

(2005) 01 DEL CK 0062

In the Delhi High Court

Case No : WP (C) 5691 of 2003 and 1356-60 of 2005

DDA Vahan Chalak Karamchari Union and Others

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 31-01-2005

Acts Referred:

Citation : (2005) 01 DEL CK 0062

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : J.P. Singh, for the Appellant; Arun Birbal, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—In these writ petitions the Petitioners have prayed for the quashing of the Seniority List circulated by the Respondents on 18.2.2003 and to direct the Respondents to prepare a new Seniority List on the basis of the length of service of the Petitioners i.e. the date of their appointment to the post of Staff Car Drivers.

2. Shri Amar Singh, the Petitioner No. 2, was appointed in terms of the letter dated 23.12.1980 which specifically mentions in paragraph 2 (a) that the post is purely temporary and shall be valid until further orders and that the services can be terminated at any time without notice. Similar letters have been issued to the other Petitioners. By letter dated 18.12.1985 the Vice-Chairman, Delhi Development Authority, was pleased to appoint some of the Petitioners who were then borne on Work-Charged Establishment in the scale of pay of Rs. 320-6-326-8-390-10-400/- together with the usual allowances as sanctioned from time to time on regular establishment against regular vacant posts, with immediate effect. That letter itself stated that ""the period for which the above officials have worked on Work-Charged basis will not be counted for seniority on regular appointment"". The other Petitioners were similarly regularised in terms of letter dated 21.12.1985 which also contained a clause clarifying that the

period spent by these officials on Work-Charged basis will not be counted towards their seniority and the cadre of regular Drivers.

3. The first question to be considered is whether the Petition is liable to be dismissed on the grounds that the other employees, whose seniority is likely to be affected if the writ petition is allowed, have not been impleaded. Secondly, the Court would also have to contemplate upon the propriety of upsetting a seniority which has attained some antiquity, which is a consideration akin to the principles of laches. In *Rajbir Singh, HFS-II Vs. State of Haryana and Another*, the Court had observed that ""the main thrust of the argument is on inter se seniority between the appellant and M.P. Sharma. But in the absence of M.P. Sharma being impleaded as a party respondent to these proceedings, we cannot go into the question. In *Government of Andhra Pradesh and others, v. M.A. Kareem and others*, 1991 SCC 1206 the Hon''ble Supreme Court found the delay of eight years on the part of the Petitioners to initiate legal remedy to be fatal. The following observations recorded therein are worthy of reproduction:

"Besides the above infirmities there are two other important considerations which weigh heavily against the respondents. The petition before the Tribunal was filed by the respondents after a period of 13 years of their initial appointment in the Chief Office, during which period many orders consistent with the terms of service as indicated in the Memorandum Annexure `A' must have been passed in favor of the other incumbents of the service. The courts and tribunals should be slow in disturbing the settled affairs in a service for such a long period. Besides, the respondents, in the application before the Tribunal, did not implead their colleagues who have been prejudicially affected by the impugned judgment. It cannot be assumed that the respondents had no knowledge about them. As was rightly pointed out by Mr. Sitaramiah, although in paragraph 4(d) of their application before the Tribunal (page 53 of the paper book) the respondents mentioned one Vijaya Chand alleged to be an officiating LDC who was out over them, they did not implead even him. We are, Therefore, of the view that apart from the merits of the case, the petition of the respondents before the Tribunal was fit to be rejected on the ground of the abovementioned last two points."

In *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, the Constitution Bench of the Hon''ble Supreme Court was anxious not to dismiss the petition on the grounds of laches but nevertheless did so. It observed as follows:

""We are not anxious to throw out petitions on this ground, but we must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a number of years. It was on this ground that this Court in *S.G. Jaisinghani Vs. Union of India (UOI) and Others*, observed that the order in that case would not affect Class II officers who have been appointed permanently as Assistant Commissioners. In that case, this Court was only

considering the challenge to appointments and promotions made after 1950. In this case we are asked to consider the validity of appointments and promotions made during the periods of 1945 to 1950. If there was adequate reason in that case to leave out Class II officers, who had been appointed permanently Assistant Commissioner, there is much more reason in this case that the officers who are now permanent Assistant Commissioners of Income Tax and who were appointed and promoted to their original posts during 1945 to 1950, should be left alone." The decision in *State of Haryana and Ors. v. Piara Singh and Others*, 1992 SCC 825 records that - "'as and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category class or service, as the case may be". In *Registrar General of India and Another Vs. V. Thippa Setty and Others*, it was observed that if ad-hoc service is regularised from the back date, it would disturb the seniority of regularly appointed employees in the cadre and, Therefore, ordinarily regularisation must take effect prospectively and not retrospectively. In *Y. Ramamohan and Others Vs. Government of India and Others*, , the Apex Court refused to upset the seniority which had been fixed in 1976 but which had been challenged in 1986. The contention of learned counsel for the Petitioner in the present petitions that the cause of action arose on the preparation of a Seniority List publicised by Circular dated 23.8.002 must also be seen as a subterfuge. Learned counsel for the Petitioners has relied on *Rudra Kumar Sain and Others Vs. Union of India and Others*, , which concerned the inter se seniority of Judges in the Delhi Higher Judicial Service. The factual matrix is not comparable to the facts of the present case. The Court reproduced the words employed by it in its earlier Judgment in *O.P. Singla and Another Vs. Union of India (UOI) and Others*, which took note of the circumstances that appointments were neither ad-hoc, nor fortuitous, nor in the nature of a stop-gap arrangement"". This distinguishes the precedent from the facts of the present case.

4. The question which should next be considered is the nature of the rights that were created and/or evolved in favor of the Petitioners consequent on their temporary engagement. In *Jaswant Singh and Ors. v. Union of India and others*, 1980 SCC 36, it was held that no Government servant can claim entitlement to a declaration that he is in quasi-permanent service, because that does not depend upon the mere fact of his being in service for a particular number of years. Certainly his terminal benefits could be protected. It was further observed that the Work-Charged employees are engaged on a temporary basis and are eligible to claim protection under the Industrial Disputes Act. In *State of Haryana and Others Vs. Jasmer Singh and Others*, , it was held that daily wagers could not be equated with regular workman and can at best claim payment of minimum wages only. A different Bench of the Hon'ble Supreme Court has made an essentially identical enunciation of the law in *State of Haryana Vs. Surinder Kumar and others*, . The decision in *State of Maharashtra v. Purshottam and others*, (1996) 2 SCC 266 refers to *Jaswant Singh's* case (supra). The Hon'ble Court observed as follows:

""6. At the outset, it may be stated that a work-charged establishment means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to `works". The pay and allowances of employees who are borne on a work charged establishment are generally shown as a separate sub-head of the estimated cost of the work. The work-charged establishment employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. The character and nature of their tenure has been fully discussed by this Court in the case of Jaswant Singh v. Union of India. In the service jurisprudence the expression `cadre" means the unit of strength of a service or a part of it as determined by the employer. And it is too well settled that services rendered by an employee in one cadre cannot be taken into account for determining the seniority in another cadre unless by any rules of seniority this privilege is conferred. This being the position, ordinarily the services rendered by an employee in a work-charged establishment is not to be taken into account for his seniority in the regular establishment particularly when the tenure in the work-charged establishment is of a precarious nature and it automatically ceases after the project is over. The normal rule of seniority is the date of entry into the cadre or the position obtained in the examination when appointment is made by any competitive examination. Therefore, in the present case ordinarily seniority would have been determined on the basis of the date of absorption of the employee in the regular establishment, but the State Government itself has passed the resolution deciding a deemed date of absorption of the employees who were initially recruited in the charged establishment and later on absorbed in the regular establishment Therefore, the Government itself having passed the resolution determining the deemed date of absorption the said date has to be taken into account for reckoning seniority. The Government of Maharashtra in the Public Works and Housing Department by its resolutions dated 15-2-1977 and 19-2-1977 decided that a Junior Engineer having work-charged service to his credit should be assigned a ""deemed date"" which should be one day prior to the date on which his immediate junior on work-charged establishment or from open market was appointed on regular temporary establishment in the same Circle. This deemed date obviously is the deemed date of absorption in the regular establishment and on the basis of that deemed date the seniority of the Junior Engineers in the Circle is maintained. It is undisputed that the promotion to the post of Sub-Divisional Engineer, which is a Class II post and is in the State Cadre is made from amongst the Junior Engineers. The question, Therefore, that arises for consideration is whether it is open for the employer to maintain a seniority list of Junior Engineers of different Circles on the basis of their actual date of absorption in regular establishment and not on the basis of their deemed date of absorption and consider promotion on that basis? The answer must be in the negative. The promotion to the post of Sub-Divisional Engineer is made according to a set of Rules called the Maharashtra Service of Engineers, Class I and Class II Cadre Rules. Under Rule

13(c) of the said Rules, appointments to the cadre of Sub-Divisional Engineers is made by promotion from amongst Junior Engineer graduates from the Subordinate Service of Engineers. Under Rule 15, a person to be eligible for promotion to the post of Sub-Divisional Engineer must have rendered 3 years of minimum service as a Junior Engineer. Under Rule 16(a), the promotion to the post of Sub-Divisional Engineer is made by a selection from the Statewise seniority list of Junior Engineers maintained by the Irrigation and Power Department and Buildings and Communications Department, separately. But the Rule is totally silent as to how the Statewise seniority list of Junior Engineers will be drawn up. In other words, it does not stipulate that the State was seniority list of Junior Engineers will be drawn up on the basis of their respective dates of absorption/employment as a Junior Engineer in regular establishment or on the basis of the deemed date which is to be determined in accordance with the two government resolutions referred to earlier. In the absence of any specific provision it would be only reasonable to construe that the Statewise seniority list has to be prepared on the basis of seniority list already prepared in the Circle indicating the respective deemed dates of each such Junior Engineer. The counsel for the appellant no doubt is fully justified in raising the contention that the two government resolutions having been specifically meant for drawing up of the seniority list in the Circle, the Tribunal erred in law in directing to draw up the seniority list by giving the benefits of those Regulations in question. But as has been stated earlier, in the absence of any provision in the Recruitment Rules the seniority list of the Junior Engineers when is prepared under Rule 16(a) for the purpose of giving promotion to the post of Sub-Divisional Engineer the same should be made taking into account the deemed date of each of the Junior Engineers in the Circle and prepare the Statewise seniority list." In *State of Rajasthan Vs. Kunji Raman*, the Hon'ble Court recognised that Work-Charged employees and employees on regular establishment of the PWD comprised two separate and distinct classes. It held that the claim of the Work-Charged Petitioners for granting them project allowance was misconceived and so was their claim that they should be given all benefits which are made available to regular employees. Very recently, in *State of Orissa and Others Vs. Balaram Sahu and Others*, etc. etc., , the Apex Court had chartered a slightly different course in that it had stated that in connection with the claim of equal pay for equal work it is for the claimants of parity to substantiate a clear-cut basis of equivalence and a resultant hostile discrimination. The Court also pithily observed that equal pay for unequal work also negates the right under Article 14 i.e. that regular employees may in some circumstances be performing longer and more onerous duties with greater responsibilities, when compared with daily wagers and should not be similarly treated. *Jasmer Singh's case* (supra) was repeatedly referred to. These views have also been voiced in *Ashwani Kumar and Others Vs. State of Bihar and Others*, and *Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan*, . It would also be of advantage to note similar pronouncements made in *Associate Banks Officers' Association Vs. State Bank of India and Others*, and *Chief Superintendent, Government Livestock Farm Hissar v. Ramesh Kumar*, (1997) 11

SCC 363 .

5. Faced with these clearly unsurmountable obstacles Mr. J.P. Sengh, learned counsel for the Petitioner, had stated that it is essential for the Respondents to have framed Regulations in this matter, and in their absence, it is impermissible for them to impose conditions such as are contained in the letters of regularisation mentioned above. In my view the Petitioners were well aware on 18th December, 1985 and 21st December, 1985 that the period during which they had discharged duties on Work-Charged basis would not be counted for seniority on regular appointment. In the first place, having accepted regular appointment on these terms, they cannot be heard to oppose the benefit bestowed on them. The principles analogous to estoppel would preclude such challenge. Furthermore, after a space of twenty years and ten years respectively, upsetting a well settled seniority would not be proper. Reliance on the proposed Seniority List circulated on 23.8.2002 and the Circular dated 18.2.2003 cannot better the case of the Petitioners since they were aware all along that they were being treated as a class separate and distinct from the then cadre of regular drivers. As has already been observed they ought to have imp leaded all those persons which would have been adversely affected in the event of the Petitioners succeeding in these writ petitions. The writ petitions are devoid of merit. For these manifold reasons I do not think it fit to exercise jurisdiction under Article 226 of the Constitution of India.

6. The writ petitions are accordingly dismissed.