
(1992) 11 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6034 of 1989

S.K. Bhatia and Others

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 23-11-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1)
Uttar Pradesh Municipalities Act, 1916 — Section 112A, 69B
Uttar Pradesh Palika (Centralised) Service Rules, 1966 — Rule 20, 3, 6

Citation : (1993) 1 AWC 591 : (1993) 1 UPLBEC 417

Hon'ble Judges : P.P. Gupta, J; B.M. Lal, J

Bench : Division Bench

Advocate : Sudhir Agrawal, for the Appellant;

Final Decision : Allowed

Judgement

P.P. Gupta, J.—Petitioner No. 1, S.K. Bhatia, was initially recruited on the post of Overseer in the Varanasi Improvement Trust on 1-2-1959. Petitioner No. 2, Ramesh Chandra, was recruited and appointed initially on the post of overseer in the Nagar palika. Varanasi on 4-11-1959, and Petitioner No. 3. Tej Narain Misra was initially appointed as overseer in Allahabad Improvement Trust on 15-9-1959. After the promulgation of the U.P. Nagar Mahapalika Adhiniyam, 1959, the Nagar Mahapalika of Varanasi and Allahabad were created and the services of Petitioners No. 1 and 2 were transferred and absorbed in Varanasi Nagar Mahapalika and the services of Petitioner no 3 were transferred and absorbed in the Nagar Mahapalika. Allahabad. The state Government in exercise of its power u/s 112A read with Section 69B of the U.P. Municipalities Act, framed U.P. Palika (Centralised) Service Rules, 1966 which came into force with effect from 9-7-1966. Under Rule 3 of the Centralised Service Rules, the State Government created Centralised Services in Nagar Mahapalika and Municipal Board including U.P. Palika Engineering (Superior) Service and U.P. Palika Engineering (Subordinate) Services In accordance with Rule 6 of the Centralised Service Rules. All the three Petitioners were absorbed initially on provisional

basis and Subsequently finally in U.P. Palika (Subordinate) Engineering Services. According to Rule 6 of the Centralised Service Rules, the post of Civil Engineers/Sahayak Abhiyanta was liable to be filled by direct recruitment as well as by promotion. Since no vacancy on the post of civil Engineers/Sahayak Abhiyanta was ever filled by direct recruitment by the Respondent's the Petitioners were given ad hoc promotions on the post of Assistant Engineer on 8-6-1973, 29-1-1974 and 9-12-1973 respectively. After promotion, the Petitioners continued to work on the post of Assistant Engineers since the date of their ad hoc promotions for a period ranging between 10 to 20 years. 21 vacancies existing on the post of Assistant Engineer were filled in the years 1977 and 1978 in the quota of direct recruits, as is mentioned in para 20 of the writ petition. Direct recruitment for the post of Assistant Engineer was made in the year 1982 in which 12 incumbents were selected, as detailed in para 22 of the writ petition. Since 1982 no further selection on the post of Assistant Engineer, by direct recruitment, has been made. The next higher post for which the Assistant Engineers are entitled to be considered for promotion is the post of Executive Engineer/Nagar Abhiyanta. According to Rule 20 of the Centralised Service Rules, the promotion to the post of Executive Engineer is to be made on the basis of inter se seniority subject to rejection of unfit in consultation with the Commission from the list of all eligible Assistant Engineers, who have seven years experience. Despite representations having been made by the Petitioners, their inter se seniority vis-a-vis the direct recruits on the post of Assistant Engineer has not been determined. The Petitioners' contention is that the period for which they are continuously working on the post of Assistant Engineer, without any break in service, for the last more than 15/16 years and are being paid salary and allowances throughout admissible to the post of Assistant Engineer/Civil Engineer, their seniority is to be counted from the date of their respective ad hoc promotion on the post of Assistant Engineer, The Petitioners, on these facts, have prayed for a writ of mandamus directing the Respondents to prepare inter se seniority of all the incumbents including the Petitioners working on the post of Assistant Engineer in the U.P. Palika Engineers (Superior) Services within a reasonable period, taking into consideration their continuous length of officiating service and further restraining the Respondents from making any promotion on the post of Executive Engineer/Nagar Abhiyanta, or on any higher post from amongst the members of the U.P. Palika Engineers (Superior) Services until seniority list is prepared and finalised as per Rules and the Petitioners are also considered for promotion.

2. Learned Counsel for the Petitioners and the learned Standing Counsel for the Respondents were heard at length and the record of the case was also perused.

3. Some facts narrated in the writ petition were not disputed before us. The Petitioners were initially recruited and appointed on the post of Overseer. On creation of the U.P. Palika (Centralised) Service Rules, 1966, the Petitioners were initially absorbed on provisional basis and subsequently finally in the U.P. Palika Engineering (Subordinate) Services. Since there was no direct recruitment on the

post of Assistant Engineer, the Petitioners were given ad hoc promotion on the post of Assistant Engineer on different dates, as mentioned in para 16 of the writ petition. Undisputedly the Petitioners are working on these posts continuously for the last about 19 years without any break. They are also being paid their salary and other emolument admissible to the post of Assistant Engineer. It is also not disputed that direct recruitment to the post of assistant Engineer took place first in the year 1977 and next in the year 1982. It is also not disputed that as per Rule 20 of the Centralised Service Rules, the promotion on the higher post is to be made "on the basis of inter se seniority subject to rejection of unfit in consultation with the Commission." It has also not been disputed before us that inter se seniority of the ad hoc Assistant Engineers and direct recruits on the post of Assistant Engineers has not so far been determined and finalised by the Respondents. Therefore, any promotion on higher post by pick and choose method will be arbitrary and violative of Articles 14 and 16 of the Constitution.

4. In the case of *Narender Chadha and Others Vs. Union of India and Others*, , It was held that "when an officer has worked for a long period for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances, the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violative of Articles 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances".

5. In a subsequent decision of the *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, the same principle was reiterated and it was held:

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

6. The latest pronouncement of the Apex Court on this issue is in the case of *State of Haryana and others Vs. Piara Singh and others etc. etc.*, . In this case it has been held by the Apex Court that "If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the state."

7. In view of these decisions and the law settled by the Apex Court, if a person is appointed on a post on ad hoc basis and continues in the post uninterruptedly for a long spell say two or three years he is to be regularised on the post, if he is eligible and qualified according to rules and his service record is satisfactory.

8. In the instant case, all the Petitioners were promoted, though on ad hoc basis, on the post of Assistant Engineer in 1973 and 1974. Undisputedly they are

continuing in the post since then without any break in service and are being paid their salary and other emoluments admissible to the post of Assistant Engineer regularly. Therefore, after having given our anxious consideration to the submissions made on behalf of the parties and the facts of the case, we are of the opinion that the Petitioners should be treated as having been regularly appointed on the post of Assistant Engineer and are to be assigned their due seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts.

9. In the result, the petition is allowed and the Respondents are directed to treat the Petitioner, who are stated to have been promoted in the post of Assistant Engineer on ad hoc basis as having been regularised on the said posts and to assign them due seniority in the cadre with effect from the dates from which they are continuously officiating in the said posts. We further direct the Respondents to prepare a seniority list of all the promotees and direct recruits treating the Petitioners as full member of the service with effect from the date from which they are continuously officiating in the post and the direct recruits and to make further promotions to the post of Executive Engineer/Nagar Abhiyanta on the basis of seniority list and in accordance with rules. Under the circumstances of the case the parties shall bear their own costs. This order shall be given effect to within four (4) months from the date a certified copy of this order is produced before the Respondents.