

(1977) 09 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Petition No. 556 of 1971

Udham Dadhwani and Others

APPELLANT

Vs

Union Public Service Commissions Ors.

RESPONDENT

Date of Decision : 29-09-1977

Acts Referred:

Citation : (1978) ILR Delhi 30

Hon'ble Judges : V.S. Deshpande, J;T.V.R. Tatachari, J;A.B. Rohtagi, J

Bench : Full Bench

Advocate : R. Dayal, A.B. Dayal, R.L. Tandon, B.N. Lokur, Urmila Kapoor, Rekha Sharma, R.P. Bansal, L.R. Gupta and G.D. Gupta, for the Appellant;

Judgement

V.S. Deshpande, J.

(1) The relevant facts of the writ petition and the reasons which led its reference to a Full Bench may briefly be stated. When the writ petition was filed, the petitioners and respondents 5 to 39 were Assistant Engineers serving the Water Supply and Sewage Disposal Undertaking of the Municipal Corporation of Delhi. While all the petitioners were appointed by direct recruitment, the first five of them are holders of diplomas in engineering while the others are holders of degrees in engineering. Respondents 5 to 39 who were already in the service of the Corporation were appointed as Assistant Engineers by promotion as distinguished from the petitioners who were appointed by direct recruitment. "The petitioners are, Therefore, direct recruits while these respondents are promotees. 50 per cent of the total number of posts of Assistant Engineers are to be filled by direct recruitment and 50 per cent by promotion.

(2) Some of the petitioners were appointed in 1962 and the others 1964. At that time, section 96 of the Delhi Municipal Corporation Act, 1957 (hereinafter called "the Act") divided the power of the Corporation to make appointments into two categories :

(1) No appointment to any post carrying a minimum monthly salary of three

hundred and fifty rupees or more shall be made except after consultation with the Union Public Service Commission : Provided that no such consultation with the Commission was necessary in regard to the selection for appointment to a temporary post for a period not exceeding one year. (2) The Corporation could make appointment to post carrying a monthly salary below three hundred and fifty rupees without the need of consulting the Union Public Service Commission.

The posts of Assistant Engineers carried the minimum salary of three hundred and fifty rupees or more and appointments to these posts then had to be done after consultation with the Union Public Service Commission.

(3) The advertisements issued by the Corporation in 1962 and 1964 and the appointments of the petitioners made in pursuance of the selection which took place from the candidates who applied in response to the advertisements made it quite clear that the appointments were temporary and made only for a period of one year. This was apparently because a permanent appointment could not be made without consulting the Union Public Service Commission while appointments for a period not exceeding one year could be so made in accordance with clause (a) of the proviso to section 96. The appointees were, however, informed that they would be eligible for consideration by the Union Public Service Commission for absorption permanently if approved by the Commission. Normally, consultation with the Commission for making permanent appointments to these posts or for appointing the petitioners permanently to these posts should have been made by the Corporation before the expiry of the period of one year for which the petitioners were temporarily appointed. The Corporation, however, took time in seeking such consultation with the Commission. Meanwhile every year at the time of the expiry of the temporary appointments of the petitioners the Corporation used to appoint them afresh for another year apparently in accordance with clause (a) of the proviso to section 96 of the Act.

(4) Draft regulations prescribing the qualifications etc. of the candidates to be appointed as Assistant Engineers were framed by the Corporation u/s 98 of the Act and were approved by the Commission on 1st May, 1967. Since then they are awaiting the approval of the Administrator under sub-section (2) of section 480 of the Act. Since they have not received such approval and have not yet been published in the Gazette, they have not acquired statutory force and are no more than a draft of the proposed regulations.

(5) On May 27, 1968 the Corporation informed the Commission that the petitioners have been continuing from year to year on adhoc basis in their posts. The Corporation noted that in the draft regulations framed u/s 97 with the approval of the Commission the qualifications for appointment to the posts of Assistant Engineers were restricted to the holding of a degree in engineering and a diploma in engineering was no longer considered to be a qualification for appointment to the post of Assistant Engineer. However, since the appointments of the petitioners were made in 1962 and 1964 when a degree and a diploma in

engineering were both regarded by the Corporation as a sufficient qualification for appointment as an Assistant Engineer and because the petitioners have continued in service since then; the Corporation requested the Commission as a special case to relax the condition of qualification to include diploma holders with seven years experience for appointment as Assistant Engineers. It was also requested that the Commission should consider the petitioners for such appointment without issuing an advertisement calling for applications from the general public for these posts. The Commission pointed out that there was no justification for agreeing to the proposal made by the Corporation, because it was not in accordance with the draft regulations framed u/s 98. Rules had however been framed by the Commission u/s 97 for the consultation of the Commission by the Corporation in making such appointments. They required the Commission to advertise the posts to the general public and, Therefore, the consideration for appointment to the posts held by the petitioners could not be confined to the petitioners.

(6) The Corporation tried to persuade the Commission to consider the petitioners alone for permanent appointment to the post held by them as a special case. But the Commission did not agree. Ultimately, the Corporation made a request to the Commission to make a selection of candidates for appointment to these posts by an advertisement to the general public in accordance with the Rules framed u/s 97. On, April 27, 1971 the advertisement for direct recruitment to these posts was issued by the Commission (Annexure P to the writ petition at pages 100-101). This advertisement is objected to by the petitioners mainly for two reasons. Firstly, the qualifications of the candidates are restricted to the holding of a degree. The petitioners I to 5 who are diploma holders are, Therefore, excluded. Secondly, the advertisement invites applications from open market and, Therefore, even the other petitioners have to stand competition with others in being considered for selection by the Commission.

(7) The present writ petition was filed by the petitioners to seek the following reliefs :

(1) A declaration, that the petitioners were validly appointed and validly continued in the said appointments and that they are entitled to be treated as Assistant Engineers for purposes of seniority and selection; (2) That the Union Public Service Commission be restrained from proceeding with the selection of candidates against the direct recruitment quota of Assistant Engineers in pursuance of the advertisement at Annexure P; (3) Respondents I to 4, that is, the Union Public Service Commission, the Municipal Corporation of Delhi, the Delhi Water Supply and Sewage Disposal Committee, and the Administrator (Lieutenant Governor). Delhi, be directed not to give effect to the Resolution No. 272 of November 4, 1969 passed by the Water Supply and Sewage Disposal Committee (Annexure 0) including the names of respondents 5 to 39 as being eligible against the promotion quota for permanent appointment as Assistant Engineers; (4) The respondent 4 be restrained from approving the draft

regulations framed u/s 98 and from publishing them u/s 480(2) of the Act; and (5) The Corporation be directed to forward the names of the petitioners for confirmation as Assistant Engineers and the respondent No. 1 be directed to consider their cases for this purpose.

(8) Respondents 5 to 39 have been promoted to the posts of Assistant Engineers in the promotion quota. Their appointments are not challenged but they have been joined as parties only because a question may arise as to the seniority of the petitioners vis-a-vis these respondents in case the petitioners are selected for permanent appointment by the Corporation.

(9) Moreover the Corporation and the Delhi Water Supply and Sewage Disposal Committee, on the one hand, as also the promotees on the other hand (from among whom respondents 5, 6, 20, 38 and 39 have filed counter-affidavits), have pointed out that under the proviso to section 96, the Corporation had the power to appoint the petitioners only temporarily for a period of one year. It is contended that the petitioners had no right to continue in their posts from year to year. Since the appointments of the petitioners were made only on, ad hoc basis, it is urged, the petitioners cannot be said to have been appointed against the direct quota of Assistant Engineers fixed by the Corporation. The promotee-respondents more specifically pointed out that the Corporation or the Delhi Water Supply and Sewage Disposal Committee had no jurisdiction or authority to grant extension to the appointments of the petitioners beyond the initial recruitment for a period of one year and, Therefore, the petitioners had actually in the eye of law ceased to be in the employment of the Corporation or the Undertaking at the expiry of the first year or their appointments. They also pointed out that if and when the petitioners are appointed by direct recruitment regularly to permanent posts of Assistant Engineers, they will not be entitled to adduce for the purpose of seniority the period during which they were employed only on ad hoc basis. It was said that they cannot compete with the promotee respondents who were regularly appointed as Assistant Engineers to their posts as to seniority etc.

(10) In the reference order by one of us (V. S. Deshpande, J.) the case was referred to the Full Bench for a consideration, inter alia, of the following questions :

(1) Whether the appointments of the petitioners were valid according to proviso (a) to section 96 (2) Whether the continuance of the petitioners in these appointments was valid Without the consultation of the U.P.S.C. after a period of one year from the date of their appointments ? (3) Whether treatment of the petitioners (direct recruits) and the respondents (promotees) by the Corporation and the U.P.S.C. is differential and if so, is it discriminatory ? (4) Whether the U.P.S.C. is justified in treating the petitioners as being candidates for direct recruitment along with such outsiders as may apply for appointment to the posts of Assistant Engineers ? (5) Whether the U.P.S.C. are under a duty to consider the petitioners for appointment as Assistant Engineers which the petitioners call regularisation, ? and (6) Whether discretion exercised by the U.P.S.C. is unreasonable or discriminatory ? Shri Rameshwar Dial for the petitioners

suggested two additional questions for consideration, namely, (7) Whether sections 96, 97 and 98 cannot be acted upon unless the draft regulation framed u/s 98 are approved u/s 480(2); and (8) Whether the draft recruitment regulations placed for approval before the Lt. Governor u/s 480(2) are contrary to Articles 14 and 16 of the Constitution.

(11) The crucial reason for the reference was that the substantive part of section 96 of the Act required the exaltation of the U.P.S.C. befoic the petitioners could be appointed regularly to permanent posts of Assistant Engineers and because the proviso to section 96 enabled the appointments of the petitioners temporarily only for a period of one year. the continuance of the ad hoc appointment of the petitioners after the expiry of the initial period of one year bay annual renewals by re-appointments created an anomatous position.

(12) Subsequently, however, section 96 was amended by the Delhi Municipal Corporation, (Amendment) Act, 1974. The Amendment Act came into force with effect from 10th January, 1975 (See the Gazette of India Extraordinary dated January 8, 1975). The effect of the amenttoent is that the consultation by the Corporation with the U.P.S.C. to make appointments is confined now only to posts which carry a minimum monthly salary of Rs. 700.00 . The posts of Assistant Engineers do not carry a minimum monthly salary of Rs. 700.00 . Consultation with the U.P.S.C. is no longer needed for making permanent appointments to the posts of Assistant Engineers by the Corporation. Shri R. P. Bansal appearing for the Corporation brought this to the notice of the Court. Shri B. N. Lokur appearing for the U.P.S.C. also expressed the view that no consultation with the U.P.S.C. was necessary by the Corporation for making appointments to the posts of Assistant Engineers after the amendment of section 96 came into force.

(13) We are of the view that appointments of the petitioners to the posts of Assistant Engineers by the Corporation can, be made only prospectively hereafter under the amended section 96. No consultation with the U.P.S.C. is now necessary for doing so. Further, the age, qualifications etc. of the candidates to be so appointed are to be determined by the Corporatioa irrespective of the qualifications etc. prescribed in the draft regulations made u/s 98 inasmuch as these draft regulations have not yet been approved u/s 480(2) and have not attained statutory force. We also note the very special and anomalous circumstances of this case in, which the petitioners were originally appointed temporarily for a period of one year bat were continued their posts from year to year. We are conscious that at the time the petitioners were appointed the Corporation hoped that they would be able to refer their cases to the U.P.S.C. for permanent appointments as required by section 96 as it stood before the amendment of 1974.

(14) Sin, the appointments of the petitioners to permanent posts of Assistant Engineers were not made and could not have been made except in consultation with the U.P.S.C. prior to the amendment of section 96 and since after the

amendment of section, 96 such consultation is nomore necessary, "it is. obvious that the petitioners can be considered for regular appointments to permanent posts of Assistant Engineers by the Corporation alone. It is in the discretion of the Corporation to decide whether the petitioners should be so considered by themselves or in competition with outside applicants for appointment bydirect recruitment. In view of the original intention of the Corporation to enable the petitioners to be considered for permanent appointments as Assistant Engineers, we assume that the Corporation would regard the petitioners as eligible for such appointments in respect of age, qualifications etc.irrespective of what age, qualifications" etc. are prescribed for outside applicants for direct recruitmeat if the Corporation decides to consider them also along with the petitioners. It is only because the Corporation has always been willing to consider the petitioners for regular appointment to permanent ports of Assistant Engineers that no issue arises in this respect between the petitioners and the Corporation. It is only when the Corporation could not persuade the U.P.S.C. that the Corporation had to agree to the stand taken by the U.P.S.C. with the result that the present writ petition has been, opposed by the Corporation. But after the amendment of section 96 the consultation with the U.P.S.C. has become unnecessary and the Corporation alone has the power to make regular appointments to the permanent posts of Assistant Engin,eers. ShriR. P. Bansal appearing for the Corporation pointed out that the Corporation was competent andwould_be willing to consider the petitioners for regular appointmen,ts to permanent posts of Assistant Engineers in exercise of the power conferred on the Corporation after the amendment of section 96.

(15) In the advertisement dated Jun,e 14, 1964, the following appears : "The appointment will be made for one year for the present but the selected candidates may be absorbed permanently if approved by the UPSC." Now that the U.P.S.C. is admittedly out of the picture, the Corporation can in justice and fairness be properly held to its assurance as contained in the advertisement. There is nothing out of order in such a course so long as there is no statutory bar. As at present advised we find there is none. This course would not only fulfill the expectations of the present diploma holders (petitioners 1 to 5) whose claims, we think, should not be passed over in silence but would also enable the Corporation, to redeem its word of honour to those who have on expectations and assurances worked for over 15 years or so in its service. In our opinion petitioners 1 to 5 are entitled to a fair deal and now that "there is no legal or technical hurdle in the way we; do not see why they should not be considered for permanent employ- ment.

(16) At the hearing we Were informed by ShriR. L. Tandon and Shri Rameshwar Dial, Advocates for the petitioners, that we have to consider cases only of petitioners 1 to 5 who are diploma holders as the rest of the petitioners (Nos. 6 to 14) have since the filing of the petition been absorbed by the Corporation.

(17) We however once again make it clear that our decision is based on the

special facts of this case. We do not wish it to be regarded as a precedent.

(18) WE. Therefore, direct the Corporation to consider the petitioners I to 5 either by themselves or along with others, as the Corporation may think "fit, for regular appointments to permanent posts of Assistant Engineers by direct recruitment. It is only if and when the petitioners 1 to 5 or such of them as are selected by the Corporation and appointed regularly to permanent posts of Assistant Engineers that the question as to whether these appointments should be considered as fresh appointments or whether the benefit of the service rendered by the petitioners in the previous years when they were appointed ad hoc temporarily from year to year should be given to them. would arise. That matter also would have to be decided by the Corporation according to law. We, Therefore, grant prayer No. (5) of the writ petition in a modified form. At present, no other question arises between the petitioners and the Corporation for decision. No other prayer made by the petitioners need be considered by us at this stage. All the points on, which the petitioners and the respondents are at issue except the one we have decided here are, Therefore, left open.

(19) The present writ petition, Therefore, partly succeeds not on grounds which were urged in the writ petition but on grounds which: properly arise for consideration by reason of the amendment of section 96 of the Act. The Corporation is directed to consider the petitioners I to 5 for regular appointments to permanent posts of Assistant Engineers in the light of the observations made above. "The. writ petition is disposed of as above. We make n,o order as to costs.

(20.) Petition partly allowed