

(2004) 05 AHC CK 0219
In the Allahabad High Court
Case No : Writ Petition No. 161 (S/B) of 1994

Mohd. Khursheed Anwar and Another	APPELLANT
Vs	
U.P. Land Development Corporation Ltd. and Another	RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Citation : (2004) 5 AWC 4797

Hon'ble Judges : Khem Karan, J;Bhanwar Singh, J

Bench : Division Bench

Advocate : A.P. Singh and P.K. Khare, for the Appellant; P.N. Mathur, Vinod Kumar Singh and Krishna Mohan, for the Respondent

Final Decision : Allowed

Judgement

Bhanwar Singh, J.—The Petitioners Mohd. Khursheed Anwar and Ashok Kumar, by filing this writ application, prayed for a writ in the nature of mandamus commanding the opposite parties to place them in the pay-scale of the post of Assistant Engineer and accordingly pay their salary with allowances as admissible to the said post.

2. According to them, they were engaged by the U.P. Land Development Corporation Limited (hereinafter referred to as the Corporation) initially on contract basis and on a consolidated salary of Rs. 2,000. In the year 1991, they submitted their applications for appointment on the post of Assistant Engineer by direct recruitment, whereupon they were required to appear for interview on 15.2.1991. A selection committee conducted the interview and found them suitable for appointment as Assistant Engineers. Pursuant to their appointment letters, the Petitioner No. 1 Mohd. Khursheed Anwar joined his post on 25.2.1991, while Ashok Kumar submitted his joining report a little later, i.e., on 11.3.1991. Since then, they have been continuously working without any break. However, their tenure of appointment was extended from time to time in the years 1991 and 1992 but then finding that their services were permanently required, the Corporation extended their term for indefinite period until further

orders. Both the Petitioners claimed them to be well qualified Engineers. They discharged their duty with excellent performance but were not given the pay-scale prescribed for the post of Assistant Engineer, i.e., 2,200-4,000. They are still being paid consolidated salary of Rs. 2,000, now revised to Rs. 7,150. In spite of their long tenure in service, their claim for regularisation has not yet been considered by the Corporation. Their request for pay parity on the strength of their claim that since they were discharging their duty as Assistant Engineer, they were entitled to draw the salary admissible to the pay scale of the said post was declined. Even their genuine claim for transfer allowance following their transfer from one place to another has not been acceded to. They moved their representations (copies Annexures-9 and 10) praying for their regularisation in service and until regularisation requested for grant of the pay-scale referred to above but the authorities did not pay any heed. It was in these circumstances that the Petitioners were obliged to file this writ application.

3. The opposite parties resisted this petition by filing counter-affidavit of Shri Pawan Agrawal, Company Secretary of the Corporation. Shri Agrawal denied the Petitioner's contention that they were appointed as Assistant Engineers ; instead, as submitted by him, the two Petitioners were engaged on contract basis initially for a period of three months on a monthly consolidated salary of Rs. 2,000. However, the term of their service was extended from time to time depending upon the need for the work. It was clearly mentioned in their appointment letters that they would not be entitled for regularisation on the basis of their appointment and continuance in service for any period. Shri Agrawal also rejected the Petitioner's claim of their having been appointed as Assistant Engineer.

4. Subsequently, Shri D.K. Mittal, Managing Director of the Corporation filed his affidavit asserting therein that the main activity of the Corporation is to help the farmers in the venture of reclamation of their barren land and for that purpose, projects are prepared and funds are also made available to the needy farmers. The Corporation does not have funds of its own and the projects for carrying out land reclamation activities are sponsored by funding agencies like World Bank, E.E.C. and Million Wells Scheme. On completion of the projects, staff and officers engaged to carry out the projects are discharged from service and as, always such projects are time bound, the staff or the officers are not engaged on permanent basis. The Petitioners too were recruited on contract basis but they were not appointed as Assistant Engineers (Civil), rather they were asked to discharge the duties of Junior Engineers. As a matter of fact, the post of an Assistant Engineer has never existed in the Corporation nor such a post is needed. According to the Government order dated 22.2.1993, various sanctioned posts were to be filled by staff on deputation and no direct recruitment was authorised. The staff on deputation basis is not easily available and it was for this reason that the Corporation engaged staff and officers on contract basis. The Petitioners were called again for interview on 8.9.1994 and offered enhanced salary of Rs. 2,950 per month for the post of Junior Engineer (Drainage). The

Petitioner's representations were disposed of in due course. The Petitioners committed serious irregularities in discharge of their duty, as a consequence enquiries were initiated against them. Therefore, their claim for their excellent performance was not sustainable. As a matter of fact, neither the Petitioners were appointed on consolidated pay nor they discharged the duty of an Assistant Engineer. Their appointment cannot even be termed to be on ad hoc basis. Their petition being devoid of merit deserves to be dismissed.

5. Mr. D.K. Mittal, Managing Director of the Corporation filed a supplementary affidavit and thereby placed before the Court that under the Services Rules of the Corporation, the classification of the posts under Corporation for purposes of appointment, control and discipline shall broadly be as laid in Annexure-A and no post of Assistant Engineer has been shown, therein, to be existing. Rules 7A, 7B, 17(A) and 18 to 28 were quoted with a view to prove as to how the appointment either by way of promotion from amongst the Corporation employees or on deputation or reemployment or on contract basis can be made by the Corporation. It was also stated by the Managing Director that the State Government sanctioned vide its order dated 22.1.1993, various posts but no post of Assistant Engineer, Mechanical or Civil or Agricultural was created. He reiterated further that the Petitioners were engaged on contract basis as Junior Engineer according to the provisions of Rule 28(2).

6. Mohd. Khursheed Anwar filed a rejoinder-affidavit to the supplementary counter-affidavit of the Managing Director and reiterating his claim that he and Ashok Kumar were appointed as Assistant Engineer referred to the letter dated 8.4.1992 of the Managing Director addressed to the Government in which it was admitted that 260 posts were existing including two posts of Assistant Engineers as shown in Col. Nos. 19 and 20 of the list of such sanctioned posts.

7. We have heard Mr. P.K. Khare, learned Counsel for the Petitioners and Mr. P.N. Mathur, learned senior advocate, assisted by Mr. Vinod Kumar Singh and perused the record.

8. While delving upon the issue as to whether the Petitioners are entitled or not to get the salary of the post of Assistant Engineer on the basis of the principle of pay parity, it would be necessary to determine as to whether the Petitioners were appointed as Assistant Engineers or Junior Engineers.

9. It is admitted to the opposite parties that the Petitioners were appointed by virtue of appointment letters dated 18.2.1991. The copies of these letters are Annexures-1 and 2 on record. A perusal of these appointment letters appears to indicate that both of them were appointed on contract basis on a consolidated salary of Rs. 2,000 per month. Their appointment was to last for three months. What is significant to note is that in neither of the letters it is mentioned that they were appointed as Assistant Engineer and similarly there is no reference to the post of Junior Engineer either but it is markable that both the Petitioners have been referred to as B. Sc. (Engineering) and B.E. (Civil) respectively.

Obviously thus, it is evident that both the Petitioners are degree holders. Only the diploma holders were appointed as Junior Engineer. It does not stand to reason that when the two were well qualified Engineers why they would accept the offer of their appointment as Junior Engineer. There was no reason for the Managing Director or the Manager (Administration and Personnel) for having omitted the rank of the Petitioners as Junior Engineer if they were proposed to be appointed on such posts. The Petitioners' case of their engagement as Assistant Engineer gets assurance from the interview letters issued by the Corporation, copies whereof are Annexures-R-1 and R-2 on record. A perusal of the interview letter (R-1) reveals that Mohd. Khursheed Anwar was directed to appear in the office of the Manager on 15.2.1991 at 4.00 p.m. and what is important to mention is that the letter refers to the application of Khursheed Anwar specifically reciting therein about the application for appointment as Assistant Engineer. Similarly, in the letter (Annexure-R-2), Ashok Kumar's application for appointment on the post of Assistant Engineer has been referred to. Further, Ashok Kumar submitted his joining report on March 11, 1991. A copy of the said joining report is Annexure-R-3. It clearly indicates that he submitted his joining report for the post of Assistant Engineer (Civil). The estimate (Annexure-R-4) submitted to the Joint Managing Director by the Senior Manager, Project Manager and Assistant Manager clearly refers to the designation of Shri Ashok Kumar as Assistant Engineer and not as Junior Engineer. The Joint Managing Director approved the said estimate on 16.7.1994 and this approval proves the Petitioners' case of their being appointed as Assistant Engineers, otherwise, not only the Joint Managing Director but other officers of the project also, who were the signatories to the estimate would have raised an objection to the Petitioner Ashok Kumar having signed as Assistant Engineer. An another "Abstract of Cost" was prepared by three officers including Mr. Ashok Kumar and as is evident from Annexure-R-5, it was submitted to the Managing Director through Mohd. Khursheed Anwar. Both the Petitioners signed as Assistant Engineers and while approving it, the Managing Director did not raise any objection on the recitals of the Petitioners' designation as Assistant Engineer because of there being a reality to the effect that the Petitioners being well qualified Engineers were working in the Corporation on the post of Assistant Engineer.

10. In the month of March, 1991, the General Manager wrote a letter dated 2.3.1991 to Mohd. Khursheed Anwar and addressed him as an Assistant Engineer, Headquarters, Lucknow. Its copy was endorsed to Senior Deputy Manager, Jaunpur. The Managing Director's averment that there was no post of Assistant Engineer is falsified from the then General Manager's letter of April 8, 1992 (copy Annexure R-7). Along with the said letter, five lists were enclosed. In list No. 5, details of 260 posts were given which were sanctioned earlier by the Government and in the said list at Sl. Nos. 19 and 20, two posts of Assistant Engineers are shown to be existing then. The letter was sent long after the Petitioners' appointment as Assistant Engineer. Thereafter, their claim cannot be brushed aside merely on the basis of the averment that there was no post of

Assistant Engineer available in those relevant days. Apart that, if there was no post of Assistant Engineer in the cadres of Corporation, why their applications were processed and they were referred to be as Assistant Engineers while being interviewed. In utter contradiction to this initial stand of the Corporation, the Managing Director Mr. D.K. Mittal in para 6 of his supplementary counter-affidavit built up an incredible story that as none was holding the post of Assistant Engineer, a letter was issued for keeping the post of Assistant Engineer in abeyance. Further, the nomenclature of the Assistant Engineer has been referred to as Manager as is evident from the advertisement published in the newspapers, copies whereof have been filed along with the supplementary-affidavit of the Petitioners (two advertisements S-1). It may be emphasised that the Service Rules do not refer to the post of Manager for engineering purposes. Obviously thus, the opposite parties have been swinging from one stand to another with a view to cover up the reality and as the old saying is with a view to screen one false allegation one has to build upon hundred. All the averments of the opposite parties are far from truth.

11. There is yet one more very important document to support the cause of the Petitioners and it is a charge-sheet issued to Mr. Ashok Kumar on 28.5.1994. Certain allegations were levelled against him regarding irregularities said to have been committed by him in Madhogarh Project. The allegations were not very serious as is evident from Annexure-C.A.-4. However, we need not go into the details of the charges that Ashok Kumar utilized some grant of Rs. 62,332 without verification of the works but it is proved from the address at the top of the charge-sheet, that Ashok Kumar was designated as the Engineer and not the Junior Engineer.

12. A similar enquiry was conducted against the other Petitioner Mohd. Khursheed Anwar and in the charge-sheet (Annexure-C.A. 3), he was addressed to be as Junior Engineer (Sanklit) but this reference is meaningless as his designation was shown in a biased manner and with prejudiced mind during the pendency of this petition. It may be noteworthy that this petition was filed on 8.2.1994 and both the Petitioners had come across the ire and fire of his superiors soon thereafter. However, subsequently, the charges were dropped and even thereafter the Petitioners have been kept and continued in service for about 10 years. This is very important to note that Ashok Kumar was addressed as Engineer and not a Junior Engineer even in May, 1994. Moreover, it is significant to note that financial works involving lacs of rupees are to be executed by the Assistant Engineers and not Junior Engineers. So from this angle also, it is established that the Petitioners were engaged as Assistant Engineer and in fact, they have been discharging their duty assigned to them as such.

13. The Corporation filed during the course of arguments photo stat copy of a letter dated 12.10.2001, issued by the Managing Director to the two Petitioners. By virtue of this letter, the Petitioners were conveyed that their monthly remuneration had been increased to Rs. 7,150 and the period of their contract

extended upto 31.12.2002. Certain other formalities regarding execution of the contract were also mentioned therein. With reference to this letter, it was argued that the designation of the Petitioners was recited as Junior Engineer and not an Assistant Engineer. This document can very well be termed to be a manufactured paper as it has been issued during the pendency of this petition and it is clearly evident that the Managing Director had taken all precautions and steps to thwart the Petitioners' claim by means of creating an evidence and at the same time earning an applause for the Petitioners' increased remuneration. As this letter is hit by the principle of *lis pendens*, it cannot be accepted as a genuine piece of evidence, although, it is different that the Petitioners are getting the increased monthly salary. But since the letter seems to be motivated, its evidentiary value is absolutely insignificant. The Petitioners' engagement as Junior Engineer seems to be an afterthought version, developed sequel to filing of this writ application.

14. Learned Counsel for the opposite parties contended that the regular scale admissible to the post of Assistant Engineers cannot be given to them as there is no sanctioned post of Assistant Engineer in the Corporation nor any one is working on the said post. It has been held in the earlier part of this judgment that there were two posts of Assistant Engineers in the pay scale of Rs. 2,200-4,000. However, subsequently, when more posts were created, the designation of Assistant Engineer was changed on account of the administrative nature of the Corporation and as stated by the Petitioners, the said post was equated with that of Manager. It is established from record that not only the Petitioners were engaged as Assistant Engineer but they also discharged their duty as assigned to an Assistant Engineer. Documentary evidence, referred to above, has clearly proved the Petitioners' case on that score. The engagement of public servants on contract basis has time and again been held by this Court to be against the public interest. However, we need not go into the validity of the Petitioners' appointment whether on permanent or temporary basis for the reason that they have not prayed for relief of regularisation although, in their petition, they pleaded that having put in more than a decade's service, they would be entitled for their regularisation. But since they have not claimed that relief, we are not called upon to delve upon the issue. However, there is enough material on record to convince us to hold that the Petitioners were appointed on ad hoc basis and the nature of their ad-hocism was well established with effect from the date their appointment orders were issued containing the terms that they shall continue to be in service until further orders. As said above, they are qualified Engineers holding eligibility for being appointed as Assistant Engineer. They are degree holders and with the lapse of time, by now, have acquired enough experience. Ad-hocism nature of their appointment should not be exploited by the authorities of the Corporation. If there are posts of Assistant Engineers or equivalent thereto, payment of their wages should be equal to the said post on the ground of the principle of pay parity. The reasoning that while creating new posts, the Government did not sanction any post of Assistant Engineer will not help the opposite parties as by the letter dated 22.2.1993

(Annexure-A-3), by virtue of which, new posts were created, the old posts numbering 260 in total lying vacant were not abolished, although they were kept in abeyance. As the Petitioners have been appointed long before issuance of the said letter dated 22.2.1993, it would be deemed that the two posts of Assistant Engineers had been filled up with the ad hoc appointment of the Petitioners. It was, however, different rather meaningless if the said two posts were not shown to have been occupied by the Petitioners on account of some implications. One of such implications is obvious that if the two posts had been indicated to be occupied by the Petitioners, their salary in the prescribed scale was required to be paid to them. The Management of the Corporation some how did not wish to keep the things clean and clear and it is a matter of common experience that very often a motivated ambiguity is left with a view to leave scope for suitable interpretation. If there was no post of an Engineer in the Corporation, why in the initial appointment letters of the Petitioners, they were referred to as simply Engineers. The opposite parties have not proved from any document that there was a post of Engineer existing in the Corporation. As is evident from the list of 260 sanctioned posts, there were posts of either Assistant Engineers or Junior Engineers. If the Corporation had in mind to appoint the two Petitioners on any terms and conditions, their designation should have been clearly indicated. In the absence of clarity coupled with subsequent reference to their designation as Assistant Engineers, it would be presumed that they were appointed as Assistant Engineers and therefore, they would be entitled to get their salary in the pay scale of Rs. 2,200-4,000 as revised up to date.

15. Before parting, we would like to observe that these days, the Government is conscious to improve the image of public sector, the confidence of the citizens and the lot of employee in the Government service and with these considerations, it has been issuing various notifications to regularise the service of ad hoc and daily rated employees. Therefore, we hope and trust that the Authorities shall take a reasonable view in the case of the Petitioners as well. Since the Petitioners have served the Corporation for more than a decade, it is expected of the Corporation and the Government both that sincere efforts would be made to absorb them permanently so that they are not thrown out of job at this middle juncture of their age. However, as said above, since they have not sought a relief for regularisation, we are not inclined to consider it.

16. In view of the discussions made above, we are of the decisive view that this petition succeeds and accordingly, the Petitioners' prayer, as contained in the relief column (a) is granted. A writ of mandamus is issued commanding the opposite parties to place the Petitioners in the pay scale admissible to the post of Assistant Engineer (Rs. 2,200-4,000) as revised up to date.