
(2013) 09 MP CK 0342
In the Madhya Pradesh High Court
Case No : W.P. No. 8931 of 2005(s)

S. Sreeraj and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2014) 3 MPHT 255 : (2014) 2 MPLJ 189

Hon'ble Judges : Vimla Jain, J;A.K. Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.—The order passed in this petition shall also govern disposal of connected Writ Petition No. 7048/2004 filed on behalf of Union of India and its functionaries, since both the petitions have arisen from a common order dated 17-3-2004 passed by the Central Administrative Tribunal, Bench at Jabalpur (hereinafter referred to as Tribunal) in O.A. No. 849/2001. The petitioners were applicants before the Tribunal. In the original application filed by them they sought following reliefs:--

- i) to call for the entire material record pertaining to the initial appointment of the applicants on ad hoc basis along with their pay received by the applicants during the course of ad hoc appointment.
- ii) to call for the entire material record pertaining to the regular selection of the applicants by the UPSC along with salary received by them subsequent to their appointment on regular basis and also records pertaining to their seniority.
- iii) to direct the non-applicants to place the applicants in order of their initial appointment on ad hoc basis in the gradation list.
- iv) to direct the non-applicants to treat the date of ad hoc appointments of the applicants as their date of initial appointment on regular basis.
- v) to direct the non-applicants to grant the consequential benefits of seniority,

pay protection and status and arrears of pay which may have accrued to the applicants by treating the initial date of appointment on ad hoc basis as their appointment on regular basis, in the interest of justice.

2. In nutshell, the case of the petitioners is that they were working in Doordarshan Kendra, Bhopal on the post of Cameraman Grade-II. These posts are to be filled by the Union Public Service Commission (hereinafter referred to as UPSC) by holding a written test, practical test, following by the interview and the candidates are declared selected on the basis of their All India merit. The UPSC generally advertises for the said post when requisite numbers of vacancies are available with a particular department and, to meet the shortfall in the contingency, every department is authorised to make appointments till the regular appointments are made by the UPSC. In the year, 1992, the Director General of Doordarshan to meet out the contingency issued an advertisement (Annexure A-1) which was published in the Employment News dated 20/26-6-1992 to recruit the candidates on ad-hoc basis on the post of Cameraman Grade-II having pay scale of Rs. 2,000-3,200/- having requisite educational qualification etc., mentioned in the said advertisement.

3. On bare perusal of the advertisement, it is clear that the appointment shall be made purely on ad-hoc basis upto a maximum period of 1 year or till the posts are filled on regular basis by the UPSC. The petitioners were selected and they were appointed on the basis of the said advertisement on 24-11-1993.

4. Thereafter in pursuance to the advertisement advertised by the UPSC for the recruitment on the post of Cameraman Grade-II the applications were invited on 28-10-1995 (Annexure A-7). Eventually, the petitioners applied for their recruitment on the said post. They were also selected and were given appointment. Annexures A-8 and A-9 are the results declared by the UPSC and individual appointment letters respectively. The petitioners were appointed on regular basis on 24-5-1999 through UPSC.

5. The dispute arose thereafter. The petitioners are claiming seniority with effect from the date when they were appointed on ad-hoc basis on 24-11-1993 on the ground that not even for a single day their services were interrupted and they continued on the said post of Cameraman Grade-II having the same pay scale of regular appointees through UPSC. They have also submitted representation praying that there is disparity in the pay scale and, therefore, their pay scale should be protected. Since, the grievance of the petitioners were not redressed by the department, this made a cause for them to file original application before the Tribunal.

6. The learned Tribunal by passing the impugned order dated 17-3-2004 (Annexure P-1) directed that the pay scale of the petitioners should be protected, however their claim for providing seniority with effect from the date of recruitment on ad-hoc basis was not allowed, hence, original application of the petitioners were allowed in part. Indeed this petition has been filed by the

employees against that part of the order by which the seniority w.e.f. the date 24-11-1993 was disallowed.

7. On the other hand, the Union of India has filed connected Writ Petition No. 7048/04 against that part of the order of Tribunal by which the pay scale of the employees have been protected.

8. We have heard both the petitions analogously. It has been vehemently put forth by Shri Ganguly, learned counsel for the petitioner that educational qualification; pay scale; and other eligibility criteria mentioned in the advertisement for the recruitment on the post of Cameraman Grade-II on ad-hoc basis are akin to that of the advertisement issued by UPSC (Annexure A-7) and if that is the position, since not even for a single day the services of the petitioners were interrupted and they were discharging the same duties which the Cameraman Grade-II were discharging on the basis of their selection by UPSC, therefore, their seniority should be given w.e.f. 24-11-1993 and not from the date of their appointment on regular basis on the basis of the select list of the UPSC. In support of his contention, he has placed reliance upon the three decisions of the Supreme Court, Rudra Kumar Sain and Others Vs. Union of India and Others, , T. Vijayan and Others Vs. Div. Railway Manager and Others, and State of W.B. and Others Vs. Aghore Nath Dey and Others, . Thus, it has been prayed that by allowing this petition that part of the impugned order passed by the Tribunal be set aside and the petitioners may be given seniority with effect from 24-11-1993.

9. Combating the aforesaid submission Shri Dharmadhikari, learned counsel by inviting our attention to the appointment letter of the petitioners made on ad-hoc basis has submitted that very clearly it is stated in the appointment letter that their services are purely on temporary basis arrangement on ad-hoc basis for a maximum period of 1 year, till recruitment is made on regular basis by the UPSC, therefore, the petitioners cannot be given seniority with retrospective effect from 24-11-1993, when they were appointed on ad-hoc basis. In this regard para-4 of the appointment letter of the petitioners has also been invited. To bolster his submission learned counsel has placed reliance upon the Supreme Court decision Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan, .

10. By pressing the petition filed by the Union of India and its functionaries, it has been submitted that the learned Tribunal has erred in protecting the pay scale of the petitioners, because no inherent right accrued in them to ask for such a relief and that part of order of the Tribunal be set aside.

11. In reply to the submissions made by Shri Dharmadhikari, it has been submitted by Shri Ganguly, learned counsel appearing for the employees that in contravention to the Article 14 of the Constitution of India, the department has adopted the method of pick and choose and they are putting the petitioners differently to the similarly situated other employees who were appointed by the UPSC on the same date and if that is the position the disparity in the pay scale

cannot be continued in perpetuity and, therefore, learned Tribunal has rightly allowed the prayer of the petitioners in that regard. Learned counsel submits that if different yardstick is applied it would be contrary to Article 14 of the Constitution of India.

12. Having heard learned counsel for the parties, we are of the considered view that both the petitions deserve to be dismissed.

13. We do not find any merit in the contention of the learned counsel for the petitioners that because educational qualification, experiences and other eligibility conditions of ad-hoc employees are akin to that of qualification and other eligibility criteria of regular employees including the pay scale, therefore, the seniority should have been given with retrospective effect from 24-11-1993 when they were appointed on ad-hoc basis. To us, had the conditions mentioned in paras 3 and 4 of the appointment letter not been there the argument may have some merit, but, since it has been clearly mentioned in the appointment letter dated 24-11-1993 that they are being appointed on ad-hoc basis for a maximum period of 1 year or till recruitment is made on regular basis whichever is earlier, and further when it has been mentioned in the appointment letter that ad-hoc appointees will not be entitled to claim any seniority, promotion, pension or claim for regular appointment and for regular appointment the appointees were required to apply through UPSC, therefore, the seniority cannot be given w.e.f. 24-11-1993 when they were appointed on ad hoc basis. It would be condign to quote paras 3 and 4 of the appointment letter which reads thus:--

3. Your appointment will be purely a temporary arrangement on ad-hoc basis for a maximum period of one year or till recruitment is made on regular basis through Union Public Service Commission, whichever is earlier, thereafter the appointment shall stand terminated without any notice. During this period, you may be required to undergo such training and pass such tests as may be prescribed from time to time. Failure to pass such tests, will render you liable to be discharged from service.

4. If on any information received relating to your nationality, age and health etc., and the Government is satisfied that you are ineligible or otherwise unfit for ad-hoc appointment to the said post, your services shall be liable for termination. Your ad-hoc appointment will not entitle you for seniority, promotion, pension or claim for regular appointment to the post etc. For regular appointment to the post, you will have to apply to Union Public Service Commission as and when advertised.

14. Indeed the decision of the Supreme Court in Dr. Chanchal Goyal (Mrs.) (supra) relied upon by learned counsel for the Union of India is fully applicable in the present case and it would be germane to quote paras 8 and 9 of said decision which reads thus:--

8. Unless the initial recruitment is regularized through a prescribed agency, there is no scope for a demand for regularization. It is true that an ad hoc appointee

cannot be replaced by another ad hoc appointee; only a legally selected candidate can replace the ad hoc or temporary appointee. In this case it was clearly stipulated in the initial order of appointment that the appellant was required to make room once a candidate selected by the Service Commission is available.

9. In fact, a candidate selected by the Service Commission was to replace the appellant, even if it is accepted as contended by the learned counsel for the appellant that the selected candidate did not join. That is really of no assistance to the appellant. The fact remains that a person has been selected and the Service Commission has drawn up a list of selected candidates. If the person, who was to replace the appellant, did not join for some reason, obviously another selected person can be posted. Non-joining of the selected candidate does not confer any right on the appellant. As the initial order dated 27-11-1974 shows, what is required is the availability of a candidate selected by the Service Commission, and not the joining of the selected candidate.

Shri Ganguly, learned counsel for the petitioners tried to distinguish this authority on the basis of the factual averments made in para. 4 of the said decision, but, according to us since very clear conditions are stipulated in the appointment letter of the petitioners when they were appointed on ad-hoc basis that they cannot claim seniority, promotion, pension etc., the dictum laid down by the Apex Court in paras 8 and 9 would squarely be applicable. In these facts and circumstances, the decisions relied by the learned counsel for the petitioners are not applicable.

15. However, we have also gone through the grounds taken by the Union of India in their connected writ petition. An application I.A. No. 2512/2010 has been filed in the said writ petition by the employees demonstrating that how they are being discriminated and these factual averments have not been disputed by the department by filing any reply to this application. Not only this the employees have filed document Annexure RJ/1 in order to show that two incumbents namely Shri G. Giriraj working in Doordarshan Kendra, Trivendrum and Shri Sanjay Kumar Singh, Doordarshan Kendra, Lucknow, their pay has been protected by Union of India, but, the petitioners have been totally discriminated just like a stepson although they are also appointees through UPSC. Hence, we do not have any scintilla of doubt to hold that the pay scale of the petitioners is to be protected and if they are differently treated, it would be contrary to Article 14 of the Constitution of India. Ex-consequenti, both the petitions are hereby dismissed with no order as to costs. Let a copy of this order be kept in the file of connected Writ Petition No. 7048/2004.