

# **SUPREME COURT OF INDIA**

Rajiv Narain Srivastava

Vs.

State of U.P.

Writ Petns. Nos. 13409 of 1983

(Ranganath Misra and M. N. Venkatachaliah, JJ.)

04.11.1988

## **JUDGEMENT**

### **RANGANATH MISRA, J.:-**

1. Writ Petitions Nos. 711, 1100, 1272-73 of 1986 are applications under Article 32 of the Constitution by a set of direct recruits to the U. P. Police Service Class II while Writ Petition No. 13409 of 1983 is by a set of promotees to the said service. A writ petition filed under Article 226 of the Constitution and bearing No. 1449 of 1985 before the Allahabad High Court by a set of promotees challenging the order of the U. P. Public Services Tribunal (Lucknow Bench) has been transferred to this Court and has been registered as Transferred Case No. 23 of 1987. Writ Petition No. 4475 of 1984 filed before the Allahabad High Court under Article 226 of the Constitution at the instance of the State of Uttar Pradesh and its Inspector General of Police against the same decision of the U. P. Public Services Tribunal has also been transferred to this Court and registered as Transferred Case No. 25 of 1987. Writ Petition No. 10751 of 1984 filed before the Allahabad High Court by different sets of promotees for a direction to the State Government to appoint the petitioners therein in terms of the recommendations of the State Public Service Commission and for treating such appointments as substantive has been transferred to this Court and registered as Transferred Case No. 24 of 1987. In all these applications excepting the last one the dispute is

mainly one relating to inter se seniority. All these writ petitions have been heard analogously and are being disposed of by the common judgment of this Court.

2. The dispute relating to inter se seniority in these applications has to be disposed of on an appropriate interpretation of the Uttar Pradesh Police Service Rules, 1942 framed under Section 241 of the Government of India Act, 1935. Straightway we may proceed to analyse the Rules.

3. Rule 2 indicates that the status of the service is Uttar Pradesh Police Service which is a State Service in Class II. Rule 3(g) defines "Member of the Service" to mean :

"A person appointed in a substantive capacity under the provisions of these rules or of rules in force previous to the introduction of these rules to a post in the cadre of the service and includes every such officer who was appointed as temporary Deputy Superintendent of Police under the stated notifications and subsequently appointed in a substantive capacity from the date of his substantive appointment."

Rule 4 authorises the Governor to determine the strength of the service from time to time and until the permanent strength is varied the strength would be as shown in the appendix. Rule 5 prescribes that recruitment to the service shall be made on the basis of the result of a competitive examination conducted by the State Public Service Commission and by promotion of permanent Inspectors of Police. The proviso to the said rule authorises the Governor in the interest of the public service to sanction the appointment of Sub-Inspectors of Police who have been approved for substantive appointments of Inspectors of Police and have officiated as Inspectors for not less than two years. Rule 7 provides that the Governor shall decide the number of recruits to be taken from each of the two sources specified in Rule 5 and the proviso prescribes that not less than half the number of candidates to be recruited each year shall be recruited by promotion. Part V of the Rules lays down the procedure for direct recruitment while Part VI deals with recruitment by promotion. Rule 17(l) provides :-

"1. For purposes of recruitment under Rule 5(ii) a selection based on the criteria of merit shall be made in the manner hereinafter provided from amongst permanent Inspectors of Police."

Sub-rule (7) provides :-

"The names of the candidates selected in the first list, up to the number of permanent vacancies intended to be filled substantively during the course of the year, shall be drawn up and rearranged in

order of seniority and they will be appointed against substantive vacancies in the cadre of service in the same order."

Sub-rule (8) provides :-

"The remaining names of the first list will be transferred from the top of the second list which will then form the select list. The candidates will be appointed against officiating and temporary vacancies in the order in which their names stand in the list, as and when vacancies occur during the course of the year ....."

Rule 18 in Part VII makes provision for the waiting list of the candidates and provides :-

"(1) The commission shall prepare a list of candidates for direct recruitment in order of their proficiency as disclosed by the aggregate marks finally awarded to each candidate. If two or more candidates obtain equal marks in the aggregate the commission shall place them in order of merit on the basis of their general suitability for the service as determined by the result of the viva voce test."

Rule 18(2) provides :-

"The list of candidates considered suitable for promotion under Rule 17(7) shall be arranged in order of seniority as Inspectors of Police."

Rule 20 prescribes :-

"The Governor shall make appointments to the service on the occurrence of the substantive vacancies by taking candidates alternatively so far as this may be possible, from the two lists prepared under Rule 18...."

Rule 21 deals with seniority and provides : -

"Seniority in the service shall be determined according to the date of the order of appointment in a substantive capacity and if two or more candidates are appointed on the same date, their seniority inter se shall be determined according to the order in which their names appear in the order of appointment :

Provided that -

1. The inter se seniority of direct recruits selected in one batch shall be determined according to their merit at the selection but a candidate may lose his seniority if he fails to join without sufficient reasons when appointment is offered to him and the decision of the Governor as to the sufficiency of the reasons shall be final;

2. The inter se seniority of the promotees, selected at one selection, relating to one particular year of recruitment shall be determined according to their seniority in the post from which they are promoted;

3 . .....

4 . .....

5. Vacancies are required to be filled on every occasion both by direct recruitment and promotion and the inter se seniority of persons appointed by promotion and direct recruitment against the vacancies of a particular year, shall be determined by arranging their names alternatively, the first name being of the person appointed by promotion, and placing the names of the remaining persons below en bloc.

Explanation: A direct recruit will not be entitled to seniority of the year earlier to the year of his recruitment solely on the ground that there had been no recruitment in that year."

4. These Rules lead to the position that the post of Deputy Superintendent of Police is to be filled up by direct recruitment as also by promotion on the basis of 1: 1. Appointment on substantive capacity makes the incumbent a member of the service. While there may be temporary posts in the cadre, seniority is to be determined according to the date of appointment in substantive capacity. Temporary service is not intended, therefore, to count for seniority.

5. Law is well settled by a catena of decisions of this Court that if there be a rule to regulate seniority, seniority shall be regulated by the same. In view of the fact that Rule 21 prescribes the manner of computation of seniority, inter se seniority has to be determined on the basis of the

provisions of the rule .

6. While the legal position in regard to seniority is clear, on account of callous indifference on the part of the State Government to adhere of the scheme in the Rules relating to recruitment from the two sources and make substantive appointments in time, the picture has been totally confused. Recruitment has not been made from either source strictly in compliance with the Rules and there are several instances where a temporary or officiating appointee though not approved by the Public Service Commission has been allowed to continue to on such temporary or officiating post without being reverted forthwith. Rule 7 contemplates that the Governor has to decide the number of recruits to be taken from each of the two sources every year but this rule has not been strictly followed. Instead temporary and ad hoc promotions have been granted. As a result of such action the number of promotees has been greater than of direct recruits. The requirement of confirmation under the scheme of the Rules has also not been properly followed. Therefore, the appointments have not been made substantive. On that account, the total picture of the service has been bizarre.

7. As we find the dispute was raised in the Services Tribunal in the year 1979 by way of a claim petition. The writ petitions before this Court are either of 1983 or of 1986. We are of the view that if the entire dispute of seniority is reopened at this stage, serious prejudice may be caused to many of the officers who on the basis of the assigned seniority, have obtained further promotions. It is relevant to take note of the fact that many of such officers have retired and all the officers who may be affected are not before us. It has also been pointed out to us that confirmations have been made up to the period ending 1980. In such circumstances we have found it prudent not to disturb inter se seniority fixed up to 1980 inclusive and to direct re-fixation of inter se seniority on the basis of the Rules from 1981 inclusive onwards. All incumbents whether directly recruited or promoted after 31st December, 1980 shall be subjected to re-fixation of their seniority on the basis of the provisions contained in the Rules and particularly Rule 21(5). Temporary vacancies which have been created and have been in existence for a continuous period of three years or more shall be treated as permanent vacancies borne on the permanent cadre of the service and shall be taken into account for purposes of computation of seniority.

8. All substantive appointments and promotions made prior to 31st December, 1980, shall be treated to have been in accordance with the Rules. Recruitment on the basis of 1:1 from the sources shall be kept in view and the State shall work out the recruitment to the service in such a phased way that within a period of five years (By end of 1993) the proper ratio shall be reflected.

9. The State of Uttar Pradesh is directed to publish the final gradation list on the basis of the directions given above within six months hence after granting confirmations in the cadre of Deputy Superintendent of Police keeping the rules in view. There shall be a direction to the State of Uttar Pradesh that the scheme in the Rules shall be strictly followed and when a temporary or officiating appointment is made and the officer is not approved by the Public Service Commission, within one month of such non-approval the candidate shall be reverted and would not be entitled to be

continued in the promotional post of Deputy Superintendent of Police.

10. Before we part with this case we must point out that the continuous failure (of) the State Government to implement the Rules has brought about a critical situation in the service. Litigations have been pending for more than ten years in different Courts. On account of pendency of such disputes, the efficiency of the service has been affected. Inter se dispute between public servants not only affects the efficiency of the service but brings about dissension, misunderstanding, a sense of rivalry and ultimately brings indiscipline. That seems to have happened in the present case. We commend to the State of Uttar Pradesh that recurrence of such a situation should not be permitted. We also find that many of the officers in the cadre rush to the Court or the tribunal too often and interim orders are made by the Court to hold up the hands of the State Government in giving effect to the Rules. Interim orders in such matters should not ordinarily be made as the position can always be rectified when judgment is rendered.

11. The writ petitions are accordingly disposed of with the directions indicated above. Transferred Case No. 24 of 1987 is not one raising the dispute of inter se seniority and should not have been transferred to this Court as a connected matter. We accordingly direct the case to be sent back to the High Court for disposal in accordance with law.

Order accordingly.

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