



2021 INSC 636

1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6251 OF 2021
(Arising out of SLP(C) No. 16416 of 2021
(Diary No. 210/2020))

STATE OF U.P. & ANR.

APPELLANT(S)

VERSUS

SHYAM LAL JAISWAL

RESPONDENT(S)

O R D E R

Delay Condoned.

Leave granted.

The instant appeal has been preferred by the State of Uttar Pradesh assailing the order impugned dated 03.08.2018 of the High Court of Allahabad, Lucknow Bench, confirming the order dated 12.12.2013 of the State Public Services Tribunal, U.P. (for short 'the Tribunal').

The facts in brief relevant for the purpose are that the respondent herein was working as a Cashier in the Transport Department since June, 1967. While in service, for some alleged

misconduct, departmental inquiry was initiated against him and was later dismissed from service by an order dated 20.11.1975. That order came to be set aside by the Tribunal by an order dated 14.02.1984 and finally confirmed on dismissal of the Special Leave Petition by an order dated 20.04.2000.

It is to be noticed that the respondent during the pendency of litigation attained the age of superannuation on 31.03.1996.

After the order of dismissal dated 20.11.1975 came to be set aside, and finally confirmed by this Court, a fresh litigation was initiated at his instance on the premise that persons who were junior to him, i.e. Mr. Ajay Kumar Sinha and Mr. K.M. Haleem, were promoted/appointed as Assistant Public Prosecutors on 21.02.1980 and once his position has been restored after order of dismissal being set aside, he too is entitled for promotion from the date his juniors were promoted as Assistant Public Prosecutors.

We have heard learned Counsel for the parties, the grievance of the respondent is not sustainable

for the reason that the post of Assistant Public prosecutor is included in the Schedule appended to the Uttar Pradesh Transport (Subordinate) Prosecution Service Rules, 1979 (for short 'the 1979 Rules') which was published in the extraordinary Gazette on 27.07.1979 and in terms of Rule 5 of the 1979 Rules, the recruitment to the post of Assistant Public Prosecutor shall be made by direct recruitment on the basis of a competitive examination followed by a *Viva Voce* test to be conducted by the Commission.

This fact has been completely ignored by the Tribunal and so also by the High Court in the order impugned. Taking the Scheme of Rules 1979 and Rule 5, in particular, in our considered view, the order of the High Court confirming order of the Tribunal is not sustainable in law.

Consequently, the Appeal succeeds and accordingly allowed.

The order of the High Court dated 03.08.2018 confirming the order dated 12.12.2013 of the Tribunal is hereby set aside.

Pending application(s), if any, shall stand disposed of.

.....J
(AJAY RASTOGI)

.....J
(ABHAY S. OKA)

NEW DELHI;
OCTOBER 07, 2021.