

State of U. P.

Vs

Girija Shankar Sonakiya

Civil Appeal No. 1484 of 1993

(S. Saghir Ahmad, K. T. Thomas JJ)

19.08.1998

JUDGMENT

S. SAGHIR AHMAD, J.

The respondent was appointed as Assistant Engineer in the Uttar Pradesh Public Works Department purely in an ad hoc capacity on 11-9-1972. The post of Assistant Engineer was within the purview of the U.P. Public Service Commission (for short "the Commission").

2. During his tenure, the respondent was given an adverse entry for the year 1976-77 and his integrity for that year was also withheld. In the meantime, some posts of Assistant Engineer in the Irrigation Department were advertised by the Commission and the respondent, perhaps being keen to change his status from an ad hoc to a regular employee, also applied for one of the posts. He was interviewed on 29-10-1977. His original certificates, including the High School Certificate, in which his date of birth was also mentioned, were scrutinised and it was found that by an interpolation, the original date of birth, namely, 13-5-1945 was changed to 13-5-1947. This fact was admitted by the respondent before the Interview Board as his date of birth was already recorded as "13-5-1945" in his service-book, maintained in the Public Works Department where he was working as Assistant Engineer in an ad hoc capacity. When the respondent was asked to explain the interpolation, he stated that this was done by his wife. The Commission, vide its letter dated 19-7-1978, debarred the respondent from appearing in any of its competitive examination or selection for a period of five years. The Government was also informed of the above fact.

3. Since the process of selection through the Public Service Commission, for making regular appointments, invariably took a long time and a large number of ad hoc employees were working on posts which were within the purview of the Commission without being regularised, the State Government, in exercise of its power under Article 309 of the Constitution, made the Uttar Pradesh Regularisation of Ad Hoc Appointments (On Posts a within the Purview of the Public Service Commission) Rules, 1979. Rule 4, as it existed originally, provided as under :

"4. Regularisation of ad hoc appointments. - (1) Any person who -

(i) was directly appointed on ad hoc basis before January 1, 1977 and is continuing in service, as such, on date of commencement of these rules;

(ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment; and

(iii) has completed or, as the case may be, after he has completed three years' continuous service.

shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointment under these rules, reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories, shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (i), the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary.

(4) The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority as determined from the date of order of appointment and, if two or more persons are appointed together from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with their character rolls and such other records, pertaining to them, as may be considered necessary to judge their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4).

(6) The Selection Committee shall prepare a list of selected candidates, the names in the list being arranged in order of seniority, and forward it to the appointing authority."

4. Rule 5 provided that the appointing authority would make appointments from the list prepared under sub-rule (6) of Rule 4 in the order in which the names of the candidates stand in the list.

5. Rule 6 provided that the appointments so made shall be deemed to have been made under the relevant Service Rules.

6. Rule 8 provided as under :

"8. Termination of services. - The services of a person, appointed on ad hoc basis who is not found suitable or whose case is not covered by sub-rule (i) of Rule 4 of these rules, shall be terminated forthwith and, on such termination, he shall be entitled to receive one month's pay."

7. After the above Rules were made, the Government took up the job of regularising the services of ad hoc employees. The Selection Committee, a constituted under the above Rules, considered the case of the respondent but did not find him suitable and consequently his services were terminated by order dated 28-4-1980 as required by Rule 8 quoted above. This order was challenged by the respondent in a writ petition filed in the Allahabad High Court (Lucknow Bench) and the High Court, by the impugned judgment dated 23-1-1992, allowed the writ petition and directed that the respondent's case for regularisation on the post of Assistant Engineer may be reconsidered. It is

against this judgment that the present appeal has been filed.

8. The appellant, it is submitted, had contended before the High Court and had also pleaded in the counter-affidavit that the respondent was found unsuitable for the reasons that on the date on which he was considered for regularisation by the Selection Committee, there existed an adverse entry in his character roll for the year 1976-77 and his integrity for that year was also found withheld. Moreover, the respondent was also found to have made interpolation in the original High School Certificate so as to reduce his age by two years, and was, for that reason, debarred from appearing in any competitive examination or selection of the Commission for five years. These three factors were specifically pleaded by the appellant in the counter-affidavit to indicate that the Selection Committee, for these reasons, had found him unsuitable. Even the respondent, in his counter-affidavit filed in this Court against the application of interim relief, has stated that his services were terminated for three reasons, namely :

- (i) The adverse entry in the character roll for 1976-77;
- (ii) Withholding of integrity for the year 1976-77; and
- (iii) Interpolation in the original High School Certificate.

9. The judgment passed by the High Court indicates that the High Court interfered with the order of termination on the ground that during the pendency of the writ petition, the adverse entry for the year 1976-77 was expunged by the Engineer-in-Chief, U.P. PWD, by his order dated 29-7-1982 and by an order passed on the same date, his integrity was also certified. In the opinion of the High Court, these two factors could not, therefore, legally constitute the basis for terminating the services of the respondent particularly as his representation against the adverse entry was pending on the date on which he was considered for regularisation. The High Court, consequently, directed the appellant to reconsider the case of the respondent for regularisation under the Rules.

10. Strangely, there is a vital omission on the part of the High Court. While it considered the two factors enumerated above and held that the adverse entry having been expunged and the integrity having been certified by the Engineer-in-Chief, U.P. PWD, the case of the respondent deserved to be reconsidered, it did not consider the relevance or significance of the third factor, namely, that on account of interpolation in the original High School Certificate, the respondent had already been debarred by the Commission from appearing in any of its competitive examinations or selections for a period of five years. Interpolation in the original High School Certificate so as to gain the benefit of two additional years in service was a serious matter which could hardly be ignored. Since this factor was also taken into consideration by the Selection Committee constituted under the above Rules, the High Court could not legally issue any direction for reconsideration of the respondent's case unless it excluded by a positive finding, the third factor also from consideration.

11. In view of the above, the appeal is allowed. The judgment and order dated 23-1-1992 passed by the Allahabad High Court (Lucknow Bench) are set aside and the case is remanded back to the High Court to hear the writ petition and decide it afresh in accordance with law in the light of the observations made above. There will be no order as to costs.