

Jagmal Singh Yadav

Vs

M. Ramayya and Others

Civil Appeal No. 1260 of 1973

(V.V. Chandrachud, P.K. Goswami, Syed M. Fazal Ali JJ)

06.01.1977

JUDGMENT

GOSWAMI, J. –

1. The appeal by special leave is directed against the judgment of the Full Bench of the High Court of Delhi whereby the writ petition of the first twelve respondents was partly allowed.

1A. The appellant, who joined service in the cadre of Assistant Engineers in the Central Engineering Service, Class II (Gazetted), was respondent 51 in the High Court, other respondents in the High Court in similar position as that of the appellant have been impleaded here as respondents (16 to 110) and they are supporting the appellant through their counsel, Mr. S.T. Desai. For the sake of convenience the appellant and the respondents 16 to 110 will be described herein below as direct recruits in the Class II Service. The Union of India, Engineer-in-Chief, C.P.W.D., and the Union Public Service Commission are respectively respondent 13, 14 and 15 and are represented by Mr. Gobind Das.

2. The respondents 1 to 12 (hereinafter to be referred to as the respondents) preferred an application in the High Court under Article 226 of the Constitution on February 16, 1970, praying for certain reliefs which the High court has summarised under the following four heads :

(1) That the confirmation of the direct recruits should be held as illegal.

(2) That the respondents and other persons who are similarly situated like them and who had joined the service earlier should be directed to be confirmed first according to the dates of their joining the service as Assistant Engineers after giving weightage in preference to the direct recruits.

(3) That the appointment of 38 specified direct recruits should be as illegal.

(4) That the respondent (13 to 15 herein) should be directed to revise the classified list published in 1968.

The High Court has also noted that the respondents did not seek to disturb the appointments of the direct recruits already made and that their main contention was that they were entitled to be confirmed before those of the direct recruits who were appointed subsequent to them.

3. This appeal was heard by us in two stages. After the first stage of the hearing the parties were given some time to settle the matter by evolving a reasonable formula to satisfy the legitimacy of their mutual claims. If, however, appeared that they could not compose their differences and the appeal was, therefore, finally heard and concluded.

4. We may now briefly give the history of the litigation.

5. The respondents (who are the twelve writ petitioners in the High Court) are either graduates in Civil Engineering or possess similar requisite qualifications, namely, an Engineering Degree or an equivalent thereof. They were all initially appointed on different dates as temporary Section Officers in the Central Public Works Department (hereinafter to be referred to as the C.P.W.D.) in the Subordinate Engineering Service, Class III (Non-gazetted). They were subsequently appointed on various dates between October 18, 1958 and January 8, 1963, "to officiate temporarily and until further orders" as Assistant Engineers in the Central Engineering Service, Class II (Gazetted) (briefly the service). The appellant and the respondents 16 to 110 are what is described as direct as recruits to the Service. Each of the direct recruits possesses a Degree in Engineering or an equivalent thereof. Fifty-eight of them were directly recruited as temporary Assistant Engineers in the Central Engineering Service Class II (Gazetted) on different dates between May 12, 1961 and December 13, 1967, on the result of a competitive examination held by the Union Public Service Commission (U.P.S.C.). The remaining thirty-eight also possess a Degree in Engineering or an equivalent thereof and they were directly recruited as temporary Assistant Engineers in the Service on different dates between November 2, 1964 and November 7, 1967, but without any competitive examination.

6. By a Notification dated June 13, 1967, excepting seven direct recruits (namely, respondents 11, 17, 29 and 31 to 34 in the High Court) the remaining respondents (respondents 4 to 37 in the High Court) were confirmed with effect from their respective dates of recruitment. The said confirmation were also shown in a 'Classified list of Class II Engineering Gazetted Establishment (Civil) of the C.P.W.D. published in 1968. BY another Notification of May 1, 1968, direct recruits (being respondents 17, 33, 34, 38, 64 and 74 in the High Court) were also confirmed. Similarly by a Notification dated April 30, 1971, other direct recruits (respondents 31, 32, 39, 43, 46, 50, 52, to 57, 60, 61, 63, 68, 69, 75, 76, 79, 82, 92 and 96 in the High Court) were confirmed.

7. The grievance of the respondents in the High Court was that although they were appointed as temporary Assistant Engineers much earlier than the direct recruits the latter were confirmed ignoring their claims. Their representations to the Government through their association having failed they approached the High Court. The respondents (13 to 15) denied their claim by means of a counter-affidavit of Shri Kailash Prakash, Director of Administration, C.P.W.D. One of the direct recruits, Shri Durgadas Karna, also filed a counter-affidavit opposing the claim of the respondents in the High Court. By consent certain documents were produced by the Government and after inspection relevant extracts from the files were submitted to the Court by respective parties.

8. Although several contentions were urged before the High Court, some of them pertaining to Articles 14 and 16 of the Constitution, the High Court accepted the main contention of the writ petitioners that there was no determination of any quota by the Government since on the basis of the said quota the direct recruits obtained preference in the matter of confirmation and seniority. The High Court thus partly allowed the application and directed the respondents (respondents 1 to 3 in the High court) "to consider the petitioners (respondents herein) for confirmation as Assistant Engineers and to adjust the inter se seniority of such of the petitioners as might be confirmed after

consideration by the respondents in accordance with law".

9. It is clear that if the High Court is right that there was no determination by the Government under Rule 4(c) of the Recruitment Rules, to which we will refer presently, apportioning quota amongst the officers recruited through different sources it will not be necessary to go into the other question raised by Mrs. Pappu for the appellant. If we find that the High Court is wrong in its conclusion on this main point, we will have to remand the matter to the High Court for decision with regard to the other submissions which had not been dealt with by it. We will, therefore, take the first point first.

10. Mrs. Pappu submits as follows :

10A. First, in the absence of a plea in the writ petition that the Home Ministry's approval is necessary the High Court exceeded its jurisdiction in going behind the determination of the quota made under Rule 4(c), particularly in the absence of any special mode of determination prescribed under the rules. Second, she submits that the High Court failed to notice that it was open to prescribe quota by way of executive instructions in the absence of any rules in this behalf. Third, she submits that even assuming the High Court could enter into such an enquiry there is ample evidence on record to show that determination has been made under Rule 4(c).

11. The person with whom we are concerned in this appeal are governed by the Central Engineering Service, Class II, Recruitment Rules (briefly the Rules) which were published on May 21, 1954. There are six Parts in these Rules. Part I (General) provides the definitions. Part II deals with the methods of recruitment. Rule 3 with which this Part opens provides as follows :

3. Recruitment to the Service shall be made any of the following methods :

- (a) By competitive examination in India in accordance with Part III of these Rules.
- (b) By direct appointment in accordance with Part IV of these Rules of persons selected in India otherwise than by competitive examination.
- (c) By promotion in accordance with Part V of these Rules.
- (d) By transfer in accordance with Part VI of these Rules.

Rules 4 and 5 may also be noted :

- 4. (a) All appointments to the service or to posts borne upon the cadre of the Service shall be made by the Government.
- (b) No appointment shall be made to the Service or to any post borne upon the cadre of the Service by any method not specified in Rule 3.
- (c) Subject to the provisions of sub-rule (b), the method or methods of recruitment to be employed for the purpose of filling any particular vacancies in the Service or such vacancies therein as may be required to be filled during any particular period and the number of candidates to be recruited by each method shall be determined by the Government.

5. Appointments to the Service made otherwise than by promotion will be subject to orders issued from time to time by the Ministry of Home Affairs regarding special representation in the Services for specific sections of the people.

Part III provides for recruitment by competitive examination which is the method provided in Rule 3(a). We are not concerned with the details in this Part except to note that the examination is conducted by the U.P.S.C. and the requisite qualifications and age restriction and relaxations are provided for in this Part. We may also note that Rule 21 of this Part provides that the selected candidates shall be appointed as Assistant Engineers on probation for two years and on the completion of the period or probation, if considered fit for permanent appointment, they will be confirmed in their appointments. There is a provision for extending the period of probation under Rule 21(c). We need not notice other details in this Part.

12. Part IV deals with recruitment by Selection. Rule 23 with which this Part opens provides as follows :

23. (1) Recruitment by selection shall be made from among Temporary Engineers and Temporary Section Officers employed on the Civil Engineering side of the Central Public Works Department after consultation with the Commission :

Provided that it shall not be necessary consult the Commission, in the case of any person, if the Commission were consulted in connection with his temporary appointment to the service.

(2) No person shall be eligible for selection under sub-rule (1) unless he would, but for age, be qualified for admission to the service under Part III of these rules, and his age at the time of appointment to the Service is not more than 40 years.

(3) Merit shall be the primary consideration in determining a person's fitness for selection under this rule and no officer shall have any claim to appointment under this rule as of right.

13. Part V deals with recruitment by promotion and contains a solitary rule, namely, Rule 24, which reads as follows :

24. Recruitment by promotion shall be made by selection on the basis of merit from among permanent Section Officers employed in the Civil Engineering side of the Central Public Works Department.

14. Part VI deals with recruitment by transfer of an officer in Government service and there is a solitary rule, namely, Rule 25, which takes care of this type of recruitment by transfer. We are not concerned with this rule in this appeal.

15. From a perusal of the Rules it is clear that there are four methods of recruitment, namely -

(1) recruitment by competitive examination (Part III);

(2) by direct appointment otherwise than by competitive examination (Part IV);

(3) by promotion (Part V); and

(4) by transfer (Part VI).

It is also clear under Rule 4(b) that no appointment shall be made to this Service or to any post borne on the cadre of this Service by any method other than the above mentioned four methods.

16. The direct recruits belongs to two categories of officers. Fifty-eight persons were recruited under Rule 3(a) by competitive examination. The remaining thirty-eight persons were also directly recruited as temporary Assistant Engineers but without any competitive examination and, according to the respondent, "on an ad hoc basis". So far as the respondents are concerned they claim to be recruited under Part IV, namely, recruitment by selection which is one of the four methods provided for under Rule 3(b). On the other hand according to Mrs. Pappu the respondents are mere temporary promotees to temporary vacancies in Class II Service and they are a class different from the direct recruits who are not similarly situated with them.

17. We have, therefore, first to consider this submission of Mrs. Pappu. As stated earlier, there are four methods of recruitment. Recruitment by promotion is provided under Part V and that is made by selection on the basis of merit from amongst permanent Section Officers. The Particular recruitment of the respondents, therefore, cannot be under Part V. It is common ground that the respondents at the material time when they were appointed as temporary Assistant Engineers were only temporary Section Officers in Class III. It is also admitted that all these respondents have requisite qualifications which are necessary for admission to the Service under Part III and they are also within the age limit laid down under Rule 23(2). Besides, recruitment when made is only on merit under Rule 23(3). Being faced with this position, Mrs. Pappu submits that their recruitment is outside the Rules particularly because Rule 23(1) provides for recruitment by Selection "after consultation with the U.P.S.C.". She submits that they were selected by the Departmental Promotion Committee which is not the same thing as the U.P.S.C. mentioned in Rule 23(1). We are, however, unable to accept this submission. It is true that Rule 23(1) provides for recruitment by selection after consultation with the U.P.S.C. The particular Departmental Promotion Committee (D.P.C.) was presided over by a member from the U.P.S.C. There is Home Ministry's O.M. No. 33/46-Ests (R) dated June 17, 1947, wherein it has been clearly stated in para 7 as follows :

Recommendations made by Departmental Promotion Committees on which the Commission is represented should be treated as recommendations having the approval of the Commission, and the convention regarding acceptance of the advice of the Commission will apply.

We are, therefore, clearly of opinion that the appointments of the respondents are clearly in accordance with Rule 23 in Part IV read with Rule 3(b) of Part II of the Rules. We find that the above conclusion we have reached is supported by the stand taken on behalf of the Government in the Lok Sabha on April 7, 1969, in answering certain Unstarred question with regard to recruitment to this Service, inter alia, under Part IV.

18. Since, however, there are no statutory rules for confirmation in service or seniority rules, it is submitted by Mrs. Pappu that under Rule 4(c) of the Rules it is for the Government to determine the method or methods of recruitment to be applied for the purpose of filling any particular vacancy in the Service or such vacancies therein as may be required to be filled during any particular period and the number of candidates to be recruited by each method. It is in conformity with Rule 4(c),

says counsel, that the Government has fixed the proportions for filling vacancies in Class II Service by different modes of recruitment. She draws our attention to a letter of the Under Secretary to the Government of India, Ministry of Works and Housing, dated October 2, 1954, which, as the subject matter shows, contains the "proposal to prescribe definite quotas for filling the posts of Assistant Engineer (Civil) and Assistant Engineer (Electrical) in the C.E.S., Class II, and the C.E.E.S., Class II, respectively, by different modes of recruitment". The proposal sets out in Part A thereof the quota for permanent vacancies as follows :

A. Permanent Vacancies :

(i) 50% by direct recruitment by competitive examination under Part III of the Recruitment Rules for the Class II Service.

(ii) 25% by promotion of permanent Section Officers under Part V of the Recruitment Rules.

(iii) 25% by permanent appointment of temporary Assistant Engineers recruited by competitive examination through the Union Public Service Commission, and by transfer under Part VI of the Recruitment Rules.

19. Part B thereof fixes the quota for temporary vacancies as under :

B. Temporary Vacancies :

(i) 50% by direct recruitment by competitive examination through the Union Public Service Commission and by transfer under Part VI of the Recruitment Rules.

(ii) 50% by departmental promotion from amongst -

(a) permanent Graduate Section Officers,

(b) permanent non-Graduate Section Officers, and

(c) temporary Graduate Section Officers,

in accordance with the ratio which may be fixed by the Departmental Promotion Committee at the time of making the selection :

Provided that if at any given time, candidates who are successful at the Union Public Service Commission competitive examination are not available in sufficient numbers for filling 50% of the temporary vacancies that might be available, the residual vacancies may be filled temporarily by departmental promotion, subject to the condition that person so promoted against such vacancies, shall be reverted later if necessary, to make room for the candidates who may qualify at subsequent examinations to be held by the Commission, as and when they become available.

20. It is pointed out that this proposal received approval of the U.P.S.C. as per its letter dated September 7, 1955. Mrs. Pappu draws our particular attention to the following paragraph in that letter :

For recruitment to the posts in the Central Engineering Service, Class II and the Central Electrical Engineering Service, Class II, the percentage quotas for various modes of recruitment suggested by the Ministry vide their letter No. E-1/5(2), dated October 2, 1954, have been approved by the Commission.

21. Our attention is particularly drawn by the respondents to a letter dated November 7, 1955, from the Deputy Secretary (Establishment) to the Secretary U.P.S.C. and the subject of the letter is "confirmation in the grades of Assistant Engineers Civil and Electrical in the C.P.W.D.". It is stated in that letter :

Since these vacancies have occurred as a result of conversion of posts from temporary to permanent and since the C.P.W.D. has a large number of officiating Assistant Engineers who have been promoted from the grade of Section Officer, it is considered that the officiating Assistant Engineers have a prior claim to these posts. The Ministry of Home Affairs also share this view.....

The last paragraph of this letter reads as under :

I am to request that the concurrence of the U.P.S.C. To the allotment of these vacancies on ad hoc basis to the officiating Assistant Engineers (Civil) And (Electrical) and to their confirmation as proposed by the D.P.C. at their meeting on July 18, 1955, may be communicated to this Ministry at an early date.

22. After this our attention is drawn by the appellant to a document dated March 5, 1962, on the "subject : preparation of a combined seniority list for direct recruits and departmental promotees in the grade of Assistant Engineers C.P.W.D.". It is stated therein as follows :

It is tentatively agreed that since the ratio of recruitment prescribed for direct recruitment through the U.P.S.C. and Departmental Promotion of Section Officers has not been adhered to, the date of confirmation should be the basis of determination the inter se seniority of direct recruits and the Departmental promotees. When the date of confirmation of direct recruit and a departmental promotee is, however, the same, the direct recruitment should rank senior to the departmental promotee. The Chief Engineer, however, indicated certain practical difficulties in following the above principle and it was decided that further discussion should be held before the Ministry the Ministry of Home Affairs would be able to give their definite views in the matter.

Mrs. Pappu then draws out attention to paragraph 2 of this letter which reads as under :

The ratio in respect of direct recruitment and departmental promotion was prescribed in September, 1955. Whenever confirmation thereafter was not made according to the prescribed ratio, approval of the U.P.S.C. was obtained to the relaxation of the quota.

The same paragraph continues to throw more light :

Before giving their final views, the Ministry of Home Affairs desired to have a copy of the communications wherein the U.P.S.C. agreed to the relaxation of the quota. As further discussions in the matter will take place in the Ministry of Home Affairs

within the next few days the copies of the relevant communications should be sent immediately.

23. Mrs. Pappu finally draws our attention to the minutes of the meeting held in the Ministry of Home Affairs on June 16, 1962, to discuss the question of drawing up a combined seniority list of various categories of Assistant Engineers in the C.P.W.D. She points out that the first paragraph in the minutes shows that "according to the orders issued in 1955 recruitment to the grade of Assistant Engineers (Civil and Electrical) in the Central Public Works Department is to be made by the following modes", namely, permanent vacancies and temporary vacancies in such manner as was contained in the proposal dated October 2, 1954, which we have already extracted. She then draws our attention that certain decisions were taken, as will appear from paragraph 4 of the minutes, with regards to the determination of the relevant seniority of direct recruits and departmental promotees. Mrs. Pappu submits that this is a follow-up action of the proposals which emanated from the Ministry of Works and Housing letter dated October 2, 1954, and which received the concurrence of the U.P.S.C. She submits that the minutes did mention quota and some decision were taken about inter se seniority. She submits that the position emanating from the minutes can only be reconciled on the basis that the quotas already fixed in 1955 had been the rule with regard to this Service.

24. The Short question arises for consideration is whether there has been a determination by the Government under Rule 4(c). It is clear that 1954 Rules did not prescribe therein any quota for recruitment through the four methods specified under Rule 3. One thing, however, is clear that under Rule 4(b) no other method is permissible for recruitment. It is also clear that with regard to the sharing of the recruitment through the different methods power is reserved to the Government under Rule 4(c) to make certain determination. It is submitted by Mr. Gobind Das, appearing on behalf of the Union of India, that at the relevant time the Department of Personnel was in the Ministry of Home Affairs and it is that Ministry which was entrusted with the matters relating to recruitment and seniority. He further submitted that the approval or sanction of the Home Ministry was mandatory for validity of any rule. It is, therefore, clear that the determination under Rule 4(c) must be by the Ministry of Home Affairs at the relevant time and if a decision were taken by the Home Ministry under the Rules of Business under Article 77(3) of the Constitution the determination would be of the Government of India. There is nothing to show that there was any determination by the Home Ministry under Rule 4(c). It is true that there was a proposal from the Ministry of Works and housing to which concurrence had been given by the U.P.S.C. After that there has been no further progress of the matter and Mr. Gobind Das concedes that there is nothing to show from the records at the disposal of the Government that the approval of the Home Ministry was given to any determination under Rule 4(c).

25. The Under Secretary in the Ministry of Works and Housing has filed an affidavit dated December 16, 1976, with an annexure dated June 14, 1954, which shows that with reference to the proposal for quotas the reaction of Home Ministry was in the following terms :

Prima facie, the proposal seems unobjectionable but this Ministry would like to see again after the U.P.S.C.'s views have been received.

It is perhaps because of this that Shri Swaran Singh the then Minister for Works and Housing also endorsed the Secretary's proposal which was in the following terms :

The proposals are in order and may be approved. After U.P.S.C. have been consulted and given their concurrence, the case will have to be shown to the Home Ministry

again who have asked to see these papers after the views of the U.P.S.C. have been obtained.

The Minister, Shri Swaran Singh's endorsement appears at the foot of this proposal on September 24, 1954.

26. So far as the records go the matter rested as above and there has been admittedly no adherence to the quota rule, but on the other hand there has been flagrant violation of the rule. As a matter of fact, pari passu with the proposal there was even a request for relaxation and everything appeared to be at that stage and for a number of years in the melting pot. This was perhaps possibly only because the file with the proposal after the concurrence of the U.P.S.C. did not move to the Home Ministry for final determination under Rule 4(c).

27. It is not possible to equate the minutes of the meeting of June 16, 1962, with an appropriate order or determination by the Home Ministry. There is nothing to show that these minutes received the approval of the Minister-in-charge. We are, therefore, unable to accept the submission of Mrs. Pappu that there has been a determination, in fact, by the Government under Rule 4(c).

28. We have already held that respondents 1 to 12 were duly appointed under Rule 23(1) of Part IV read with Rule 3(b). They are, therefore, entitled to be considered for confirmation in the Service in Class II. Since we have held that there was no quota rule, as sought to be made out, on the basis of which the confirmations have been made and seniority has been fixed, we agree with the High Court that it will be for the respondents (13 to 15) to consider the case of the respondents. (1 to 12) for confirmation and seniority in accordance with law. As the High Court has pointed out, the validity of the recruitment of the thirty-eight direct recruits will, however, not be affected.

29. We are not impressed by the submission of the appellant that there was no averments in the writ petition regarding absence of determination under Rule 4(c) of the Rules. After a perusal of the pleadings and having regard to the stand taken by the parties before the High Court, we find that the submission has no force. Since the factum of determination of seniority was a live issue between the parties in the High Court, there was no error of jurisdiction on the part of the High Court in examining the whole matter thoroughly and in considering the documents filed by the respective parties after inspection of the files by consent.

30. It is also necessary to observe that even for executive instruction the condition precedent is an appropriate decision by the competent authority and we are unable to hold that the High Court committed such a gross error of law in holding that there was no determination by the Government under Rule 4(c) to call for interference under Article 136 of the Constitution.

31. We also do not feel justified in placing exaggerated importance on the use of the words "specified quota" in some of the correspondences relied upon by Mrs. Pappu and Mr. Desai. We are of opinion that such a reference to "specified quota" was only a usual way of a compendious expression to facilitate identification of the subject matter of the proposal of the ministry of Works and Housing in the course of long correspondence between the several authorities.

32. Mrs. Pappu also strenuously submitted that the High Court should have dismissed the writ application on the ground of inordinate delay. We are not satisfied that the writ applications was liable to be dismissed on the ground of inordinate delay in the entire circumstances of the case and in particular when we find that the Government even though the so-called determination of the

Government under Rule 4(c) had been struck down by the High Court.

33. Before parting with the records we consider it proper to point out that persons entering Government service has the right to know where they stand with regard to their conditions of service and future promotion. Since there is no impediment in the way of the Government to make appropriate rules regarding conditions of service, even retrospectively, subject to constitutionality, keeping in view justice and fair play to all concerned, it is a sorry sight to find that officers in the same Service fight over the years in courts having failed to get redress from the Government. When officers are qualified to hold certain posts after recruitment, according to rules, and they have put in a number of years, without break, in the Service to the satisfaction of the authorities, it is impermissible to invoke a recondite rule and call it in aid to deprive a large section of officers of the benefit of their otherwise satisfactory service. The matter may be different when posts in the Service are abolished, appointments to the Service are transitory or fortuitous or incumbents are found unsuitable for absorption. The history of this Service is that temporary posts are first created and then after some years they are converted into permanent posts. The Government therefore, cannot merely be an on-looker where it could rightly claim to be a legitimate arbiter on its own authority and having proper regard to all just claims. We also cannot help feeling that thinking in the Ministry has not always been uniform, sympathy waning or waxing from time to time for reason not always manifest.

34. As found above, the submissions of the appellant are devoid of force. In the result the appeal fails and is dismissed. We will, however, make no order as to costs.

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