
(2004) 12 UK CK 0002

In the Uttarakhand High Court

Case No : Civil Miscellaneous Writ Petition No. 51 of 2004

Virendra Kumar Verma

APPELLANT

Vs

The State of Uttaranchal and Others

RESPONDENT

Date of Decision : 07-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Government Servants (Seniority) Rules, 1991 — Rule 4, 8(2)
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4, 8(2)

Citation : (2005) 2 UC 1313

Hon'ble Judges : Irshad Hussain, J;B.S. Verma, J

Bench : Division Bench

Advocate : S.N. Babulkar, sisted by, Tumul Nainwal, for the Appellant; N.P. Shah, Learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Irshad Hussain, J.—By means of this writ petition under Article 226 of the Constitution of India, the Petitioner sought quashing of order dated 12-2-2004 passed by the State Public Service Tribunal in O.A. No. 12/2004 Sri. V.K. Verma v. State of Uttaranchal and Ors. (Annexure-1) and the order dated 20-11-2003 (Annexure-2) passed by the Respondent No. 2, whereby, by way of correction, the date of Petitioner's promotion to the rank of Range Forest Officer, from the post of Deputy Ranger, was mentioned as 30-11-1989, instead of the date mentioned as 25-5-1979, when the Petitioner was given ad hoc: promotion and the said date was so mentioned in the tentative seniority list dated 12-6-2002 (Annexure-3). The Petitioner therefore also prayed for issuance of a writ in the nature of mandamus commanding the Respondents to treat his seniority as has been fixed per order dated 12-6-2002 (Annexure-3) and to give all the consequential benefits of service such as promotion etc. by treating the said seniority as correct.

2. It is not in dispute that the Petitioner along with 11 other Deputy Rangers was

given ad hoc promotion to the post of Range Forest Officer vide order dated 11/12-4-1979 and the Petitioner assumed the charge of the promotion post on 25-5-1979, the date of the appointment of the Ranger Forest Officer shown in the tentative seniority list dated 12-6-2002 (Annexure-3). It is not the case of the Respondents that the ad hoc promotion was given de hors the service rules. The Petitioner was however regularized on the post of Range Forest Officer by the order dated 22-10-2001 passed by Respondent No. 2 and the regularization by the said order was purported to be given from the year 1989, which date has now been shown in the impugned order dated 20-11-2003 (Annexure-2) although in the tentative seniority list as stated above the date of promotion has been shown as 25-5-1979.

3. The short question which falls for consideration in this petition is-"Whether the subsequent regularization would relate back to the date of ad hoc appointment and the ad hoc service should be reckoned for the purpose of seniority?"

4. Sri S.N. Babulkar, Learned Senior Counsel strenuously urged that considering the peculiar facts of the case the ad hoc service would count for seniority and the impugned order whereby the date of appointment of the Petitioner to the promotional post of Range Forest Officer has been altered to 30-11-1989 instead on 25-5-1979 could not be legally sustained. Learned Senior Counsel referred to the admitted facts that the ad hoc promotion of the Petitioner was not de hors the service rules as the Petitioner was not ineligible for appointment to the promotional post in regard to his age, qualification and length of service prescribed under the service rules; because the appointment was not a stop gap arrangement and because the Petitioner has been finally regularized by the order of the competent authority on the promotional post of the Range Forest Officer and in that event the ad hoc services were rightly reckoned for the purpose of seniority in the tentative seniority list issued on 12-6-2002 and that the date of promotion shown as 25-5-1979 could not have been altered by the impugned order dated 20-11-2003. He also placed reliance on the following decisions of the Apex Court:

1- Shri L. Chandrakishore Singh Vs. State of Manipur and Others, .

2- Chandra Prakash and Ors. v. State of U.P. and Anr. J.T. 2002 (3) S.C. 493.

5. On the other hand Learned Standing Counsel submitted that the order dated 20-11-2003 was passed to rectify the mistake in the tentative seniority list as the date of the substantive appointment of the Petitioner on the post of Range Forest Officer was 30-11-1989 and that the order so passed was in conformity with the provisions of the U.P. Government Servants Seniority Rules 1991. The Learned Standing Counsel referred to Rule 8(2)(ii) in support of his submission. The Rule reads as under:

(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but

shall get the seniority of the year in which their appointments are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees.

6. Learned Standing Counsel further referred to term "substantive appointment" as defined in Clause (h) of Rule-4 of the said Rules and the term is defined as under:

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.

7. In short the submission of the Learned Standing Counsel was that in view of the above provision the seniority of the Petitioner would be reckoned from the date of his substantive appointment and not from the date when he was given ad hoc promotion way back in the year 1979. Considering the undisputed facts of the case it is evident that the Petitioner was given ad hoc promotion according to the rules and that he was eligible for that promotion. It has not been shown that the ad hoc appointment on the post of Range Forest Officer was merely a stop gap arrangement or of fleeting nature. It is also not in dispute that right from the date of the ad hoc promotion the Petitioner had been continuing on promotional post and he was so regularized on that post by a subsequent order of regularization. It is the basic principle of the Service Jurisprudence that the seniority is normally determined only on the basis of length of the service and in the absence of rules to the contrary subsequent regularization/ confirmation would relate back to the date of the appointment and entire service is to be computed in reckoning the seniority. Same is the ratio of the decisions of the Apex Court in both the cases pressed in to service on behalf of the Petitioner and referred above. It will be relevant to refer to paragraph-13 of the Apex Court judgment in the case of Shri L. Chandrakishore Singh (supra) which reads as under:

It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, .

8. On the face of the facts of the instant case it is also of significance that in the said case the Apex Court also considered the decision rendered in the case of Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, wherein it was

observed that-"To approximate to the official diction used in this connection, we may well say that a person is said to hold a post in a substantive capacity when he holds it for an indefinite period especially of long duration in contradistinction to a person who holds it for a definite or temporary period or holds it on probation subject to confirmation."

9. As stated above the Petitioner at the time of ad hoc promotion was eligible for appointment to that post of Range Forest Officer and the appointment was not stop gap arrangement and further that the appointment was made by following the procedures according to rules and eventually his appointment was regularized under the U.P. Regularization of Ad hoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1979. In a situation like this the ratio of the decision of the Baleshwar Dass case being applied here would result in saying that the initial ad hoc promotion of the Petitioner on the post of Range Forest Officer could be treated as substantive appointment within the meaning of the provisions of the Uttar Pradesh Government Servants Seniority Rules, 1991. As a consequence thereof the principle laid down by the Apex Court in the case of L. Chandrakishore Singh apply to the facts of the instant case to conclude that the subsequent regularization of the Petitioner would relate back to the date of the appointment as Range Forest Officer and entire service should be reckoned for the purpose of seniority. Therefore, there also can be no gain saying that Section 8(2)(ii) of the U.P. Government Servants Seniority Rules, 1991 shall have no application to the facts of the case and it can not be accepted that the appointment of the Petitioner as Range Forest Officer on 25-5-1979 could not be treated as substantive appointment in the eyes of law.

10. The other decision cited on behalf of the Petitioner also fortify the above conclusion. In that case the law laid down by the Bench of three Judges was held to be correct. The law laid down pertain to a dispute of seniority of the medical officers of the U.P. State medical service who have served for over 30 years as temporary doctors and were subsequently regularized under the provisions of Uttar Pradesh Regularization of Ad hoc Appointments (on posts within the purview of the public Service Commission) Rules, 1979 and were given benefit of whole of the period towards seniority by the Allahabad High Court in a writ filed in that regard by the aggrieved doctor. The State of U.P. filed a SLP against the judgment of the Allahabad High Court which was decided by a Bench of three Judges of the Apex Court and agreeing with the reasoning and the conclusion reached by the Allahabad High Court the SLP was dismissed. The law laid down by the three Judges Bench was held to be correct in preference to the law laid down by the two judges Bench which was contrary to the above view. The ratio of the decision of the three judges Bench of the Apex Court whereby the entire period was counted for seniority also apply to the facts of the instant case and the Petitioner's seniority would therefore be reckoned from 25-5-1979 as has been shown in the order dated 12-6-2002 (Annexure-3). In other words the submissions made on behalf of the Respondents with reference to the seniority Rules, 1991 could not be accepted to set at naught the continuous service

rendered by the Petitioner in reckoning his seniority on the post of Range Forest Officer.

11. The State Public Service Tribunal by impugned order dated 12-2-2004 rejected the original application at the stage of the admission on the grounds that the application is premature in view of the proviso-(ii) of Section-4 of the U.P. Public Services (Tribunal) Act, 1976 and that the final allocation of the incumbents for the state of U.P. and the successor State of Uttaranchal has not yet been made. It is averred in the counter affidavit of S.K. Dutt on behalf of Respondent No. 1 the allocation of the state cadre employees to Uttaranchal has been finalized by the competent authority. Even otherwise the non-allocation would not have been a bar to the filing of the present petition as the decision was required to be given as to from which date the seniority of the Petitioner would be reckoned. As held above the seniority of the Petitioner would be reckoned from 25-5-1979 and he will be placed in the seniority list accordingly. No appeal was provided under the relevant service rules against the impugned order dated 20-11-2003 (Annexure-2), therefore it was not a case in which the Petitioner has not exhausted departmental remedy. In our view there was no bar in either of the two cases to decide the original application by the State Service Tribunal. However considering the peculiar facts of the case we have heard the case on merit and instead of remanding the case to the State Service Tribunal, the same is being disposed of finally in view of the conclusion arrived at after considering the legal aspects of the case.

12. For the reasons aforesaid the writ petition succeeds and is allowed. We issue a writ of certiorari quashing the impugned order dated 12-2-2004 (Annexure-1) and order dated 20-11-2003 (Annexure-2) and further issue a writ of mandamus commanding the Respondents to reckon the seniority of the Petitioner on the post of Range Forest Officer with effect from 25-5-1979, the date as mentioned in tentative seniority list dated 12-6-2002 (Annexure-3) and to give all the consequential benefits of service such as promotion etc. to the Petitioner within a period of three months from the date of this order.