was recalled by the Government vide its letter No. 1929/29.2.88.76 P.C. dated 1.5.80 Supp. Meanwhile, a State level seniority list was issued by the Commissioner of Food & Civil Supplies, Lucknow on 16.6.1989. The petitioners therein allege that they came to know from such list that 153 persons junior to them listed in Annexure E had been promoted. The petitioner herein have prayed for promotion in accordance with the seniority list to the post of Supply Inspectors and claimed the same treatment which had been given to their colleagues by the different orders of the High Court and this Court mentioned above.

Writ Petition bearing No. 329 of 1992 entitled K.K. Singh & Anr. v. State of U.P. Ors. is very similar to that of Mahmood Hasan and others. The petitioners in this writ petition also claim to be senior to those promoted under various orders mentioned above. The petitioners in the W.P. No. 512/92 entitled P.K. Bhatnagar & Ors. v. State of U.P. & Ors., W.P. No. 266/92 entitled Ranjit Singh & Ors. v. State of U.P. & Ors., W.P. No. 263/92 entitled P.C. Jain & Ors. v. State of U.P. & Ors., W.P. No. 578/92 entitled Harish Chandra Dubey & Ors. v. State of U.P. & Ors., W.P. No. 43/92 entitled Surendera Gupta & Ors. v. State of U.P. & Ors., W.P. No. 368/92 entitled Ram Briksh Prasad & Ors. v. State of U.P. & Ors., W.P. No. 851/92 entitled Girish Chandra Srivastava & Ors. v. State of U.P. & Ors., W.P. No. 571/92 entitled Vinod Kumar Srivastava & Ors. v. State of U.P. & Ors., W.P. No. 294/92 entitled Har Narain Gupta & Ors. v. State of U.P. & Ors., W.P. No. 237/92 entitled Merah Singh & Ors. v. State of U.P. & Ors., W.P. No. 582/92 entitled Radha Sharma & Ors. v. State of U.P. & Ors., W.P. No. 106/92 entitled Harichandpal & Ors. v. State of U.P. & Ors. as well as that of W.P. No. 220/93 entitled Ashahad Mabud Hussain v. State of U.P. & Ors. are on similar facts.

The Writ Petition No. 218/93 is filed by Shri Dalip Kumar Roy & Ors. against the State of U.P. & Ors. The petitioners Dalip Kumar Roy & others had approached the High Court of Allahabad by filing CMP No. 34057 of 1991 in which the High Court vide an order dated 16.11.1991 directed that in view of the order of this Court dated 1.10.1990 in Writ Petition (Civil) No. 1128/89 and W.P. No. 490/90, the case of the petitioners therein be considered within 15 days to maintain uniformity amongst employees. The petitioners filed a contempt petition alleging failure on the part of the Government to comply with the order. Later, by an order dated 18.7.1992, the petitioners' representation for promotion to the post of Supply Inspectors was rejected. The petitioners have challenged the order dated 18.7.1992 as violative of Article 14 of the Constitution since they had been deprived of promotion despite the fact that their juniors had been promoted.

Contempt Petition No. 373 of 1991 is by an Association of Head Clerks/Accountants working in Food and Civil Supplies Department praying for initiating Contempt proceedings against the State of Uttar Pradesh for not complying with the order of this Court dated 23rd October, 1990 in Writ Petition No. 152/89 filed by the said Association. By an order dated 23rd October, 1990, this Court had directed the State of Uttar Pradesh to consider the case of all the concerned workmen in the light of relevant rules and orders and to accord whatever relief was available to them under law. the facts alleged herein are the same as those in the case of Mahmood Hasan.

The Writ Petition No. 309 of 1993 by Shri Gyan Chand is on its individual facts. His case is that he was promoted to the post of Supply Inspector w.e.f. 5.11.1973 but since he was not relieved from his post of Clerk, he could not join the promotional post and his promotion was cancelled vide G.O.No. 45 of 1974 and was again subsequently promoted on 4.11.1986. His main prayer is that his seniority in the cadre of Supply Inspector be treated to be the same as his seniority in the cadre of Clerks.

The petitioners in W.P. No. 522/92 entitled Bikram Singh Rawat & Ors. v. State of U.P. & Ors., except petitioners No. 2, have been working as Supply Inspectors for quite sometime. Their grievance is that many juniors have since been regularised as Supply Inspectors under the orders of this Court and High Court while they (petitioners) have not yet been regularised.

The State of U.P. has come up with the Review Petition, being No. 820 of 1994 for recalling the orders dated 4.12.1987 and 1.10.1991. These two orders have caused in a large number of Clerks in the Food & Civil Supplies Department being promoted as Supply Inspectors in violation of the rules of seniority as well as in excess of the posts, thereby causing serious administrative difficulties.

The State of U.P. has also filed a Special Leave Petition, being No. 8726 of 1992, assailing the order dated 16.11.1991 of the High Court of Allahabad whereby the High Court in view of the order of this Court in Writ Petition No. 1128 of 1989 directed the State of U.P. to consider the case of the respondents (writ petitioners) for promotion to the post of Supply Inspectors within a period of 15 days from the date of presentation of the certified copy for maintaining uniformity with other employees.

On behalf of the State of Uttar Pradesh certain anomalies in the promotion of Clerks/Head Clerks to the post of Supply Inspectors have been admitted. However, the position taken by the petitioners is denied on the ground that instead of a State level seniority, the U.P. Food and Civil Supplies (Supply Branch) Ministerial Service Rules, 1979 require seniority lists to be drawn up in respect of each category of posts in the service to be maintained separately for each division. The State of U.P., however, does not maintain that the promotions so far made strictly adhere to even the divisional seniority list. It is submitted in the counter-affidavit that some Clerks who were illegally promoted to the post of Supply Inspectors had to be continued under the orders of this Court as they had worked for some time even though the State Government passed an order cancelling promotions illegally made by the District Magistrate. It is further submitted that on 1.10.1991 when this Court made the order to continue the promoters in the rank of Supply Inspectors, the Advocate for the State did not appear to explain the position. It is also submitted that as on the date of the counter-affidavit, there were 99 vacancies in the rank of Supply Inspectors of which 50% could be filled by promotion and if all the petitioners (about 400) are promoted for the reason that their juniors had already been promoted, it will lead to administrative difficulties, weaken the cadre of Supply Inspectors and would be unjust to the State. Explaining the position regarding those protected by the order dated 4.12.1987, the State submits that 15 persons as mentioned in the writ petition had been recruited contrary to rules and were so declared vide letter dated 21.3.1980 and certain promotions made by the District Magistrate on 4.8.1982 were also similarly declared illegal on 27.12.1983. However, vide order dated 4.12.1987, this Court regularised their promotion on practical considerations.

It will not be out of place to mention here that 147 writ petitions by 490 employees of the Food & Civil Supply Department of U.P. have been filed and the High Court has made several interim directions in these writ petitions giving benefits of interim promotions. The State level provisional seniority list circulated in 1989 was cancelled on 22.8.1991. It is submitted by State of U.P. that the 1979 Rules required seniority lists to be maintained only division-wise and so the list issued in 1989 was not according to the Rules. However, the state of U.P. has since framed another State level seniority list and has sought permission to revert all those promoted out of turn. By an interim application, being I.A. No.14 of 1994 in writ petition No. 1131 of 1991, the State of U.P. has applied for vacating all those orders of the High Court.

A Division-wise seniority list is submitted by the State. The petitioners in W.P. No. 1131/91 lost no time to point out that even according to the Divisional-wise seniority list, the promotions made could not be justified. In fact, the situation is quite apparently faulty and a remedial measure is required to be devised.

It became apparent from the conflicting claims filed by the petitioners that in order to place the promotion of the Supply Clerks/Head Clerks in the post of Supply Inspectors, those provisionally promoted for seasonal requirement or otherwise, as well as those promoted without adhering to the seniority list for one reason or the other, even though protected by various orders of this Court and the High Court would have to be reverted and promotions made afresh on the basis of the inter se seniority of the members of the said cadre. By an order dated 19.2.1993, it was directed that before any order for regularisation of promotion is made on the basis of a State level seniority, some reversions may be caused and it would be desirable that those likely to be reverted have an opportunity to present their viewpoint before this Court. We directed that the State of Uttar Pradesh should have public notices issued regarding the possibility of reversion taking place so that those likely to be reverted may put forward their views. In response to such public notice, some employees have filed applications for interventions/ impleadment/ affidavits. It is not necessary to describe their responses to the notices in detail. Suffice it to say that most of the applications are filed by those who have benefited by one order or the other in securing promotions for the reason their juniors were promoted. They, in fact, do not oppose the proposed or possible provision but claim that they be promoted regularly at least w.e.f. the date anyone junior to them is promoted. Two of the responses are not against the apprehended reversions but against the seniority list prepared by the State of U.P. during the course of present proceedings.

On 16.8.1993, the State of U.P. informed us that a provisional seniority list had been prepared and objections thereto had been invited. We directed that the Commissioner of Food & Civil Supplies will put on notice board a notice to the effect that this Court has directed that the objections should be filed within four weeks and that if they are not filed within that period, they will not be entertained. It was suggested that a public notice may also be issued in the press. A final state-wise seniority list of persons appointed after 1.4.1964 was submitted by the Additional Commissioner, Food & Civil Supplies, U.P. on 21st April, 1994. In the accompanying affidavit, it was submitted that the list was finalised after hearing about 512 objections and that the State of U.P. will adopt this list for the purpose of promotion to the post of Supply Inspectors. It was further submitted on behalf of the State that those granted promotion on ad hoc basis prior to 1.1.1985 were governed by the U.P.

Regularisation of Ad hoc Promotions (all posts within the purview of PSC) Rules, 1988 and certain ad hoc promotees were regularised thereunder. The State of U.P. asked for permission to revert all Supply Inspectors promoted after 1.1.1985 and to make promotions on the basis of seniority list according to rules.

We may recall that the State of U.P. also filed a petition for review of the orders dated 4.12.1987 and 1.10.1991, being Review Petition No. 820 of 1994. The respondents contended in the Review Petition that the respondents therein who were given ad hoc promotion in violation of the statutory rules and whose promotions had been cancelled vide order dated 27.12.1983, challenged the cancellation order in the High Court and on such challenge having failed, filed Civil Appeal No. 329 of 1985, Civil Appeal No. 116 of 1986 and Civil Appeal No. 329 of 1985 in which the order dated 4.12.1987 was passed. Subsequently, Writ Petition No. 1128 of 1989 was filed in which the order dated 1.10.1991 was passed. It is contended on behalf of the State in the petition for review that in view of the two orders dated 4.12.1987 and 1.10.1991, a large number of Clerks had filed writ petitions before this Court and the High Court claiming promotion on the ground that they were senior to the persons granted promotion, that the earlier Review Petition filed against the order dated 1.10.1991 being Review Petition No. 292 of 1992 was dismissed on 18.2.1992 as the order dated 4.12.1987 was still in operation and that the present petition was being filed for review of both the orders dated 4.12.1987 and 1.10.1991 so that the entire matter could be heard de novo. The contention is that unless this Court overcomes the inhibition of the said earlier orders complete justice cannot be done and the unreserved benefit reaped by some in preference to their seniors would continue to them at the cost of their seniors. The confusion and anomaly caused by the previous orders has brought about a serious imbalance in the service, inasmuch as, juniors are manning the higher posts without sufficient experience whereas seniors with sufficient experience are required to work at lower levels when they should be manning the higher posts. It is, therefore, contended that the Court should utilise its extra-ordinary powers under Article 142 to undo the injustice and repair the imbalance caused by its earlier orders. Unless the situation arising under the earlier orders is repaired, the imbalance in the cadre will continue and the grievance of the seniors who have been denied promotion because the promotional slots are occupied by their juniors, will survive and so will the brooding sense of injustice continue to adversely affect the functioning of the department. We see considerable substance in this line of reasoning.

The exceptional situation has arisen because the number of officials seeking promotion on the ground that their juniors have been promoted is almost as large as the total strength of the promotional cadre. The proper course in such a situation is for the juniors to vacate and to make room for their senior colleagues. To restore the balance it is necessary to recall the orders dated 28.1.1985, 4.12.1987 and 1.10.1991 and to set aside all orders of the High Court passed in the matter after 28.1.1985 as well as all orders for promotion made by the State Government during this period and to direct that promotions be made, keeping in view all relevant rules and norms, with retrospective effect from the date a vacancy arises for an incumbent according to the State Level Seniority List now prepared and submitted to the Court. However, those promoted prior to 1.1.1985 and protected by the U.P. Regularisation of Ad hoc Promotions (on posts within the purview of PSC) Rules, 1988 need not be disturbed. It is needless to say that those promoted with retrospective effect will be entitled to all pecuniary benefits of such promotion. However, those who will have to step down on

account of this correctional process need not refund the pecuniary or other benefit enjoyed by them for they had actually worked as Supply Inspectors during that period. We order accordingly. All the writ petitions, the appeal, the interim application, the review petition and the contempt petition shall stand disposed of in the above terms.

The State Government will complete the entire exercise within a period of six months from today, taking the State Level Seniority List as final and conclusive for that purpose. There will be no order as to costs.