

(2024) 10 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : CWPOA No.1195, 1224, 1386 Of 2019

Vinay Modi And Others

APPELLANT

Vs

State Of H P And Others

RESPONDENT

Date of Decision : 04-10-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Himachal Pradesh Tehsildari Service Rules, 1973 — Rule 7(1), 14, 15, 16(ii), 17

Citation : (2024) 10 SHI CK 0001

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Vijay Kumar Arora, Anup Rattan, Pranay Pratap Singh, Sanjeev K. Suri

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. All these petitions are being decided by a common judgment as the questions of facts and law involved are identical.

2. In the State of Himachal Pradesh, Tehsildari Service is regulated by the Himachal Pradesh Tehsildari Service Rules, 1973 (for short, "Tehsildari Rules"). Rule 7 (1) of the ibid rules provide as under:

"7(1) Recruitment to the service shall be made in the following manner:-

(a) 50% by selection of Naib Tehsildars who have four years continuous substantive/ officiating service in the grade;

(b) 30% from Class 'A' candidate; and

(c) 20% from Class 'B' candidate."

3. The Class 'A' candidates are those who are selected by way of direct recruitment on the basis of an examination and a viva-voce test on the same

pattern as may be prescribed for recruitment to the Himachal Administrative Services. The direct recruits are recommended by the Public Service Commission on the receipt of requisition from Financial Commissioner. The direct recruits are then accepted by the Financial Commissioner as Class 'A' candidates in the year in which they are recommended by the Commission. Thereafter one year training; service as Naib Tehsildar for another one year and passing of departmental examination within two years is required for declaration by the Financial Commissioner of candidate as qualified for appointment to the post of Tehsildar.

4. The petitioners, in CWPOA 1224 of 2019 and CWPOA 1386 of 2019 were Class 'A' Tehsildars. They were accepted as Class 'A' Tehsildars on 26.12.1997 and 16.01.1998 respectively.

5. Similarly, the Naib Tehsildari Service in the state is regulated by the Himachal Pradesh Naib Tehsildars Service Rules, 1973. As per these rules, the posts of Naib Tehsildars are also filled from three categories, directly through competitive examination i.e. "A" class candidates; from amongst certain categories of ministerial staff i.e. "B" class and by promotion of Kanungo as per rota and quota laid down in Himachal Pradesh Naib Tehsildars Service Rules, 1973 and the procedure of recruitment is same as in the case of Tehsildars.

6. The petitioners in CWPOA 1195 of 2019 were the "A" Class accepted Naib Tehsildar candidates in 1983.

7. Respondent No.1 vide notification dated 7.10.1998 regularized the ad-hoc promotions of 41 Naib Tehsildars to the post of Tehsildar (Class-1 Gazetted) in relaxation of rule 16 (ii) of Tehsildari Rules with immediate effect. A tentative seniority list of Tehsildars as it stood on 31.12.1998 was circulated on 25.2.1999. In the said tentative seniority list, the placement of petitioners was above the respondents in CWPOA No. 1224 of 2019 and as per said petitioners, for such reasons, they had not raised any objection with respect to said tentative seniority list. The petitioners in CWPOA 1195 of 2019 had, however, objected to the issuance of notification dated 7.10.1998 and tentative seniority list dated 25.2.1999.

8. The final seniority list was issued on 1.6.1999 showing seniority position as on 31.12.1996. In the said final seniority list, names of 41 Tehsildars regularized vide notification dated 7.10.1998 also found mention. As per respondent No.1, ad-hoc Tehsildars whose ad-hoc promotions followed without break and regularization were regularized and adjusted by treating them regular from the date, posts in the promotion quota were available to their share.

9. The petitioners in CWPOA 1224 of 2019 and CWPOA 1195 of 2019 represented against the final seniority list dated 1.6.1999. Having failed to receive any response to their representation, petitioners preferred Original Applications before the erstwhile H.P. Administrative Tribunal, which later came to be transferred to this Court and are the petitions being decided hereby as CWPOA

No. 1224 of 2019 and CWPOA 1195 of 2019.

10. The regularization order dated 7.10.1998 and final seniority list of Tehsildars dated 1.6.1999 has been assailed not only by the petitioners in CWPOA No. 1224 of 2019 but by the beneficiaries of the regularization notification dated 7.10.1998 by way of CWPOA 1195 of 2019. The challenge in CWPOA 1224 of 2019 is on the grounds that the regularization of ad-hoc Tehsildars was notified w.e.f. 7.10.1998 and hence they could not be assigned seniority from anterior date and also that since the ad-hoc promotions of Naib Tehsildars to the post of Tehsildars were dehors the relevant service rules the period for which they officiated as such could not be considered for any purpose whatsoever. In CWPOA 1195 of 2019 challenge has been laid on the premise that the seniority position of the promotee Tehsildars regularized vide notification dated 7.10.1998 was not correctly shown in the seniority list dated 1.6.1999. The grounds as raised in CWPOA No.1195 of 2019 can be summed up as under:-

(i) The cadre of Naib Tehsildars being divisional level cadre, their seniority lists were prepared and maintained by the respective Divisional Commissioners and there was no uniformity in application of Naib Tehsildari Rules for the purpose of preparation of seniority lists in different divisions.

(ii) The integrated seniority list of Naib Tehsildar was required to be prepared for the purpose of consideration for selection to the post of Tehsildar, but this exercise was completely missing.

(iii) The seniority of Naib Tehsildars as per Rule 20 of Naib Tehsildari Rules, is to be counted from the date of substantive appointment, which principle has also been violated.

(iv) The respondents could not be given seniority as Naib Tehsildars from the date of their appointment especially when ad hoc appointment had been made against slots fixed for "A" and "B" Class. The private respondents were to be regularized from the dates/years when posts meant for their quota as per roster became available for regularization, whereas, they were illegally regularized from the date of ad hoc appointment. Respondent No.1 had constantly defined H.P. Tehsildari Service Rules.

11. The respondents vide their separate replies, have contested the claim of the petitioners and have supported the issuance of regularization notification dated 7.10.1998 and the seniority list dated 01.06.1999.

12. During the pendency of CWPOAs No. 1224 of 2019 and 1195 of 2019 respondent No.1 once again regularized the services of 44 more ad-hoc Tehsildars vide notification dated 1.3.2006. In addition to regularization of ad-hoc Tehsildars, some of the Naib Tehsildars were also promoted as Tehsildars.

13. Thereafter, a tentative seniority list of Tehsildars as it stood on 1.3.2006 was issued by respondent No.1 on 6.7.2006. In the said tentative seniority list, petitioners in CWPOA 1224 of 2019 were shown at serial Nos.4, 5, 6 and 7

respectively. The petitioners filed representations against said tentative seniority list. Respondent No.1 vide memo dated 4.10.2007 issued final seniority list of Tehsildars as it stood on 1.3.2006 maintaining the seniority position of petitioners at serial Nos.4, 5, 6 and 7 on the basis of their dates of acceptance as Class 'A' Tehsildars. The said seniority list was implemented and the petitioners were further promoted to the posts of District Revenue Officers on ad-hoc basis vide notification dated 6.10.2007.

14. Respondent No.1 issued yet another seniority list on 7.10.2008 of Tehsildars as it stood on 11.9.2008. The reasons assigned for circulation of tentative seniority list dated 7.10.2008 was that in the meanwhile the seniority lists of Naib Tehsildars by respective Divisional Commissioners had been rectified in consonance with the instructions of the Government dated 21.11.2006 and the review DPC meeting had been held on 19, 23 and 28.8.2008. The tentative seniority list on 7.10.2008 was circulated in continuation to the earlier seniority list issued on 1.6.1999 and in supersession of subsequent final seniority list of Tehsildars issued on 4.10.2007.

15. In seniority list dated 7.10.2008, the petitioners were placed below the private respondents in CWPOA No. 1386 of 2019. Against the treatment, which according to petitioners was arbitrary and against the rules, representation was filed but without any result. Final seniority list was issued on 24.12.2008 showing the seniority position as on 11.9.2008.

16. The petitioners in CWPOA 1195 of 2019 appears to have raised no objection against the regularisation notification dated 1.3.2006, tentative seniority list dated 7.10.2008 and final seniority list dated 24.12.2008.

17. This seniority list has been assailed by the petitioners by way of CWPOA No. 1386 of 2019. The grievance raised by the said petitioners is that the gradation of regularized ad-hoc Tehsildars by respondent No.1 vide notification dated 11.9.2008 was contrary to Rules. They were given promotions to the posts of Tehsildar from the year 1990 onwards. Consequently, in seniority list dated 24.12.2008, petitioners have been wrongly downgraded. According to the petitioners, the seniority in the cadre is required to be given from the date the incumbents were appointed on regular service. Respondents No.2 to 28 in CWPOA No. 1386 of 2019 were wrongly given benefit of ad-hoc service by placing them above the petitioners in the seniority. The said petitioners have alleged that they were directly and regularly appointed to the cadre of Tehsildar Class 'A'. Respondents No. 2 to 28 are promotee Tehsildars from Naib-Tehsildars category, therefore, they are to be given seniority from the dates they were declared as qualified by virtue of passing the examination and acceptance by the competent authority. It has also been alleged that the instructions dated 30.6.2001 and 21.11.2006 as also the agenda for review DPC, were wrongly given precedence over the rules.

18. As per petitioners in CWPOA 1386 of 2019, slots against which the

respondents have been promoted from back dates were not available in the share of their quota. These slots had already been exhausted by the persons of the cadre although this was not reflected in the minutes placed before the review Departmental Promotion Committee. Accordingly, the impugned seniority is alleged to be not based on true facts.

19. Another grievance of the said petitioners is that respondent No.1 wrongly gave benefit to respondents No. 2 to 28 by promoting them on regular basis to the posts of Tehsildars right from the year 1990 against the vacancies in the cadre taking into account ex-cadre posts and each and every vacancy created during 1990 to 2006 by virtue of retirement or promotion of Tehsildars from Naib Tehsildars category. The vacancies caused due to the promotion, retirement or demise of Tehsildars promoted from Naib Tehsildars were to be filled in the ratio of 50%, 30% and 20% from all the three categories as per Rule 7 of Tehsildari Rules and not from the category of Naib Tehsildars promotee only.

20. It is also the concern of said petitioners that though vide notification dated 1.3.2006, the ad-hoc Tehsildars were regularized with immediate effect, but seniority assigned to them makes them regular from the dates when they were not even eligible to hold the post.

21. On the other hand, to support and justify its acts of promoting the Naib-Tehsildars as Tehsildars on ad-hoc basis from time to time, respondent No.1 has taken a stand that since the post of Tehsildar is a functional post, it cannot be kept vacant.

22. As per respondent No.1, Rule 17 of Tehsildari Rules provides 20-point roster to be followed for assigning inter-se seniority to the three feeder categories i.e. A Class, B Class and promotees from Naib Tehsildars in respect of a particular year. The services of ad-hoc promotees were regularized against vacancies arising in their own quota i.e. 50% by holding regular DPC. Reliance for such purpose has been placed on the procedure prescribed in the Department of Personnel Instructions dated 30.6.2001.

23. It has also been submitted that Class 'A' and Class 'B' candidates in the first instance are accepted as candidates for the post of Tehsildars. After undergoing training under Rule 14 of Tehsildari Rules, they are declared as qualified candidates under Rule 15 for appointment to the cadre of Tehsildars. In this manner, the quota rule in respect of appointments of Class 'A' and Class 'B' candidates is said to have been complied with on the acceptance of such candidates, even if their formal appointments are made later on after they are declared qualified for appointment under Rule 15. In support of decision to make the candidates in Class 'A' and Class 'B' entitled to seniority from the date of acceptance, reliance has also been placed on a judgment passed by erstwhile H.P. Administrative Tribunal in TA No. 519 of 1986. On the strength of above, it has been contended that by same analogy, the seniority of Naib Tehsildars is also to be considered from the date of acceptance of Class 'A' and Class 'B' Naib

Tehsildars in their cadre.

24. Respondent No.1 has further submitted that while regularizing the ad-hoc Tehsildars vide notification dated 7.10.1998, the regularization was done from such back dates when the vacancies had arisen in the quota of promotees. In this manner, 41 ad-hoc Tehsildars regularized vide notification dated 7.10.1998, were shown in the seniority list as it existed on 31.3.1996. As further contended by respondent No.1, after September 1998, DPC for regularization of ad-hoc Tehsildars was held in March, 2006. The tentative seniority list was issued on 6.7.2006, followed by final seniority list on 4.10.2007. While framing the seniority list, A & B Class appointees were assigned seniority as per their dates of acceptance. The promotees who were considered by the DPC as per consolidated seniority list of Naib Tehsildars were accordingly placed as per recommendations of DPC. The petitioners were subsequently promoted as District Revenue Officers on ad hoc basis on 6.10.2007. In the meanwhile, the seniority lists of feeder category of Naib Tehsildars were re-drawn by the Divisional Commissioners Kangra, Mandi and Shimla during the year 2007, which necessitated a review DPC for reviewing the seniority list of Tehsildars. Accordingly, the review DPC was convened in August, 2008; tentative seniority list was issued on 7.10.2008 and final seniority list after inviting objections was issued on 24.12.2008.

25. Respondent No.1 has maintained a categoric stand that the seniority list dated 24.12.2008, was prepared in accordance with law. The correct vacancy position was worked out by the Department and placed before the DPC, whereafter the seniority list was issued on 24.12.2008. The promotee Naib Tehsildars were assigned the seniority from the dates when the posts were available in their quota. No ex-cadre post had been taken into account while assigning the seniority to the Naib Tehsildars. It has been pleaded that the quota of 50% of the cadre post falling to the share of Naib Tehsildars was not exceeded at any point of time.

26. Respondent No.1 also has taken a stand that the petitioners having been promoted as District Revenue Officers on ad hoc basis, were not proposed to be reverted.

27. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

28. CWPOA No. 1224 of 2019 is filed by four petitioners, whereas CWPOA No. 1386 of 2019 is filed by three petitioners only (petitioners No. 1 to 3 in CWPOA No. 1224 of 2019), the 4th petitioner Ms. Sushma in CWPOA No. 1224 of 2019 has not joined the other petitioners in CWPOA No. 1386 of 2019.

29. The Tehsildars promoted on ad-hoc basis from time to time, were ordered to be regularized vide notification dated 7.10.1998 issued by the 1st respondent. According to said notification, the regularization was ordered from immediate effect and by relaxing Rule 16 (ii) of Tehsildari Rules. A tentative seniority list showing the seniority position as on 31.3.1998 was circulated vide office

memorandum dated 26.02.1999. The petitioners were placed above the Tehsildars regularized vide notification dated 7.10.1998, therefore, the petitioners did not raise any objection. However, respondent No.1 issued final seniority list dated 1.6.1999 showing seniority position as on 31.12.1996, which included the names of Tehsildars regularized w.e.f. 7.10.1998. It was specifically mentioned in the forwarding memorandum dated 1.6.1999 that the ad-hoc Tehsildars whose promotions were followed without break and regularization had suitably been adjusted by treating them regular from the date posts in the promotion quota were available to their share.

30. The petitioners in CWPOA No. 1224 of 2019 assailed the above noticed decision of respondent No.1 by seeking relief to the following effect:-

"(i) Declare the act of the respondent-State whereby vide the impugned final seniority list dated 1.6.1999, it has regularized the promotions of the private respondents 2 to 42 to the post of Tehsildar from Naib Tehsildar with retrospective effect and thus made applicants junior to them, ignoring the fact that the applicants were directly recruited to the said post prior to order of regularization of ad hoc promotion of private respondents as Tehsildars with immediate effect vide order dated 7.10.1998, and further declare the act of the respondents of omitting the name of the applicants from the seniority list by preparing it to reflect the position as on 31.12.1996 and not as on 31.12.1998 and taking this decision at the back of the applicants without any notice to the applicants in this regard as arbitrary, discriminatory against the principles of natural justice, defeats the legitimate expectation of the applicants and is hence violative of Article 14 and 16 of the Constitution of India and quash seniority list dated 1.6.1999 qua respondents 2 to 42."

31. Respondent No.1 vide notification dated 1.3.2006 yet again ordered regularization of services of ad hoc Tehsildars besides promotion of Naib Tehsildars to the post of Tehsildar (Class-I Gazetted) on regular basis with immediate effect. On 6.7.2006, a tentative seniority list of substantive Tehsildars as it stood on 1.3.2006 was circulated. The final seniority list of Tehsildars as it stood on 1.3.2006 was circulated on 4.10.2007 reflecting the same position as in the tentative seniority list dated 6.7.2006. The petitioners accepted the said seniority list. The fact of the matter is that petitioners were promoted as District Revenue Officers on ad-hoc basis vide notification dated 6.10.2007.

32. Respondent No.1 issued another tentative seniority list on 7.10.2008 of Tehsildars as it stood on 11.9.2008. In the said tentative seniority list, the seniority position of petitioners was downgraded and they were placed after the private respondents in CWPOA No. 1386 of 2019. The petitioners unsuccessfully objected against the said tentative seniority list dated 7.10.2008. Lastly, final seniority list of Tehsildars as it stood on 11.9.2008 was circulated on 24.12.2008 maintaining the same seniority position as shown in tentative seniority list dated 7.10.2008.

33. The petitioners in CWPOA No. 1386 of 2019 then came up seeking following reliefs:

"(i) That the writ in the nature of certiorari may kindly be issued for quashing the final seniority list (Annexure P-11) issued by respondent No.1 on 24.12.2008 whereby the petitioners have been illegally downgraded. Similarly, the impugned notification dated 11.9.2008 (Annexure P-12), whereby the respondents No. 2 to 28 have been given regular promotions from the year 1990 onwards against the provisions of Rules may be quashed and set-aside.

(ii) That the writ or order may kindly be issued directing the respondent No.1 to reassign the seniority to the petitioners at appropriate places according to the date of their appointment."

34. The memorandum dated 7.10.2008 whereby the tentative seniority list of Tehsildars as it stood on 11.9.2008 was circulated, recorded that the said list was circulated in continuation to earlier final seniority list of Tehsildars dated 1.6.1999 and in supersession of subsequent final seniority list dated 4.10.2007. In other words the final seniority list dated 1.6.1999 showing the seniority position as on 31.12.1996 was kept in continuation while preparing the tentative seniority list of Tehsildars as it stood on 11.9.2008 vide memorandum dated 7.10.2008. The seniority list dated 4.10.2007 showing the seniority position of Tehsildars as on 1.3.2006 was superseded. Thus, the cause raised by the petitioners in CWPOA No. 1224 of 2019 remained alive.

35. The grievance of the petitioners in CWPOA 1224 of 2019 and CWPOA 1386 of 2019 is that firstly the grant of regular status as Tehsildars to the private respondents in CWPOA No. 1224 of 2019 vide memorandum dated 1.6.1999 and thereafter the same treatment to the Tehsildars whose services were regularized vide notification dated 1.3.2006 was against the provisions of Tehsildari rules. In CWPOA 1195/19 a similar grievance was raised alleging violation of Naib Tehsildari rules.

36. Noticeably, in the first place the petitioners in any of the above cases have not laid any challenge to the ad-hoc promotions of Naib Tehsildars to the post of Tehsildars, as ordered by the 1st respondent, from time to time and in the second the regularization of ad-hoc Tehsildars ordered by respondent No.1 firstly vide notification dated 7.10.1998 and thereafter vide notification dated 1.3.2006 have not been challenged as such.

37. The petitioners in all the cases have shown their grievance to the placements in seniority lists prepared and circulated post the aforementioned regularisation orders dated 7.10.1998 and 1.3.2006. They have taken exception to the retrospectivity in conferment of regular status or in alternative grant of seniority from back dates to the private respondents in all the petitions.

38. According to petitioners, both the notifications dated 7.10.1998 and 1.3.2006 were made effective from the date of their issuance respectively and thus, the ad-

hoc Tehsildars whose services were regularized thereby could not be allowed seniority positions from any prior when they were not even born in the cadre. It is also contended that for being appointed as regular Tehsildar, the requirements of Tehsildari Rules were to be fulfilled and since the ad-hoc Tehsildars regularized vide aforesaid notifications did not fulfill such requirements, they could not be allowed the benefit of regularization retrospectively or in alternative the benefit of seniority from back date.

39. Respondent No.1 has taken a specific stand that the regularized Tehsildars were given seniority from the date of their officiation as ad-hoc Tehsildars subject to availability of particular vacancy in their quota. It has also been submitted that the petitioners have been considered from the date of their acceptance as Tehsildars, which has not been changed at any point of time. As per respondent No.1, the post of Tehsildar being a functional post, could not be kept vacant for long and for such reason ad-hoc promotions were made from time to time. While fixing the seniority, the dates on which the vacancies had occurred in the quota of promotees were taken into consideration and accordingly, the seniority was fixed from retrospective dates. To same effect has been the stand taken by the private respondents.

40. In the backdrop of above noted diverse stands, an issue with disputed facts has been posed before this Court in exercise of writ jurisdiction. The petitioners have maintained that the seniority positions assigned to respondents as Tehsildars were from the dates when the vacancies were not available to their quota and in CWPOA 1195/2019 it has also been alleged that the slots, by grant of retrospective seniority were dehors the rule of rota-quota prescribed in relevant service rules.

41. The petitioners in CWPOA 1224/2019 and CWPOA 1386/2019 have not been able to discharge their burden by placing on record unimpeachable material to establish their allegations.

42. Though the petitioners in CWPOA 1195/19 have tries to exemplify the instances of violation of rules including rule of rota quota, but they have kept their challenge limited against the regularisation notification dated 7.10.1998 and consequent seniority list dated 1.6.1999, whereas much water has flown thereafter more particularly another regularisation of ad-hoc Tehsildars took place on 1.3.2006 followed by circulation of final seniority list dated 24.12.2008 on the basis of review DPC held after redrawing of seniority lists of Naib Tehsildars and such subsequent remained unchallenged by the said petitioners.

43. The petitioners have also not been able to controvert the stand of respondent No.1 that the seniority was assigned to the ad-hoc Tehsildars after their regularization from the dates the slot in their own quota of 50% were available.

44. Thus, in absence of the discharge of necessary burden by the petitioners to prove violation of relevant service rules while granting seniority positions to the parties vide seniority lists dated 1.6.1999 and 24.12.2008 and also in absence of

any impeccable material to establish their contention, this court is unable to find any fault with the administrative actions impugned by way of these petitions.

45. Another ground taken by respondent No.1 is that the post of Naib Tehsildar is governed by its own service rules known as 'Naib-Tehsildari Rules'. It is a divisional level cadre. The seniority list of Naib Tehsildars is maintained by respective Divisional Commissioners in each of the divisions of Shimla, Mandi and Dharamshala. The Divisional Commissioners had not applied uniform parameters for maintaining the seniority lists of Naib Tehsildars in their respective Divisions, therefore, there were several anomalies in the consolidated seniority list of Naib Tehsildars prepared for consideration of their promotion to the post of Tehsildar. Various representations were pending before the competent authority. The rectification in terms of rules were made and the anomalies in consolidated seniority list of Naib Tehsildars were removed which necessitated the holding of review DPC and consequent issuance of the tentative seniority list dated 7.10.2008 followed by final seniority list dated 24.12.2008. Respondent No.1 has also submitted that since the date of acceptance of petitioners as Tehsildars was considered as relevant date for placing them in seniority list, the same principle was applied in the case of Naib Tehsildars also.

46. The petitioners have not been able to rebut above factual position nor have they come up with any additional material to challenge the process of redetermination of seniority lists of Naib Tehsildars at divisional level or consequent integrated seniority list of such cadre prepared for promotion to the next higher cadre of Tehsildar.

47. The proposition that seniority can be fixed from back date cannot be disputed in light of principles laid down in Direct Recruit Class II Engineers Officers Association Vs State of Maharashtra (1990) 2 SCC 715 (hereinafter referred to as 'Direct Recruits case'). The relevant extract from Direct Recruits case is reproduced hereunder:

"47. To sum up, we hold that:

(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 regularization of his service in accordance with the rules, the period of officiating service will be counted."

48. In one of the numerous interpretations to the principles enunciated in Direct Recruits Case Hon'ble Supreme Court in Santosh Kumar v. State of A.P. (2003) 5

SCC 511 expounded as under:

10. A Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. case (1990) 2 SCC 715 after considering various aspects and earlier decisions, summed up the conclusions in para 47 of the judgment. For our purpose paras (A) and (B) of the said paragraph are relevant, which are extracted hereunder : (SCC pp. 744-45)

"47. To sum up, we hold that:

(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 stopgap 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."

The respondent and others were appointed as Sub-Inspectors out of seniority looking to the outstanding merit and record prior to the direct recruits like the appellant. Their services were admittedly regularised by relaxing the Service Rules in exercise of power available under Rule 47 of the General Rules. The appellant did not challenge the validity of Rule 47 and no mala fides were established against the authorities in exercise of powers of relaxation under the said Rule. The Tribunal has recorded a finding that the Rule relating to the method of recruitment was not relaxed but only the conditions which had to be fulfilled for the purpose of promotion to the category of Sub-Inspector were relaxed; this finding is not disturbed by the High Court; there was no relaxation as to the basic qualification; the State Government regularised the services of the respondent and others with retrospective effect from the date they were temporarily appointed as Sub-Inspectors (OSSIs). It is also not disputed that they continued in service uninterruptedly for about 12-13 years till their services were regularised with retrospective effect. This being the factual position it could not be said that the corollary to para 47(A) of the aforementioned Constitution Bench judgment applies to the facts of the present case. Once their services were regularised it cannot be contended that their initial appointment was only on ad hoc basis and not according to the rules and made as a stop gap arrangement. On the other hand para 47(B) supports the case of the respondent.

49. Hence, even the period of ad-hoc promotion can be considered for the purposes of seniority provided the same is followed by regularization and is in terms of relevant service rules. The fact that the petitioners have not laid attack to the regularization of respondents, as such, impliedly the petitioners have not

found any fault in the adhoc promotions of the private respondents ordered by respondent No.1 from time to time. The only evident objection has been raised with reference to the relaxation clause included in notification dated 7.10.1998, but later when respondent No.1 has raised the plea that relaxation was with respect to Rule 16 (iv) of Tehsildari Rules and not Rules 16 (ii), the petitioners have not been able to further controvert the same. Rule 16 (iv) deals with the requirement of a Naib Tehsildar to work in tribal/hard area for three years and it has not been disputed by the petitioners that such a condition could not have been relaxed or was so fundamental that the Naib Tehsildar could not have been considered for promotion in absence thereof. No other illegality, infirmity or irregularity has been pointed out by the petitioners in the ad-hoc promotions of the private respondents.

50. Learned counsel for petitioners in CWPOA 1224 of 2019 and 1386 of 2019 has placed reliance on judgments passed by Supreme Court in the matter of Suraj Parkash Gupta and others Vs State of J&K and others (2000) 7 SCC 561 and Union of India Vs Dharampal (2009) 4 SCC 170 to contend that the power to relax rules is not absolute. In my considered view the precedent so relied on behalf of petitioners has no application in instant cases for the reasons firstly that the Suraj Parkash Gupta (supra) was in the context of specific requirement under J&K (CCA) Rules, 1956 and secondly as held above the relaxation of rule 16(iv) of Tehsildari rules in the instant cases was neither proved to be beyond the power of the government nor so fundamental which could render the consideration of Naib Tehsildar for selection to the post of Tehsildar void. Rather, para 69 of the Suraj Parkash Gupta as reproduced hereafter supports the case of respondents:

"69. Thus, there is overwhelming authority of this Court to hold that ad hoc, stopgap service could be regularised from an anterior date after consulting the Service Commission from the date of vacancy in the promotee quota, after considering fitness, eligibility, suitability and ACRs. Therefore, the ad hoc/ stopgap service rendered by promotees beyond six months and without the consent of the Public Service Commission as per Regulation 4(d)(ii) cannot be treated as non est. It can be regularised later after consulting the Commission in respect of posts in the promotion quota and subject to eligibility and suitability based on ACRs, etc. Only the period rendered outside the quota or the period rendered within the quota when the promotee was not eligible or found fit has to be excluded."

51. The reliance placed by petitioners on R.K. Mobisana Vs Kh. Themba Singh (2008) 1 SCC 747, Union of India Vs Dharampal (2009) 4 SCC 170 and Narayana Rao Vs Union of India (2010) 9 JT 346 to contend that since the ad hoc promotions of private respondents were dehors the rules such service could not be considered for seniority purposes also does not help their cause in view of what has been held above in respect of failure of petitioners to prove violation of any service rule while granting ad-hoc promotions to the private respondents.

52. This Court was informed that the majority of petitioners and private respondents have already retired. In absence of petitioners pointing out instances where the private respondents have been granted seniority from a date when the vacancy was not existing in the quota of

53. V. Vincent Velankanni Vs Union of India promotees, this Court does not find any reason to show interference in exercise of jurisdiction under Article 226 of the Constitution of India. Moreover, such an exercise will amount to unsettling of long standing settled seniority positions, which otherwise is impermissible. Reference can be made to recent reiteration of said principle by Hon'ble Supreme Court in and others 2024 INSC 748 53. As notices above, the petitioners in CWPOA 1195/2019 had already given up their chase half way by not laying any challenge to subsequent regularisation of ad-hoc Tehsildars on 1.3.2006 and consequent circulation of final seniority list dated 24.12.2008, therefore, the reliefs prayed by them have become infructuous.

54. In light of what has been discussed above all the three petitions are dismissed with no order as to costs.

55. Pending miscellaneous application(s), if any, also stand disposed of.