
(2011) 09 UK CK 0117

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 178 of 2010

Vishwa Nath Semwal and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 4(4), 4(5), 4(6), 5

Citation : (2011) 09 UK CK 0117

Hon'ble Judges : Barin Ghosh, C.J; Umesh Chandra Dhyani, J

Bench : Division Bench

Judgement

Barin Ghosh, C. J.

1. On 17th November, 1983, Respondent No. 3 was appointed as an ad hoc Junior Engineer. On 11th January, 1985, Petitioner Nos. 1 and 2 and Respondent Nos. 4 and 5 were appointed as ad hoc Junior Engineers. On 30th April, 1985, Petitioner No. 3 and Respondent Nos. 6 and 7 were appointed as ad hoc Junior Engineers. Such ad hoc appointments were considered for regularization under the U.P. Regularization of Ad hoc Appointments (On posts within the purview of the Public Service Commission) Rules, 1979. At that time, the service records of Respondent Nos. 3 to 7 were not available, whereas the service records of the Petitioners were available. Considering the service records of the Petitioners on 14th February, 1990, they were regularized. Subsequent thereto, the service records of the Respondents were traced and the same having been considered they were also regularized on 7th January, 1991.

2. Respondent Nos. 3 to 7 could not be blamed for non-availability of their service records. Because, the said Rules provided, amongst others, that a person appointed under those Rules shall be entitled to seniority only from the date of order of appointment after selection, it is being contended in the present writ petition that since the Petitioners were regularized on 14th February, 1990 and Respondent Nos. 3 to 7 on 7th January, 1991, Petitioners are senior. The fact

remains that Respondent Nos. 3 to 7 were not regularized along with the Petitioners for their records were not available and for no one other reason. It has not come on record that while considering regularization of the Petitioners, the case of regularization of Respondent Nos. 3 to 7 was considered and rejected on any ground. On the other, the records suggest that while the case of the regularization of the Petitioners was considered, the case of regularization of Respondent Nos. 3 to 7 was also considered but the said Respondents could not be regularized in view of non-availability of their service records. In the circumstances, for all practical purposes, it must be deemed that regularization of Respondent Nos. 3 to 7, though made on 7th January, 1991, in fact, took place on 14th February, 1990 along with the Petitioners.

3. Sub-rule (4) of Rule 4 of the said Rules requires an appointing authority to prepare an eligibility list of the candidates, arranged in order of seniority as determined, from the date of order of appointment. Sub-rule (5) of Rule 4 of the said Rules directs the Selection Committee to consider the cases of the candidates on the basis of their records. Sub-rule (6) of Rule 4 of the said Rules directs the Selection Committee to prepare a list of selected candidates, the names in the list being arranged in order of seniority and to forward the same to the appointing authority. Rule 5 of the said Rules provides that the appointing authority shall make appointment from the list prepared under Sub-rule (6) of Rule 4 in the order in which the names stand in the list. Therefore, the said Rules direct preparation of an eligibility list of the candidates arranged in order of seniority. In the event more than one appointment is made on one day, the seniority is required to be counted on the basis of the age. The person senior by age will be senior to the person junior by age. The eligibility is required to be prepared on the basis of such seniority. The cases of the candidates, in such eligibility list, are required to be considered on the basis of their records. After the candidates are selected, a list of selected candidates is required to be prepared in order of seniority. The appointing authority is obliged to appoint from the said list in the order in which the names stand in the list. Therefore, it is clear that Respondent No. 3 is senior to the Petitioners and the other private Respondents, whereas Petitioner Nos. 1 and 2 and Respondent Nos. 3 & 5 are senior to Petitioner No. 3 and Respondent Nos. 6 & 7. The inter se seniority between Petitioner Nos. 1 and 2 and Respondent Nos. 4 & 5 as well as between Petitioner No. 3 and Respondent Nos. 6 & 7 is required to be determined on the basis of their age.

4. With the above declaration, we dispose of the writ petition and direct the State Government to suitably alter the seniority list.