

Pankaj Prakash Vs. United India Insurance Company Ltd. and Ors.

Civil Appeal No. 2213 of 2022 arising out of SLP (C) No. 17024 of 2019
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Full judgment text

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[Civil Appeal No. 2213 of 2022 arising out of SLP (C) No. 17024 of 2019]

1. Leave granted.
2. We have heard Mr Ravi Kumar, counsel for the appellant and Mr. P.P Malhotra, senior counsel with Mr. Mohit Paul, counsel for the respondent.
3. The appeal arises from a judgment dated 6 August 2018 of a Division Bench at the Lucknow Bench of the High Court of Judicature at Allahabad.
4. The writ petition¹ by the appellant under Article 226 of the Constitution pertains essentially to the grievance of the appellant of not being promoted as a Manager. The appellant was claiming promotion from the post of Deputy Manager in Scale III to the post of Manager in Scale IV. The relevant years are 2015 and 2016.
5. The grievance of the appellant in relation to 2014 was the subject matter of an earlier proceeding. The High Court had dismissed the writ petition² instituted by the appellant on 6 October 2016 and the review petition³ was dismissed on 17 January 2017. This led to the institution of proceedings before this Court. Upon the grant of leave, the Special Leave Petitions⁴ arising from the decision of the High Court were converted into Civil Appeal Nos 5340-5341 of 2019.
6. By a judgment dated 10 July 2019, this Court held that the non-communication of the Annual Performance Appraisal Reports (APAR) for the relevant years was contrary to the decisions of this Court in *Dev Dutt vs Union of India*⁵ and *Sukhdev Singh vs Union of India*⁶. Hence, the grievance of the appellant that the failure to communicate the entries for 2010-2011 and 2011-2012 was accepted by this Court. In that context, this Court issued the following directions:
"15
(i) Within a period of one month from the date of receipt of a certified copy of this order, the respondent shall communicate to the appellant the un-communicated entries in the APARs for the years which were taken into account for the promotional exercise of 2014-15;
(ii) Within a period of two months from the date of receipt of the above, it would be open to the appellant to submit his objections and representation to the respondent;
(iii) The representation shall be considered within a period of three months from the date of receipt of the representation;
(iv) Thereafter, based on the result of the decision, the competent authority shall take a decision on whether any modification in the decision for promotion from Scale III to Scale IV for 2014-15 in respect of the appellant is warranted; and
(v) In order to ensure that this exercise is carried out fairly, we direct that the competent authority shall ensure that the representation that is submitted by the appellant is placed before an authority at a sufficiently senior level to obviate any bias or injustice."
7. The judgment of this Court specifically notes that the appellant was since promoted in 2018 to the post of Manager. However, since the claim of the appellant related to his non-promotion for 2014, the grievance was directed to be reconsidered on the basis of the representation that may be submitted by the appellant to the un-communicated entries in the APARs.

8. During the course of the hearing, the Court has been apprised by Mr Ravi Kumar, counsel appearing on behalf of the appellant that following the decision of this Court dated 10 July 2019, the representation which was submitted by the appellant was not accepted and this has resulted in the institution of a fresh petition under Article 226 of the Constitution before the Delhi High Court. The petition is pending. The Court has been apprised of the fact that the website of the Delhi High Court indicates that the petition was heard on 9 March 2021 and the next date of listing is 2 May 2022.

9. The present appeal relates to the non-promotion of the appellant for the subsequent years, namely, 2015 and 2016. There is an element of overlap between the non-promotion of the appellant for 2014 and the present case which relates to 2015 and 2016. The High Court, in the course of its impugned judgment adverted to the outcome of the proceedings for the previous year in paragraph 24 of the judgment, which reads as follows:

"It is apt to mention that the action of the Insurance Company in not promoting the petitioner on the post of Manager though his juniors were promoted on 29.5.2014 has been challenged by the petitioner in writ petition No.7631 (S/6) of 2016. A Division Bench of this Court, vide judgment and order dated 6.10.2016, dismissed the writ petition as the Division Bench did not find the allegation of the petitioner to be true. Against the order dated 6.10.2016, the petitioner has filed review application, bearing No.103173 of 2016, which too was dismissed vide judgment and order dated 17.1.2017.

The petitioner has admitted the fact that the aforesaid orders have not been challenged by him before the higher forum. Thus, the judgment and orders dated 6.10.2016 and 17.1.2017 have attained finality. In these backgrounds, it is clear that the issue of nonpromotion of the petitioner on the post of Manager (Scale-IV) has set at rest, therefore, the plea of the petitioner challenging the issue of promotion for the year 2014-2015 is not sustainable."

10. In the above extract, the Division Bench of the High Court observed that no proceedings were adopted to challenge the judgment dated 6 October 2016 and the order in review dated 17 January 2017. This appears to have been acknowledged by the appellant since the High Court recorded that the "petitioner has admitted the fact that the aforesaid orders have not been challenged by him before the higher forum". This is evidently erroneous for the reason that the judgment of the High Court for 2014, became the subject matter of the decision of this Court dated 10 July 2019.

11. The fate of the grievance of the appellant for 2014 on the one hand and for 2015 and 2016 on the other hand cannot be considered in isolation since there would be a degree of overlap. The ultimate view of the Delhi High Court for 2014 may have some bearing on the outcome for 2015 and 2016. Under the promotion policy of 2006, the parameters which are taken into account for promotion from Scale III to Scale IV are the (i) written test; (ii) work record; (iii) seniority; and (iv) interview.

Since the APARs which reflect the work record constitute a reckonable parameter in the overall exercise of promotion, and since the grievance of the appellant pertaining to the year 2014, following the earlier decision of this Court is now pending before the Delhi High Court, it would be appropriate that both the writ petitions which were filed before the Lucknow Bench of the High Court of Judicature at Allahabad as well as the petition before the Delhi High Court are considered together and disposed of finally.

12. We are, therefore, inclined to set aside the impugned judgment of the High Court dated 6 August 2018 and to direct:

(i) The transfer of the writ petition which was instituted before the Lucknow Bench of the High Court of Judicature at Allahabad to the Delhi High Court; and

(ii) The writ petition so transferred to be heard and decided together with the writ petition pending in the Delhi High Court.

13. We accordingly order and direct:

(i) The impugned judgment and order of the Division Bench at the Lucknow Bench of the High Court of Judicature at Allahabad dated 6 August 2018 in Service Bench No 10902 of 2016 is set aside;

(ii) The writ petition which was instituted by the appellant as set out in (i) above shall stand transferred to the Delhi High Court and shall be heard and disposed of afresh together with Writ Petition Civil No 44 of 2021 instituted by the appellant which is pending before the Delhi High Court;

(iii) The setting aside of the judgment of the High Court dated 6 August 2018 shall not be construed as an expression of opinion by this Court on the merits of the claim of the appellant pertaining to his non-promotion for 2015 and 2016. All the rights and contentions of the parties are expressly kept open; and

(iv) The Registrar (Judicial) at the Lucknow Bench of the High Court of Judicature at Allahabad shall take steps forthwith to ensure the transfer of the records pertaining to Service Bench No 10902 of 2016 to the Delhi High Court so that both the petitions can be heard and disposed of by the same Bench expeditiously.

14. The appeal is disposed of in the above terms.

15. Pending applications, if any, stand disposed of.

Item No. 3

Pankaj Prakash Vs. United India Insurance Company Ltd. & Ors.

[Petition(s) for Special Leave to Appeal (C) No.17024/2019 arising out of impugned final judgment and order dated 06-08-2018 in SB No.10902/2016 passed by the High Court of Judicature at Allahabad, Lucknow Bench]

[With appln.(s) for IA No.75881/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES]

These matters were called on for hearing today.

CORAM:

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE SURYA KANT HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Appellant(s)

Mr. Ravi Kumar, Adv. Mr. Rahul Kumar Sharma, Adv. Mr. Ronak Karanpuria, AOR Mr. Abhishek Sharma, Adv. Ms. Gaurran, Adv.

For Respondent(s)

Mr. P.P. Malhotra, Sr. Adv. Mr. Vineet Maolhotra, Adv. Mr. Mohit Paul, AOR Mr. Vishal Gohri, Adv. Mr. Shubhendu Kaushik, Adv. Mr. Bikram Dwivedi, Adv. Ms. Sonia Malhotra Kumar, Adv.

UPON hearing the counsel the Court made the following

1 Leave granted.

2 The appeal is disposed of in terms of the signed order.

3 Pending applications, if any, stand disposed of.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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