

Mohan Krishna Wazir

Vs

State of J & K and Others

Writ Petition (Civil) No. 82 of 1980 with WP (Civil) No. 771 of 1980

(Jagannatha Shetty, J. )

(G. L. Oza, K. Jagannatha Shetty JJ)

20.04.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. These two writ petitions under Article 32 of the Constitution concern with the inter se seniority of the petitioners and some of the respondents.

2. On June 30, 1955, the petitioner in Writ Petition (Civil) No. 82 of 1980 who was a Graduate in Electrical Engineering was appointed as Shift Engineer in the Irrigation Department. On June 14, 1956, the State Government issued an Order No. 142-C of 1956 providing inter alia that the appointment of Engineering Graduates in the three branches of the Public Works Department, that is, roads and buildings, irrigation and electric will be made as Assistant Engineers and that the person so appointed will be put on probation for two years. The order also directed that the service rendered by Engineering Graduates in the capacity as Supervisors will count towards the probationary period on their appointment as Assistant Engineers. On February 24, 1956, the petitioner joined as Assistant Engineer. He accordingly got the benefit of his antecedent service and there was a declaration to the effect that he had completed the period of probation with effect from July 1, 1957. The State Government intimated this fact to the Accountant General Srinagar under letter dated December 18, 1957. Consequently his salary was fixed in the cadre of Assistant Engineers with effect from July 1, 1957. He was later appointed as Electrical Engineer with a declaration as quasi-permanent.

3. In the seniority list of Assistant Electrical Engineers, the petitioner in Writ Petition No. 771 of 1980 was ranked at serial No. 10. The former was always considered as senior to the latter and there and there is no dispute as between themselves. All the respondents were ranked below them. A. H. Mattoo, respondent 2 was ranked at serial No. 20. These rankings have been maintained even in the subsequent seniority list prepared in the cadre of Executive Engineers.

4. On April 29, 1972, the petitioners along with some others were promoted as Superintendent Engineers, Respondent 2 and another officer called M. M. Fotedar filed writ petition in the High Court of Jammu and Kashmir challenging the promotion of the petitioner and others as Superintendent Engineers. They also challenged the correctness of the seniority list prepared by the government. As regards the seniority in the seniority in the cadre of Assistant Engineers, it was argued before the High Court that the present petitioners were appointed as Assistant Engineers and, therefore, they could not have been promoted as Executive Engineers. The High Court repelled that

argument in view of the Government Order 142-C of 1956. The High Court said that present petitioners would be deemed to have been appointed as Assistant Engineers on probation and the absence of a formal order or appointment would make no difference in their case. The High Court, however, on other grounds allowed the writ petition and quashed the promotion and the impugned seniority list.

5. On May 3, 1974, the petitioner M. K. Wazir was reverted to the post as Executive Engineer perhaps in obedience to the decision of the High Court. But on the next day itself he was again selected and promoted as Superintendent Engineer on ad hoc basis. On the same day, respondents 2 to 12 were also promoted by a separate order.

6. After the decision of the High Court, the government appointed a committee to finalise the seniority list of Electrical Engineers. The committee consisted of three persons. They submitted two separate reports. The report by majority stated that the seniority list should be prepared on the basis of continuous length of service. That was the basis of the earlier seniority list. But the third member Mr. Kamili disagreed with this view and gave a separate report in which he has pointed out that the persons who were directly appointed as Assistant Engineers must take precedence over all those appointed in contravention of quota rules applicable at the relevant time. He also recommended different criteria for promotion. The government strangely accepted the dissenting opinion of Mr. Kamili and ignored the report by majority.

7. On August 9, 1979, the government prepared the seniority list of Assistant Engineers (first 100 officers as recommended by Mr. Kamili). In that list, A. H. Mattoo respondent 2 was ranked at serial No. 15 and M. K. Wazir at serial No. 30. A. K. Nagpal, the petitioner in Writ Petition (Civil) No. 771 of 1980 was at serial No. 28. Both these officers were considered as having been regularised as Assistant Engineers with effect from March 14, 1957. This was the deemed date assigned to them. This was followed by the government order dated August 18, 1979. These respective rankings were also reflected in the promotional cadre of Superintendent Engineers.

8. The petitioners have challenged the validity of the seniority list giving them a deemed date of regularisation as Assistant Engineers with effect from March 14, 1957.

9. We have perused the material and also heard counsel for both sides. We are of the opinion that the government was clearly in error in accepting the report of Mr. Kamili and giving the deemed date of regularisation to the petitioners. It is nobody's case that petitioners M. K. Wazir was promoted as the Assistant Engineer from the post of Shift Engineer. The Government Order 142-C of 1956 directed that the appointment of Engineering Graduates in the three branches of the Public Works Department will be made as Assistant Engineers on probation. The said order also gave the benefit of the antecedent service for the purpose of completing their probation. Accordingly, M. K. Wazir was considered as Assistant Engineer and his period of probation was terminated with effect from July 1, 1957. There cannot be any dispute on this aspect of the matter. The government had then taken a clear and correct view of the matter. They intimated the same to the Accountant General by letter dated December 18, 1957. They cannot now turn round and say that the petitioners shall be given another deemed date of appointment as Assistant Engineers.

10. What we have said with regard to M. K. Wazir must equally apply to A. K. Nagpal who is the petitioner in the Writ Petition No. 771 of 1980.

11. In the result these petitions are accepted. The Government Order No. 218 of 1979 dated August

18, 1979 is quashed. A direction shall issue to the State to prepare the seniority list giving the petitioners their respective dates of appointment as Assistant Engineers. Since the petitioners are undisputedly seniors to the respondents, the State shall consider the case of the petitioners for promotion with effect from the date on which the respondents were so promoted. If they are found suitable for promotion they shall be promoted with all consequential benefits. Time to comply six months.

12. The petitioners are entitled to their costs which we quantify at Rs. 5000 for each.

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