

(1996) 09 AHC CK 0132
In the Allahabad High Court
Case No : C..M.W.P. No. 2301 of 1987

Raghuraj Singh Yadav and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-09-1996

Acts Referred:

Uttar Pradesh Government Servants (Seniority) Rules, 1991 — Rule 16(2), 25, 4
Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 2, 4, 4(2), 5, 6

Citation : (1996) 09 AHC CK 0132

Hon'ble Judges : R.A. Sharma, J;D.K. Seth, J

Bench : Division Bench

Advocate : K.C. Sinha and A.K. Dwivedi, for the Appellant; S. C., for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—What is the date with reference to which seniority of the Petitioners is to be determined. Is it the date of their temporary/officiating appointment Or is it the date of regularisation of their services is the question, which is involved in this writ petition.

2. Petitioner No. 1 was appointed temporarily as Sub-Deputy Inspector of Schools (hereinafter referred to as the S.D.I.) subject to his selection subsequently by the Public Service Commission, U.P. (hereinafter referred to as the Commission) vide appointment letter dated 12.10.1965. But he was never selected subsequently by the Commission. Petitioner Nos. 1, 2, 3 and 4 were appointed as temporary/officiating S.D.Is. vide appointment letter dated 15.10.1968, 5.3.1970 and 10.8.1972 respectively. These Petitioners were also not selected by the Commission. By order dated 18.6.1980 service of the Petitioner Nos. 1 and 2 was regularised under the U.P. Regularisation of Ad hoc Appointments (on Posts within the Purview of Public Service Commission) Rules, 1979. The service of the Petitioner Nos. 3 and 4 was also regularised under the

said rules by orders dated 18.1.1981 and 27.4.1980 respectively. In 1973 the Commission issued an advertisement inviting applications for the posts of S.D.Is. pursuant to which the Commission held the selection and recommended the names to the Government for appointment. On the recommendation of the Commission, the Government appointed 177 S.D.Is. On temporary basis vide appointment letter dated 22.1.1976. The services of these appointees were confirmed and made permanent by orders dated 22.5.1980, 8.10.1980 and 20.5.1981. The Government prepared a seniority list in 1985 in which 177 S.D.Is. who were selected by the Commission, were shown seniors to the Petitioner Being aggrieved, the Petitioners have filed this writ petition. Although the Petitioners are aggrieved by the seniority list In which they have been shown Junior to the S.D.Is. who were appointed on the recommendation of the Commission, but they have neither prayed for its quashing nor have they impleaded those who have been shown as seniors to them. The Petitioners have merely prayed for fixation of their seniority from the dates of their temporary appointments. The consequential relief of grant of the selection grade has also been claimed.

3. The Sub-Deputy Inspector of Schools Service Rules, 1945 (hereinafter referred to as the Service Rules), provide for mode of recruitment and have also laid down the terms and conditions of service of S.D.Is. Rule 3(i) defines "the service" as the Sub-Deputy Inspector of Schools Service. "Member of the service" has been defined by Rule 3(e) as under:

3. (e) "Member of the service" means a person appointed in a substantive capacity under the provisions of these rules to a post in the cadre of the service. Persons holding posts in the cadre of the service in a substantive capacity on the date on which these rules come into force shall be deemed to be members of the service.

Rule 4 has laid down the sanctioned strength of the service. By Sub-rule (b) of the said rule, the power has been given to the Governor to Increase the cadre by creating additional, permanent or temporary posts from time to time. Rule 5 lays down that the recruitment to the service shall be direct and as per Rule 11 such recruitment is to be made through the Commission and the candidates selected by the Commission are issued orders of appointment under Rule 16(1). Sub-rule (2) of Rule 16 provides for appointment in temporary and officiating vacancy. Rule 16 is reproduced below:

16. Appointment.-

(1) A person recommended by the Commission for appointment to the service shall be appointed thereto on the occurrence of a vacancy by the Director in the order in which he is recommended by the Commission.

(2) The Director may make appointments in temporary and officiating vacancies from persons who are eligible for permanent appointment to the service under these rules.

Rule 17 deals with the period of probation. Rule 19 provides for confirmation after completion of the period of probation or extended period of probation and passing of the examination prescribed in Rule 18. Rule 25, which deals with the seniority is as under:

25. Seniority.-The seniority of a member of the service shall be determined by the date of the order of his substantive appointment to the service, provided that if two or more candidates are appointed on the same date, their seniority shall be determined according to the order in which their appointments have been notified.

According to the said rule, the seniority of a member of service is to be determined from the date of the order of his substantive appointment. In *Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others*, , the Hon''ble Supreme Court has laid down that the appointment of the temporary appointee can also be in substantive capacity if he fulfils the necessary conditions/tests for regular appointment, such as, consultation with the Commission. Rule 4(h) of the U.P. Government Servants Seniority Rules, 1991 has also defined the "substantive appointment" as follows:

4(h). "Substantive appointment" means an appointment, not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the service rules relating to that service.

These rules apply to all U.P. Government servants and have the overriding effect over other rules.

4. Petitioners were not selected by the Commission for appointment on temporary/officiating basis. They applied before the Director, who straightaway issued appointment letters to them. They were not appointed on the posts in the cadre of the service after the selection in accordance with the service rules. They were, therefore, not appointed in substantive capacity. In Paragraph 14 of the writ petition, Petitioners have stated that they were appointed temporarily against the clear vacant posts by the Director. Against such posts, even temporary/officiating appointments could not have been made by the Director, because Rule 16(2) enables the Director to make such appointments "in temporary and officiating vacancies". Under Rule 25 of the service rules the seniority is to be determined from the date of order of the substantive appointment. Confirmation in service is not relevant for this purpose. Temporary appointments of the Petitioners were de hors the service rules and were not in substantive capacity. Therefore, the service rendered by them under such appointments cannot be taken into consideration for the purposes of the seniority. But the temporary appointments of S.D.Is., we were: appointed on the recommendation of the Commission, being in accordance with service rules, were in substantive capacity and, therefore, their seniority has to be determined from the dates of their temporary appointment.

5. The U.P. Regularisation of Ad hoc Appointments (on Posts within the Purview

of Public Service Commission) Rules, 1979 (hereinafter referred to as the Regularisation Rules) provides for regularisation of the service of the temporary/ ad hoc appointees. Rule 2 given overriding effect to these rules. Rule 4, being relevant is reproduced below:

4. Regularisation of ad hoc appointment.-

(1) Any person who-

(i) was directly appointed on ad hoc basis before 1.1.1977 and is continuing in service, as such, on date of commencement of these rules;

(ii) possessed requisite qualification prescribed for regular appointment at the time of such ad hoc appointment; and

(iii) has completed or, as the case may be after he has completed three years continuous service, shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointment under these rules, reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories, shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of Sub-rule (i), the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary.

(4) The appointing authority shall prepared an eligibility list of the candidates, arranged in order of seniority as determined from the date of order of appointment and, if two or more persons are appointed together from the order In which their names are arranged in the said appointment order, the list shall be placed before the Selection Committee along with their character rolls and such other records, pertaining to them, as may be considered necessary to judge their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in Sub-rule (4).

(6) The Selection Committee shall prepare a list of selected candidates, the names in the list being arranged in order of seniority, and forwarded it to the appointing authority.

The Rule 4 provides for consideration of the cases of ad hoc appointees for their regular appointment on the basis of their record and suitability by a Selection Committee. The candidates so selected are appointed under Rule 5, which is reproduced below:

5. Appointments.-The appointing authority shall subject to the provisions of Sub-

rule (2) of Rule 4, make appointments from the list prepared under Sub-rule (6) of the said rule In the order In which their names stand in the list.

In view of Rule 6, the appointments made under Rule 5 are deemed to be the appointments under the relevant service rules or orders. Rule 8 has laid down that if an ad hoc appointee is not found suitable for regular appointment his service is to be terminated forthwith and such an employee is entitled to one month's salary. Rule 7, which deals with the fixation of seniority of the employees, who have been given substantive appointment under the Regularisation Rules is as under:

7. (1) A person appointed under these rules shall be entitled to seniority-only from the date of order of appointment after selection in accordance with these rules and shall, in all cases, be placed below the persons appointed in accordance with the relevant service rules, or as the case may be, the regular prescribed procedure, prior to the appointment of such person under these rules.

(2) If two or more persons are appointed together, their seniority inter se shall be determined in the order mentioned in the order of appointment.

In view of Rule 7, a person, who is appointed under Rule 5, is entitled to seniority "only from the date of order of appointment after selection in accordance with these rules." Such a person, therefore, gets the seniority from the date of regularisation of his service/the date of order of appointment under Rule 5. The Petitioners' services were regularised under the regularisation rules and they were issued appointment letters under Rule 5 on 18.6.1980, 24.6.1980 and 18.1.1981. They will, therefore, get the seniority from the said dates of their appointment letters issued under Rule 5. Rule 7 has statutory force and it cannot be ignored. They are, therefore, not entitled to get the seniority from the dates of their temporary/officiating appointments.

6. When the regularisation rules have fixed the date with reference to which the seniority of the employees, who have been given substantive appointment thereunder, is to be determined, it is not open to determine their seniority from any other date, because these rules have statutory force and are binding. But as the learned Counsel for the Petitioners has argued about the general principles for determining the seniority of the temporary appointees, we consider it proper to deal with this question also.

7. Whether a temporary appointee is entitled to seniority from the date of his temporary appointment depends on the relevant service rules and the mode/method of his appointment. If the temporary appointment is de hors the service Rules, the period of service of such an appointee cannot be taken into account for the purpose of seniority on a post in the cadre of the service. Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, and various other cases following that decision has laid down that if the ad hoc/temporary appointments are made in accordance with the relevant service rules, the entire period of temporary service is to be

counted for determining seniority but if such appointments have not been made In accordance with the service rule, the entire period of temporary service is liable to be ignored and cannot be counted for the purpose of seniority. The position having been settled by the Supreme Court, it is not necessary to cite all the cases. It is sufficient to refer to the following two cases.

8. In (1996) 2 SCR 59 , it was laid down as follows:

9. In the Direct Recruits case, the Constitution Bench of this Court summarised the legal position in Paragraph 44 as follows:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority,

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

* * * * * 11. In the three judge Bench decision this Court in the case of State of W.B. and Others Vs. Aghore Nath Dey and Others, . this Court held:

That to enable his seniority to be counted from the date of initial appointment the incumbent of the post has to be initially appointed according to rules. Thus, where initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority.

12. It was thus held that "conclusions A and B of the Constitution Bench in Direct Recruits case have to be read harmoniously and conclusion B cannot cover cases which are expressly excluded by conclusion A.

13. In a more recent case of V. Sreenivasa Reddy and others Vs. Govt. of Andhra Pradesh and others, . where one of us (brother Ramaswamy, J.) was a member, all the decisions of this Court on the point have been considered and it has been laid down that temporary or ad hoc appointments are not appointments in accordance with the rules and the temporary service cannot be counted towards the seniority.

In V. Sreeivasa Reddy and Ors. v. Government of A.P. and Ors. AIR 1995 SC 588, Supreme Court has laid down as under:

It is settled law by the judgment of the Constitution Bench in "The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, , that appointment in accordance with Rules is a condition precedent to cogent seniority. Temporary or ad hoc or fortuitous appointments etc. is not an

appointment in accordance with the Rules and the temporary service cannot be counted towards the seniority.

In the above case, the Supreme Court rejected the argument based on equity. In this connection, relevant extract from the said judgment is reproduced below:

We would also test the validity of the Appellantss contention on grounds of equity. It is seen that admittedly some of the temporary appointees had appeared before P.S.C. and were selected on competitive basis by direct recruitment. The P.S.C. candidates appeared for and were selected In the order of their merit. In A.K. Bhatnagar and Others Vs. Union of India (UOI) and Others, , this Court considered a situation where temporary appointees between different periods and many a candidate availed of the selection by U.P.S.C, who though they were appointed later in the non-selected temporary candidates, this Court upheld the seniority as per the list drawn by the U.P.S.C. All those temporarily appointed as earlier as 1964. Were made juniors to the candidates selected by the U.P.S.C. This Court also made a distinction between U.P.S.C. candidates and temporary candidates who do not stand at par. The unregularised officers remained outside the cadre until 1977 and those officers should be placed below regular recruits through the 1970 examination. The same ratio applies to the facts in this case. The temporary appointees cannot be put on a higher pedestal over the P.S.C. candidates who stood the test of merit and became successful and secured ranking according to the merit in the approved list of the candidates prepared by the P.S.C. In Piara Singh's case AIR 1992 SCW 2315, this Court reiterated that the temporary candidates always be replaced giving way to the regular recruits through the prescribed agency and appointments of the regularly selected candidates cannot be withheld or kept in abeyance for the sake of temporary or ad hoc employees.

9. The temporary appointments of the Petitioners were de hors the service rules and, therefore, their temporary services cannot be counted for the purposes of their seniority in view of law laid down by the Hon"ble Supreme Court. That apart, under Rule 25 of the service rules, the seniority can be counted from the date of substantive appointment. Petitioners" temporary appointment not being substantive appointment, the period of their temporary service has to be ignored while determining their seniority. However, as their service has been regularised under the Regularisation Rules, they are entitled to get their seniority from the dates on which they were issued appointment letters under Rule 5 of the said rules. The dates of their appointments under Rule 5 of the Regularisation Rules are 13.6.1980, 24.6.1980 and 18.1.1981. Therefore, they will get their seniority from those dates.

10. For the reasons given above, this writ petition is dismissed, view of the facts and circumstances of the case, there shall be no orders as to costs.