

Union of India and another

Vs

S. K. Sharma

Civil Appeal No. 3082 of 1988

(N. M. Kasliwal, K. Ramaswamy JJ)

03.04.1992

JUDGEMENT

KASLIWAL, J.:-

1. Union of India and the Home Secretary Chandigarh Administration have filed this appeal by grant of special leave challenging the order of the Central Administrative Tribunal, Chandigarh dated March 3, 1988. The respondent, Shri S. K. Sharma was appointed initially as Assistant Professor on 24-9-1958 in the Punjab Engineering College, Chandigarh. He was promoted as Associate Professor on 23-10-1963. The respondent was then promoted as Professor (junior Scale) on temporary and ad hoc basis for a period of six months in the department of Irrigation and Hydraulics vide order dated 29-3-1969. The respondent was thereafter appointed as Professor (Junior Scale) on regular basis through U.P.S.C. vide order dated 28-6-1969 on probation for a period of two years in the Civil Engineering Department of the College. The respondent relinquished the earlier charge of Professor (Junior Scale) of Irrigation and Hydraulics and assumed the charge of his new post with effect from the same date. However, since Dr. S. S. Sharma was holding the post of Professor (Junior Scale) in the Civil Engineering Department, the said post was not available to the respondent Sh. S. K. Sharma and as such the respondent was adjusted on ad hoc basis against the vacant post of Professor (P.G. Course) in the Department of Irrigation and Hydraulics in his own grade. The above interim arrangement was made on ad hoc basis till such time any regular selected candidate by the U.P.S.C. joined the post of Professor (P.G. Course) in the Department of Irrigation and Hydraulics. This appointment on ad hoc basis continued from 28-6-1969 to 14-2-1971 in the Department of Irrigation and Hydraulics and thereafter from 15-2-1971 to 29-9-1973 against the post of Professor (Senior Scale) in the Civil Engineering Department. The respondent was selected for appointment on regular basis as Professor (Senior Scale) w.e.f. 29-9-1973. The respondent was not paid his pay and allowances for the period for which he worked against the post of Professor (P.G. Course) or (Senior Scale) on ad hoc basis. The respondent in these circumstances approached the Tribunal and was granted arrears of pay and allowances for the period 28-6-1969 to 29-9-1973 by the judgment of the Tribunal dated 12-6-1986 in Application No. T-159 of 1986.

2. Though the respondent was allowed the arrears of pay and allowance for the post of Professor (Senior Scale) in accordance with the above judgment of the Tribunal yet the respondent was not granted seniority on the post of Professor (Senior Scale) from the date of his ad hoc appointment on the said post from 28th June, 1969. It may, however, be noted that the Chandigarh Administration though sanctioned the grant of pay of Professor (Senior Scale) to the respondent for the period 28-6-

1969 to 29-9-1973 but did not bestow any seniority to the respondent prior to 29-9-1973 when he was selected on regular basis for the post of Professor (Senior Scale). It is further important to note that though the respondent had appeared for interview for the post of Professor (P.G. Course) in the Irrigation and Hydraulics Department of the College before the U.P.S.C. in September, 1969 but he was rejected whereas one Dr. P. P. Rao was selected for the said post. As Dr. P. P. Rao joined the post on 15-2-1971 in the Irrigation and Hydraulics Department, the respondent was adjusted in his own scale of pay against the vacant post of Professor (Senior Scale) in the Civil Engineering Department on ad hoc basis as already mentioned above. The respondent himself in a letter dated 1-7-1977 addressed to the Chief Commissioner, Chandigarh has stated as under.

"It may be pointed out that ad hoc appointment has no effect on the seniority of staff members in the cadre and no supersession is involved by allowing the benefit of pay for the period I was appointed against higher post. This is a well established fact and have a large number of precedents itself."

3. The respondent in the above circumstances submitted an application before the Tribunal claiming his seniority on the post of Professor (Senior Scale) with effect from his ad hoc appointment dated 28-6-1969 which continued till his regular selection for the said post on 29-9-1973. The Tribunal vide its impugned order held that the respondent was given ad hoc appointment on the post of Professor (Senior Scale) from 1969 to 1973 after prior consultation with the U.P.S.C. and as such was entitled to claim his seniority from 28-6-1969. The Tribunal, however, observed that the grant of this relief would affect the interest of three/ four persons of the College who had been shown senior to the respondent in the seniority list as such the appellants (respondents before the Tribunal) to revise the seniority list taking the above into account and circulate the draft seniority list to all concerned inviting their objections, if any, before the seniority list was finalised. This course was considered to be necessary as the affected persons had not been made party respondents in the case before the Tribunal and it was necessary to give an opportunity to give their views in the matter and there should be no violation of the principles of natural justice and equity. Aggrieved against the aforesaid order of the Tribunal, the appellants have come before this Court in appeal by grant of special leave.

4. We have heard learned counsel for the parties and have thoroughly perused the record. The facts mentioned above are no longer in dispute and the only controversy is whether the respondent S. K. Sharma is entitled to his claim of seniority on the post of Professor (Senior Scale) counting the entire period of his continuous ad hoc appointment from 28-6-1969 to 29-9-1973 or his seniority would be counted only from 29-9-1973 when he was regularly selected for such post after interview by U.P.S.C. The Tribunal in this regard placed reliance on a decision of this Court in *Narender Chadha v. Union of India*, (1986) 2 SCC 157: (AIR 1986 SC 638). The Tribunal also placed reliance on a judgment of the Principal Bench of the Central Administrative Tribunal in the case of *K. N. Mishra v. Union of India* reported in ATR 1986 (2) CAT 270.

5. In our view the Tribunal was totally wrong in granting seniority to the respondent for the period of ad hoc appointment on the post of Professor (Senior Scale), in the facts and circumstances of the present case and wrongly applied the ratio of *Narendra Chadha's* case (AIR 1986 SC 638) (supra). The respondent was regularly selected as Professor (Junior Scale) and in view of the fact that the aforesaid post in the Civil Engineering Department was not vacant, he was adjusted against the post of Professor (P.G. Course) and subsequently against the post of Professor (Senior Scale) on ad hoc basis in his own grade. It is no doubt correct that the Tribunal in the earlier application No. T-159 of 1986 by order dated 12-6-1986 had allowed arrears of pay and allowances for the period 28-6-1969

to 29-9-1973 for the post of Professor (Senior Scale) but that was allowed by the Tribunal on the ground that the respondent had actually worked against the post of Professor (Senior Scale) though on ad hoc basis. Such order of the Tribunal granting pay and allowances cannot confer any right on the respondent to claim seniority also on the post of Professor (Senior Scale). The approval of U.P.S.C. for the continuation of the respondent on the post of Professor (Senior Scale) on ad hoc basis was merely for the purpose of granting pay and allowances and it cannot be considered as a regular appointment of the respondent on the post of Professor (Senior Scale). It may be further noted that the respondent was selected for the post of Professor (Senior Scale) on regular basis on 28-6-1969 and according to the extant rules three years service on regular basis on the post of Professor (Senior Scale) was necessary for promotion to the post of Professor (Senior Scale). Thus the respondent was not even eligible for promotion to the post of Professor (Senior Scale) prior to June 28, 1972 till he completed three years of service on the post of Professor (Junior Scale). In view of this ground also the respondent was not entitled to claim any seniority on the post of Professor (Senior Scale) from 28-9-1969 the date of his ad hoc appointment on such post. Narendra Chadha's case (supra) does not give any assistance at all to the respondent and the Tribunal was wrong in applying the ratio of Narendra Chadha's case to the present case. It was held by this Court in Narendra Chadha's case that persons having been allowed to function in higher posts for 15 to 20 years with due deliberation it would be unjust to hold that there is no sort of claim to such posts and such persons could be reverted unceremoniously or treated as persons not belonging to the service at all, particularly where the Government is endowed with the power to relax the rules to avoid unjust results.

6. In Masood Akhtar Khan v. State of Madhya Pradesh, (1990) 4 SCC 24 it was held that if the initial appointment is not made according to the rules, subsequent regularisation of his service does not entitle an employee to the benefit of intervening service for seniority. Seniority has to be reckoned from the date of regular appointment and not to be counted from the date of any stop-gap appointment.

7. In D. N. Agrawal v. state of Madhya Pradesh, (1990) 2 SCC 553 : (AIR 1990 SC 1311) it was held that regular appointment at later date cannot relate back to the date of ad hoc appointment and the employee is not entitled to claim the period of officiation between the dates of ad hoc appointment and regular appointment for being counted for the purpose of seniority. A Constitution Bench of this Court in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra, (1990) 2 SCC 715: (AIR 1990 SC 1607) held as under:

"Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Seniority cannot be determined on the sole test of confirmation, for, confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Arts. 14 and 16. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority".

8. In the circumstances mentioned above we are clearly of the view that the respondent was not entitled to claim his seniority on the post of Professor (Senior Scale) from 28-9-1969 and the appellants had rightly counted his seniority from 29-9-1973 when he was regularly selected in

accordance with the rules on the said post. In the result we allow this appeal, set aside the judgment of the Tribunal dated 3-3-1988. In the circumstances of the case we direct no order as to costs.

Appeal allowed.

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