

HIGH COURT OF UTTARANCHAL AT NAINITAL

Reserved

Civil Misc. Writ Petition No. 204 (S/S) of 2000

Sri Hari Bilas Upreti

.....

Petitioner

Versus

Commissioner/Registrar,

Cooperative Societies,

U.P. and others

.....

Respondents

.....

Hon'ble P.C. Verma, J.

By means of this writ petition, the petitioner seeks the writ of mandamus commanding the respondents to promote him with effect from the date from which juniors to him have been promoted to the post of Assistant Registrar, Co-operative Societies.

The petitioner was appointed to the post of Co-operative Supervisor on 7.1.1966 by respondent no.1 and the petitioner joined on the post in March, 1966. The petitioner was promoted from the post of Co-operative Supervisor to the post of Cooperative Inspector Grade-II vide order dated 23.5.1978, and the petitioner joined on promoted post on 27.5.1978 which is evident from the Annexure 1 to the writ petition. The petitioner was sent on deputation to U.P. Cooperative Land Development Bank, Pithoragarh, where he joined his duties on 8.12.1978.

While the petitioner was on deputation, he was reverted from the post of Cooperative Inspector Grade II vide order dated 19.12.1978. Despite the aforesaid reversion, the petitioner was not relieved by the borrowing bank and was allowed to continue upto 15.1.1981. Meanwhile, the petitioner made several representations against his reversion that he has been reverted arbitrarily without any basis or reason.

The petitioner also filed a writ petition before the Allahabad High Court bearing writ petition no.29631 of 1998, which was disposed of vide order dated 14.02.1998 with a direction to the concerned authority to decide the representation of the petitioner within two months. In compliance of the aforesaid direction, Additional Registrar (Administration) decided the representation of the petitioner. The order passed by the Addl. Registrar(Administration), Cooperative Societies U.P., Lucknow is contained in Annexure '4' to the writ petition, which reads as under:

“माननीय उच्च न्यायालय इलाहाबाद में श्री हरी विलास उप्रेती द्वारा दायर रिट याचिका संख्या 29631/98 हरि विलास उप्रेती बनाम निबंधक सहकारी समितिया एवं अन्य में पारित आदेश दि० 14.09.91 के अनुपालन के क्रम में श्री हरि विलास उप्रेती सहकारी निरीक्षक वर्ग -2 द्वारा विभाग को प्रस्तुत प्रत्यावेदन दिनांक 29.12.97 तथा 27.01.98 का सम्यक रूप से विचारोपरान्त निस्तारित करते हुये श्री उप्रेती को इस कार्यालय के पत्र संख्या 4182/स्था० व / 1ए-4 दि० 31.01.2001 द्वारा सूचित किया जा चुका है कि श्री उप्रेती को वर्ष 1978 में दि० 19.12.78 से मण्डलीय उपनिबंधक कुमायूँ मण्डल नैनीताल के आदेशानुसार पुनः राजकीय पर्यवेक्षक पद पर तैनात करने की तिथि से दि० 19.01.92 को उनकी निरीक्षक वर्ग-2 पर नियमित पदोन्नति होने की तिथि तक नोशनल प्रोन्नति दिये जाने का पर्याप्त ओचित्य पाया गया।

यह तथ्य निर्विवाद है कि दि० 23.05.78 को श्री उप्रेती राजकीय पर्यवेक्षक के पद से सहकारी निरीक्षक वर्ग -/2 पद पर तदर्थ रूप से मण्डलीय उपनिबंधक कुमायूँ मण्डल द्वारा प्रोन्नति किये गये थे। तथा दि० 19.12.78 को पुनः राजकीय पर्यवेक्षक के पद पर मण्डलीय उपनिबंधक द्वारा उनको तैनात किया गया। वर्ष 1978 में मण्डलीय उपनिबंधक को यह अधिकार प्राप्त थे। श्री उप्रेती का मुख्य बिन्दु उनके प्रत्यावेदनों में यही था कि उनके कनिष्ठ राजकीय पर्यवेक्षक श्री कवि दत्त पाठक वर्ष 1978 में तदर्थ पदोन्नति के पश्चात सहकारी निरीक्षक वर्ग-2 के पद पर बने ही रहे जबकि श्री उप्रेती को पुनः राजकीय पर्यवेक्षक के पद पर तैनात कर दिया गया। इसी मुख्य बिन्दु को ध्यान में रखाते हुये श्री उप्रेती को दि० 19.12.78 से सहकारी निरीक्षक वर्ग-2 के पद पर नोशनल प्रोन्नति देने को निर्णय लिया गया, ताकि सहकारी निरीक्षक वर्ग-2 के पद पर सेवा अवधि के कारण अग्रेत्तर प्रोन्नतियों में तथा सेवानिवृत्त के उपरान्त पेंशनरी लाभ में श्री उप्रेती अपने कनिष्ठ श्री कविदत्त पाठक के सापेक्ष बेहतर स्थिति में रहें।

श्री उप्रेती के प्रत्यावेदनों पर परीक्षण के समय इस बिन्दु पर भी विचार किया गया कि क्या श्री उप्रेती को वर्ष 1978 से सहकारी निरीक्षक वर्ग -2 के पद के वेतनमान का अन्तर दिया जा सकता था अथवा नहीं। इस बिन्दु पर भलीभांति परीक्षण किया गया और यह निर्णय लिया गया कि वर्ष 1978 में सहकारी निरीक्षक वर्ग -2 के पद पर श्री उप्रेती की पदोन्नति नियमित नहीं थी, केवल तदर्थ पदोन्नति थी। जिसको तत्कालीन सक्षम अधिकारी, मण्डलीय उपनिबंधक कुमायूँ मण्डल द्वारा समाप्त करते हुए उनको पुनः दिनांक 19.12.78 से राजकीय पर्यवेक्षक के पद पर तैनात कर दिया, इस हेतु भी मण्डलीय उपनिबंधक सक्षम थे। अतः न तो श्री उप्रेती विधिवत प्रोन्नत थे और न ही

उनका पुनः राजकीय पर्यवेक्षक के पद पर तैनात किया जाना दण्डात्मक कार्यवाही थी। अतः श्री उप्रेती को वर्ष 1978 से ही राजकीय पर्यवेक्षक एवं सहकारी निरीक्षक वर्ग -2 के वेतन का अन्तर दिये जाने का औचित्य नहीं है, क्योंकि श्री उप्रेती सहकारी निरीक्षक वर्ग -2 के पद विधिवत दि० 19.01.92 को ही पहली बार पदोन्नत किये गये।

अतः मण्डलीय सहकारी समितियाँ उत्तर प्रदेश कुमायूँ मण्डल नैनीताल के आदेश संख्या 2927-31/स्था० वर्ग -2 दि० 19.12.78 द्वारा श्री हरि विलास उप्रेती के पुनः राजकीय पर्यवेक्षक पद पर तैनात करने की तिथि 19.12.78 से श्री उप्रेती को सहकारी निरीक्षक वर्ग -2 /सहायक विकास अधिकारी (सह०) के पद पर नोशनली पदोन्नत किया जाता है।”

From the perusal for the aforesaid order it is evident that the petitioner has been given notional promotion from 1978, meaning thereby that the promotion to the petitioner from 1978 has been regularized as the order of his reversion was found to be illegal as his junior was promoted in the year 1978 and he was reverted.

It is on the basis of the aforesaid regularization and notional promotion, the petitioner claims his seniority from 1978 and further claims that promotion on the post of Co-operative Inspector Grade I and Assistant Registrar, Co-operative Societies be considered treating him to have been appointed as Co-operative Inspector Grade II in the year 1978.

Although the petitioner's appointment from 1978 to 1992 has been treated to be ad hoc but in the order quoted above, it has not been decided as to when the vacancy to be filled up by promotion occurred on which the petitioner could be regularized. How the promotion of the petitioner was ad hoc has not been clearly stated in the order quoted above. Since, the petitioner has been given notional promotion vide the order quoted above from 1978, therefore, the petitioner is continuing in service in the cadre of Co-operative Inspector, grade II Since 1978.

The law is well settled. The seniority of the promote shall be reckoned from the date of his ad hoc promotion if the vacancy in the quota to be filled up by promotion is available in the year in which his ad hoc promotion is made. In the instant case, the petitioner has been given promotion vide order quoted above from 1978, which itself proves that the vacancy to be filled up by promotion was available in the year 1978. Therefore, the petitioner's seniority in the post of Co-operative Inspector Grade II shall be reckoned from the year 1978. The petitioner has given

specific name of Sri Harish Chandra Singh Rawat, Sri Umrab Singh Saini, Mohammad Vadir, Awdhesh Narayan Tripathi, who were appointed in the year 1980 directly as Co-operative Inspector Group-II have been given promotion to the post of Co-operative Inspector Grade I and thereafter on the post of Assistant Registrar, Co-Operative Societies.

Thus, the writ petition is allowed. A writ of mandamus is issued to the respondents to consider the case of the petitioner for the post of Co-operative Inspector Group-I and Assistant Registrar, Cooperative Societies from the date in the post his juniors have been promoted and grant him all production of the certified copy of this order.

(P.C. Verma,J.)

January 16,2002

P.Singh