(2010) 07 AHC CK 0196

Allahabad High Court

Case No: Special Appeal No. 50 of 2007

State of Uttaranchal and others		APPELLANT
	Vs	
Ramesh Chandra Joshi		RESPONDENT

Date of Decision: July 30, 2010

Acts Referred:
Uttar Pradesh Government Servants (Seniority) Rules, 1991 â€" Rule 4(h), 5, 7#Uttar Pradesh Rural Engineering Services Subordinate Engineers Rules, 1984 â€" Rule 19, 3(g), 3(i)

Citation: (2010) 07 AHC CK 0196

Hon'ble Judges: J.S.Khehar, CJ and Sudhanshu Dhulia, J

Final Decision: Allowed

Judgement

J.S. Khehar, C.J.
The respondent was inducted into the service of the Minor Irrigation Department of the composite State of Uttar

Pradesh as an Assistant Development Officer vide an order dated 16.8.1982. A perusal of the aforesaid appointment order reveals, that the

respondent"s appointment was on adhoc basis, the specified tenure whereof was of one year. In the conditions depicted in the order of

appointment dated 16.8.1982, it was also mentioned that the appointment was on temporary basis, wherein the services of the respondent could

be dispensed with by issuing him a notice of one month or pay in lieu thereof. The order of appointment also expressly mentioned, that the services

of the respondent would stand terminated when regular appointments to the post of Assistant Development Officers were made by the Public

Service Commission.

2. It seems, that the respondent continued to discharge his duties against the post of Assistant Development Officer in the Minor Irrigation

Department in the composite State of Uttar Pradesh till he was issued another order of appointment dated 2.1.1984, this time also as Assistant

Development Officer, but in the Rural Engineering Department of the composite State of Uttar Pradesh. The terms and conditions depicted in the

earlier order of appointment dated 16.8.1982 were reiterated in the subsequent order of appointment dated 2.1.1984.

3. It is not a matter of dispute, that the respondent continued to work in his aforesaid capacity till his regularisation by an order dated 16.12.1993.

Consequent upon his regularisation by the aforesaid order dated 16.12.1993, the appellants published a seniority list. In the seniority list, the

service rendered by the respondent on adhoc basis was not taken into consideration. His seniority was determined on the basis of his continuous

length of service i.e., after his appointment on regular basis (by the order dated 16.12.1993). Aggrieved by the seniority list issued by the

appellants, the respondent approached this Court by filing Writ Petition (S/S) No. 478 of 2006. The aforesaid Writ Petition was allowed by a

learned Single Judge of this Court vide an order dated 21.6.2006. A learned Single Judge quashed the seniority list (dated 18.2.1994), and while

doing so, directed the appellants to fix the seniority of the respondent by taking into consideration the initial date of his appointment i.e. his

appointment on adhoc basis as Assistant Development Officer.

4. Through the instant Special Appeal, the judgment rendered by this Court on 21.6.2006 allowing Writ Petition (S/S) No. 478 of 2006 has been

assailed by the appellants.

5. It is not a matter of dispute, that the post of Assistant Development Officer, against which the respondent was originally inducted, was

redesignated as Junior Engineer in the year 1984. It is also not a matter of dispute, that conditions of service of Junior Engineers of the Rural

Engineering Department are governed by the provisions of the U.P. Rural Engineering Department Subordinate Engineering Services Rules, 1984

(hereinafter referred to as the ""1984 Rules""). The 1984 Rules are available on the record of the instant Special Appeal. Rule 3 (g) defines the term

Member of Service"" as a person who has been inducted against a post, governed by provisions of the 1984 Rules, and in case of an appointment

prior to the promulgation of the 1984 Rules, governed by the existing Rules or Government Orders ""in a substantive appointment"". The term

substantive appointment"" has also been defined in Rule 3 (i) as an appointment made through a process of selection under the existing rules or

under any Government Order, but not including an appointment made on adhoc basis. Rule 15 of the 1984 Rules is further material for the present

controversy, inasmuch as, the aforesaid Rule expressly mandates, that appointment to the post of Junior Engineer would be made only by way of

direct recruitment. Rule 19 of the 1984 Rules lays down the manner of determining interse seniority. Rule 19, however, envisages the manner of

determining seniority only in respect of selections made through a common process of selection, wherein seniority is to be determined on the basis

of the interse merit of the candidates, who had participated in the same. Having given our thoughtful consideration to the mandate of the provisions

of the 1984 Rules, we are of the considered view, that Rule 19 thereof laying down the manner of determining seniority can not be a valid basis to

determine the controversy raised by the respondent (where he assailed the original order of. seniority published by the appellants vide an order

dated 18.2.1994) because the issue raised by the respondent does not relate to persons who were selected through a common process of

selection. Moreover, under the 1984 Rules seniority is to be determined of ""members of the service"", whereas the appointment of the respondent

having been made on adhoc basis, he could not be considered to be a member of the services, and as such, the question of determining his

seniority till he became a member of the service did not arise at all. He could be treated as a ""member of the service"" only when his appointment on

adhoc basis was converted into regular appointment (on 16.12.1993).

6. During the course of hearing, learned counsel for the appellants also placed reliance on the U.P. Government Servants Seniority Rules, 1991

(hereinafter referred to as the ""1991 Rules""). The term ""substantive appointment"" has been defined therein in Rule 4 (h) of the 1991 Rules to mean

an appointment made to a post in a cadre of the service after holding a process of selection, but not including appointments made on adhoc basis.

On the issue of seniority relating to appointments, wherein the cadre allows only appointments by way of direct recruitment, Rule 5 of the 1991

Rules is liable to be invoked. Rule 5 of the 1991 Rules is being extracted hereunder :

5. Seniority where appointments by direct recruitment only. Where according to the service rules appointments are to be made only by the Direct

recruitment the seniority inter se of the persons appointed on the result of any one selection, shall be the same as it is shown in the merit list

prepared by the Commission or the Committee, as the case may be:

Provided that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons when vacancy is offered to him, the

decision of the appointing authority as to the validity of reasons, shall be final:

Provided further that the persons appointed on the result of a subsequent selection shall be junior to the persons appointed on the result of a

previous selection.

We have perused the aforesaid Rule. The controversy relating to the determination of seniority of the respondent, however, is not based on

selections made in one batch, but is on the basis of a claim not arising out of any selection process whatsoever, either under the statutory rules or

under any Government Order. On the analogy of the consideration of the matter in the foregoing paragraph, the respondent could not be treated as

a ""member of the service"" under the 1991 Rules also because his appointment was on adhoc basis. He could be treated as a member of the

service only when his appointment on adhoc basis was converted into regular appointment (on 16.12.1993). We are, therefore, of the view that

Rule 5 of the 1991 Rules can also not be a basis of finalising the controversy raised in the present .case so as to arrive at a conclusion. It is in the

background of the aforesaid determination at our hands, that the learned counsel for the appellants then invited our attention to the U.P.

Regularisation of Ad HOQ Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 (hereinafter referred to as

the ""1979 Rules""). First and foremost, it would be relevant to notice Rule 2 of the 1979 Rules, which gives an overriding effect to the 1979 Rules

over all other prevalent Rules. The manner of determining seniority of employees, who were originally engaged on adhoc employees, but were

subsequently regularised in service, has been delineated in Rule 7 of the 1979 Rules. Rule 7 of the 1979 Rules is being extracted hereunder for

facility of reference.

7. Seniority.(1) A person appointed under these rules shall be entitled to seniority only from the date of order of appointment after selection in

accordance with these rules and shall, in all cases, be placed below the persons appointed in accordance with the relevant service rules, or as the

case may be, the regular prescribed procedure, prior to the appointment of such person under these rules.

(2) If two or more persons are appointed together, their seniority inter se shall be determined in the order mentioned in the order of appointment.

A perusal of Rule 7 of the 1979 Rules extracted hereinabove, reveals that an employee, who was originally appointed on adhoc basis, but was

subsequently regularised under 1979 Rules, is entitled to the benefit of seniority with effect from the date of his appointment on regular basis. It is,

therefore, necessary for the purposes of determining the present controversy to determine the date with effect from which the respondent was

appointed on regular basis, by the order dated 16.12.1993. The aforesaid order dated 16.12.1993 (Annexure 5) does not give any retrospective

effect to the date of regularisation. Thus viewed, the regularisation envisaged by the order dated 16.12.1993 will be deemed to be, with immediate

effect. If the order of regularisation dated 16.12.1993 is to be given effect from the date of its issue, then in terms of Rule 7 of the 1979 Rules, the

respondent cannot be allowed the benefit of service rendered by him on adhoc basis preceding the date of his appointment on regular basis. The

conclusion drawn by the learned Single Judge was, therefore, in complete disregard to Rule 7 of the 1979 Rules. The aforesaid Rule was evidently

not brought to his notice.

7. Insofar as our aforesaid determination is concerned, the conclusion drawn by us finds support from the decision rendered by the Apex Court in

K. Madalaimuthu and another v. State of T.N. and others, (2006) 6 SCC 558, wherein on the issue of seniority, in a factual controversy akin to

the present case, it was observed as under:

24. On a consideration on the submissions made on behalf of the respective parties and the decisions cited on their behalf, the consistent view

appears to be the one canvassed on behalf of the appellants. The decisions cited by Mr Rao have been rendered in the context of Rule 10(a) (i)

(1) and the other relevant rules which are also applicable to the facts of the instant case. Apart from the above, the law is well settled that initial

appointment to" a post without recourse to the rules of recruitment is not an appointment to a service as contemplated under Rule 2 (1) of the

General Rules, notwithstanding the fact that such appointee is called upon to perform duties of a post borne on the cadre of such service. In fact,

Rule 39 (c) of the General Rules indicates that a person temporarily promoted in terms of Rule 39 (a) is required to be replaced as soon as

possible by a member of the service who is entitled to the promotion under the Rules. It stands to reason that a person who is appointed

temporarily to discharge the functions in a particular post without recourse to the recruitment rules, cannot be said to be in service till such time as

his appointment is regularised. It, therefore, follows that it is only from the date on which his services are regularised that such appointee can count

his seniority in the cadre.

25. In the instant case, the authorities on the strength of the several government orders giving retrospective effect to the regularisation of the

promotees, have taken the date of initial appointment of such promotees as the starting point of their seniority. In our view, such a course of action

was erroneous and contrary to the wellestablished principles relating to determination of seniority. In our view, the High Court took an erroneous

view in the matter in applying Rule 4 of the General Rules and holding that the period during which the promotees had initially discharged the duties

of District Registrars, though appointed temporarily under Rule 10 (a)(i) (1), was to be counted for determining their seniority. The decision of this

Court in L. Chandrakishore Singh ((1991) 8 SCC 287) relied on by Shri Venkataramani did not involve the question of persons appointed outside

the service as a stopgap arrangement. The fact situation of the said decision is different from the fact situation of the instant case which finds

support from the decisions cited by Mr Rao.

8. In the aforesaid view of the matter, keeping in mind Rule 7 of the 1979 Rules, as also, the declaration of law at the hands of the Supreme Court,

we are satisfied that the respondent cannot be allowed the benefit of seniority in the cadre of Junior Engineers prior to the date of his regular

appointment, i.e., prior to 16.12.1993. We are of the view, that the learned Single Judge erred in arriving at the final conclusion in the matter, oh

account of the fact that Rule 7 of 1979 Rules was not brought to his notice for consideration. Reference to the aforesaid factual position has been

made by us, keeping in mind the judgment rendered by a Division Bench of this Court in Dr. Km. Kamla Joshi and others v. State of Uttaranchal

and another (Writ Petition (S/B) No. 41 of 2004, decided on 15.5.2006), wherein a controversy similar to the one in hand pertaining to the

Education department was decided by this Court, wherein a conclusion contrary to the one recorded by us hereinabove, was taken. The aforesaid

judgment, however, would not interfere in our determination in the controversy on account of the fact that, Rule 7 of the 1979 Rules was not taken

into consideration by the Division Bench (referred to hereinabove) as well.

9. For the reasons recorded hereinabove, the instant Special Appeal is allowed. The order passed by the learned Single Judge dated 21.6.2006

allowing Writ Petition (S/S) No. 478 of 2006 is hereby set aside. Thus viewed, the seniority list issued by the appellants dated 18.2.1994 allowing

the benefit of seniority to the respondent with effect from the date of his regular appointment i.e. 16.12.1993 is hereby affirmed. Appeal allowed.