

(2011) 05 UK CK 0121

In the Uttarakhand High Court

Case No : Special Appeal No. 49 of 2006

Jagpal Singh and Others

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Uttar Pradesh Public Works Department (Irrigation Branch) Subordinate Engineers Service Rules, 1951 — Rule 17

Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 7, 9

Citation : (2011) 2 UC 1210

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—All the three appeals challenge one composite judgment rendered by a learned Single Judge of this Court while dismissing three writ petitions, which were filed by the Appellants in these three appeals. We have, accordingly, decided to dispose of all the three appeals by this judgment and order.

2. At the time when the Appellants were appointed as Junior Engineers in the Irrigation Branch of the Public Works Department of the State of Uttar Pradesh, Uttar Pradesh Public Works Department (Irrigation Branch) Subordinate Engineers Service Rules, 1951 was in vogue. The said Rules did not authorize appointment of any of the Appellants in the manner they were appointed. The said Rules authorized appointment of Junior Engineers from amongst only those people, who had been selected for being appointed as Junior Engineers by the Public Service Commission. The proviso to Clause (2) of Rule 17 of the said Rules, authorized appointment of Junior Engineers for a period not exceeding 12 months, only when an attempt had been made by the Commission to select people for being appointed as Junior Engineers and when no such selected person is available for being appointed. Admittedly, at or before appointment of

any of the Appellants, no action was taken by the Public Service Commission to select people for being appointed as Junior Engineers.

3. In the circumstances, all the Appellants were appointed on ad hoc basis. On 14.05.1979, U.P. Regularization of Ad Hoc Appointments (on posts within the purview of Public Service Commission) Rules, 1979 came into force. The said Rules provided that a person, who was directly appointed on ad hoc basis before 01.01.1977 and is continuing in service, as on the date of commencement of the said Rules, shall be considered for regular appointment in permanent or temporary vacancies, as may be available on the basis of record and suitability before any regular appointment is made in such vacancies in accordance with the relevant service rules or orders. Some of the Appellants were appointed on ad hoc basis before 01.01.1977 and some after 01.01.1977. By notification dated 22.03.1984, published on 08.09.1984, Rule 9 was inserted in the said Rules, in terms whereof the provisions of the said Rules became applicable, *mutatis mutandis*, also to any person directly appointed on ad hoc basis on or before 01.05.1983 and continuing in service as such, as on the date of coming into force of the said notification. All the Appellants were appointed before 01.05.1983. As a result, each of the Appellants was regularized. Rule 7 of the said Rules specifically provides that a person appointed under those Rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with those Rules and shall, in all cases, be placed below people appointed in accordance with the relevant service rules or as the case may be, through regular prescribed procedure prior to the appointment of such person under those Rules.

4. In terms of the provisions contained in Rule 7 of the said Rules, seniority of the Appellants was fixed. In one of the writ petitions, there were four Petitioners, whose appointments were vetted by the Public Service Commission subsequent to their appointment on ad hoc basis and the Public Service Commission approved their appointment and while doing so, gave them positions according to their merit. Those Petitioners withdrew from the writ petitions accepting that their seniority has been fixed on the basis of their seniority as ought to have had been fixed. They are not before us as Appellants. According to the learned Counsel for the Appellants, there are two Appellants, who are similarly circumscribed i.e. their cases too had been referred to the Commission and the Commission has approved their appointments. But according to the learned Counsel for the Appellants, their seniority has not been fixed from the date of their initial appointment.

5. As aforesaid, the 1951 Rules did not authorize any of the appointments of the Appellants on ad hoc basis. The Appellants could only be appointed in the event an exercise had been made by the Commission to select people for being appointed and there had been no such selected people available for appointment and that too only for 12 months. In the circumstances, question of any of the Appellants and even those two Appellants, whose appointments were

subsequently approved by the Commission, were not entitled to their seniority from the date of their initial appointment. Whereas the other Appellants were entitled to their seniority from the date of their regularization in terms of 1979 Rules, the two Appellants, whose cases were approved by the Commission, were entitled to their seniority from the date of their approval by the Commission, which, according to the learned Counsel for the Appellants, has been given to them.

6. After regularization of Junior Engineers, thus appointed, was complete, a seniority list, inter se them and others, was prepared in the year 1984 and the same was finalized in the year 1986. None of the Appellants challenged the said final seniority list of 1986.

7. In 1992, the Irrigation Branch of Public Works Department became an independent department, namely, Irrigation Department of the State and appropriate rules were framed in respect of employees of the said department. Appellants, in block, came to Irrigation Department of the State with their seniority as was finally determined in 1986.

8. In 1992, a Hill Sub-Cadre was made in the Irrigation Department of the State. Some of those Junior Engineers, who were in the Irrigation Department, having had opted for Hill Sub-Cadre, went to Hill Sub-Cadre. In respect of members of the Hill Sub-Cadre, in accordance with the Hill Sub-Cadre Rules, a separate seniority list was required to be prepared. Such a seniority list was prepared. In 1997, the same was finalized. On the basis of the said seniority list, promotions were given to Junior Engineers, who were in the Hill Sub-Cadre, to the posts of Assistant Engineers, available in the Hill Sub-Cadre, in the year 2000.

9. Subsequent to grant of such promotion, in the year 2000, by the U.P. Re-organization Act, 2000, by carving out a part of State of Uttar Pradesh, the State of Uttaranchal was created. Simultaneously, it was decided to do away with the Hill Sub-Cadre. As a result, a few Junior Engineers, who still remained Junior Engineers in the Hill Sub-Cadre for having not been promoted to the post of Assistant Engineer in the year 2000, were to be merged once again with the general cadre and for that, it became necessary to prepare a fresh seniority list. That was prepared in 2001. No sooner that was prepared in 2001, in 2002 that seniority list was challenged by the Appellants by filing the said three writ petitions contending that they are entitled to count their seniority from the date of their initial appointment on ad hoc basis and not from the date they were regularized or from the date two of them were found suitable by the Commission and, accordingly, sought to interfere with the matter which stood settled since 1986. The whole purpose and object of the writ petitions by the Appellants was, thus, gross mala fide.

10. For the reasons, inter alia, as above, the writ petitions have been dismissed by the judgment and order impugned in instant appeals. We have not been persuaded to take a different view. We feel that the present litigations were ill-

advised and utterly mala fide. Nowhere, in any of the petitions, it had been contended that a Junior Engineer, who stood merged with the general cadre upon bringing to an end the Hill Sub-Cadre, though was junior to any of the Appellants, was placed higher up in the seniority list made in 2001. We personally feel that these litigations should not only be nipped in the bud but every effort should be made to discourage filing of these kinds of mala fide and unjust litigations. This, we think, can only be done by imposing exemplary cost so that the same become an example and prevent others from taking similar steps. We proposed to impose cost of rupees three lakhs on each of the Appellants, but we restrained ourselves from doing so in view of the mercy pleaded by the Counsel appearing for them.

11. All the appeals stand dismissed accordingly.