

**SUPREME COURT OF INDIA**

Secy., Minor Irrigation Deptt.& R.E.S.

Vs.

Narendra Kumar Tripathi

C.A.No.3348 of 2015

(V.Gopala Gowda and Adarsh Kumar Goel JJ.)

07.04.2015

**JUDGMENT**

**ADARSH KUMAR GOEL, J.**

1. Leave granted.

2. These appeals have been preferred against judgment and order dated 13th February, 2003 in Civil Miscellaneous Writ Petition No.9940 of 2001 and dated 10th December, 2004 in Civil Miscellaneous Writ Petition No.11542 of 2003 passed by the High Court of Judicature at Allahabad. Special Leave Petition (Civil) No.18683 of 2004 has been filed by the Minor Irrigation Department of State of Uttar Pradesh ("the Department") and SLP (Civil) No.8330 of 2005 has been filed by Narendra Kumar Tripathi ("the writ petitioner") employed as engineer with the Department of Minor Irrigation, Rural Engineering in the State of Uttar Pradesh. In both the matters, the question involved is whether the writ petitioner is entitled to count his service as Assistant Engineer from 12th June, 1985, the date of his initial appointment on an 'ad hoc' basis, for purposes of seniority or his service will be counted only from 14th December, 1989, the date on which approval to his appointment was given by the State Government under the provisions of the Uttar Pradesh Regularisation of Ad hoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1979 ("1979 Rules") as amended on 7th August, 1989 by the Uttar Pradesh Regularisation of Ad Hoc Appointments (on posts within the purview of the Public Service Commission) (Second Amendment) Rules, 1989 ("1989" Rules).

3. The writ petitioner was first appointed as Work Engineer (Work Charge) on a fixed pay of Rs.650/- on 18th January, 1983. Later, vide Office Memo dated 12th June, 1985 issued by the Secretary, Government of Uttar Pradesh, Rural Development Section on the basis of recommendations of the Selection Committee, he was appointed on temporary post of Assistant Engineer in regular scale on ad hoc basis. The letter of appointment, inter alia, provided that the appointment was purely on ad hoc basis and his services could be terminated by notice or on availability of candidates duly selected through Public Service Commission and the appointee had no claim for regular appointment. The said appointment, however, continued and was followed by "Notification/Regularization" dated 14th December, 1989 as per the 1979 Rules as amended by 1989 Rules.

4. The 1979 Rules provided for regularization of ad hoc appointment of persons possessing requisite qualifications for regular appointment on completion of three years continuous service. Rule 7 provides for seniority from the date of order of appointment after selection. The said Rules though initially applicable to appointments made prior to January 01, 1977 were extended from time to time and on 7th August, 1989, the said rules were extended to persons directly appointed on ad hoc basis on or before 1st October, 1986 and who continued in service.

5. Rules 4 and 7 are as under :

"4. Regularisation of adhoc 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 the 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 order.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward

classes and other categories shall be made in accordance with the order of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (1) 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 the selected candidates, the names in the list being arranged in order of seniority and forward it to the appointing authority."

7. Seniority :- (1) A person appointed under these rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with these rules and shall, in all cases be placed below the persons appointed in accordance with the relevant service rules, or as the case may be, the regular prescribed procedure, prior to the appointment of such person under these rules.

(2) If two or more persons are appointed together, their seniority inter se shall be determined in the order mentioned in the order of appointment."

6. The 1989 amendment to the Rules inserted Rule 10 as follows :

"10. Extension to the rules: - The provisions of these rules shall apply mutatis mutandis, also to any person directly appointed on ad hoc basis on or before October 1, 1986 and continuing in service as such, on the date of commencement of the Uttar Pradesh Regularization of Ad hoc Appointments (on posts within the purview of the Public Service Commission) (Second Amendment) Rules, 1989."

7. The writ petitioner filed Civil Miscellaneous Writ Petition No.9940 of 2001 with the grievance that in the seniority list published on 4th January, 1995 his name was placed at Serial No.274 showing his service w.e.f. 14th December, 1989. In doing so, he was not given benefit of past service, while such benefit was given to other similarly placed persons. This contention was noticed by the High Court as follows :

"A perusal of the seniority list shows that persons placed at Serial No.8 to 64 were regularized vide order dated 15-4-1985 w.e.f. 14-5-1979, and similarly the person placed at serial No.132 was regularized by order dated 17-1-1990 w.e.f. 13-5-1984. One Subhash Singh whose name is at serial No.8 was given the benefit of his previous service and his seniority fixed accordingly. However petitioner was not given any benefit of his previous service in the department."

The High Court held that the writ petitioner was entitled to benefit of past service in view of the law down by this Court in Direct Recruit Class II Engineering Officers Association vs. State of Maharashtra[1]. Accordingly, the High Court directed that the initial date of appointment of the writ petitioner be taken as 18th January, 1983. Aggrieved by the said view, the State has approached this Court.

8. However, during pendency of the matter in this Court, the issue arose in other pending matters before the High Court including the second writ petition by the writ petitioner Narendra Kumar Tripathi being Civil Miscellaneous Writ Petition No.11542 of 2004 which was filed to seek compliance of earlier order of the High Court. The matter was referred to a larger Bench and was heard and decided by a Bench of three Judges vide Judgment dated 10th December, 2004 "Farhat Hussain Azad versus State of U.P. & Ors." against which the department has approached this Court.

9. Referring to the decision of this Court in State of West Bengal & Ors. vs. Aghore Nath Dey & Ors.[2] laying down that, to count past service, initial appointment has to be according to rules and if initial appointment is ad hoc, not according to rules and is made as a 'stop gap arrangement', the officiation in such posts cannot be taken into account for counting the seniority, the High Court held that appointment on ad hoc basis dehors the rules and without following the procedure prescribed under the law could not be counted for seniority. Accordingly, it was held that the writ petitioner was not entitled to count ad hoc service for his seniority. The judgment dated 12th February, 2003 rendered in the

case of the writ petitioner which is the subject matter of appeal filed by the State was held to be per incuriam. Aggrieved thereby, the writ petitioner has approached this Court by way of appeal arising out of Special Leave Petition (Civil) No.8330 of 2005.

10. We have heard learned counsel for the parties.

11. Learned counsel for the writ petitioner submitted that the view taken by the larger Bench of the High Court is based on erroneous assumption that the appointment of the writ petitioner was stop gap arrangement and dehors the rules. Careful perusal of the scheme of the rules and their working shows that the appointment of writ petitioner was neither against the rules nor by way of stop gap arrangement. It was made clear by learned counsel for the writ petitioner that the claim of the writ petitioner was limited for counting service from 12th June, 1985 when he was appointed after due selection in regular pay scale. It is pointed out that under the 1979 Rules to meet exigency of service, appointments were being made without approval of the Public Service Commission and were being thereafter regularized. Service of such persons was being counted from the date of initial appointment made after due selection. In the present case also, the writ petitioner was duly selected and though the terms of appointment provided for his service being terminated on a person selected by Public Service Commission joining service, such a situation never arose and services of the writ petitioner continued and were regularized thereafter. In these circumstances, the past service of the writ petitioner could not be ignored.

12. Learned counsel for the State however, submitted that the view taken by the larger Bench was the correct view and ad hoc service as stop gap arrangement could not be taken into account. At the time of appointment no rules had been framed.

13. After giving due consideration to the rival submissions, we are of the view that the contention of the writ petitioner has to be upheld. No doubt, ad hoc service, when appointment was against rules and purely as stop gap arrangement, cannot be counted for the purposes of seniority, as held by the larger Bench of the High Court and in several judgments of this Court, including in *Keshav Chandra Joshi vs. Union of India*[3] but the present is not the case where the ad hoc service is purely by way of stop gap arrangement or against the rules.

14. At this stage, observations of this Court in some of the leading judgments may be referred to. In Direct Recruit Class II Engineering Officers' Association, it was observed:-

"47. To sum up, we hold that:

[pic](A) 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.

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.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

15. In Aghore Nath Dey, the above observations were explained as follows:-

"25. In our opinion, the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the 'rules' and the latter expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a [pic]fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be

cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."

16. In *Rudra Kumar Sain & Ors. vs. Union of India & Ors.*[4], it was observed:-

"15. So far as the terminology used in Singla case [1984 (4) SCC 450], namely "ad hoc", "fortuitous" and "stopgap", the same is quite familiar in the service jurisprudence. Mr Rao, appearing for the High Court of Delhi however contended before us that the said terminology should be given the same meaning, as was given in *Parshotam Lal Dhingra v. Union of India* [AIR 1958 SC 36 : 1958 SCR 828]. In Dhingra case the Court was examining whether removal of an employee can be held to be penal and whether Article 311(2) of the Constitution can at all be attracted and the Court also observed that certain amount of confusion arises because of the indiscriminate use of the words "provisional", "officiating" and "on probation". We do not think that the concept or meaning given to those terminology in Dhingra case will have any application to the case in hand, where the Court is trying to work-out an equitable remedy in a manner which will not disentitle an appointee, the benefit of his fairly long period of service for the purpose of seniority, even though he possesses the requisite qualification and even though his appointment has been made after due consultation and/or approval of the High Court.

[pic]16. The three terms "ad hoc", "stopgap" and "fortuitous" are in frequent use in service jurisprudence. In the absence of definition of these terms in the Rules in question we have to look to the dictionary meaning of the words

and the meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to be "fortuitous". In Black's Law Dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose". The expression "stopgap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need".

17. In Oxford Dictionary, the word "ad hoc" means for a particular purpose; specially. In the same dictionary, the word "fortuitous" means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyar's Law Lexicon (2nd Edn.) the word "ad hoc" is described as: "For particular purpose. Made, established, acting or concerned with a particular (sic) and or purpose." The meaning of word "fortuitous event" is given as "an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with Act of God".

19. The meaning to be assigned to these terms while interpreting provisions of a service rule will depend on the provisions of that rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stopgap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of

such a post can aptly be described as "fortuitous" in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called [pic]as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the questions of inter se seniority of officers in the cadre.

20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be "fortuitous/ad hoc/stopgap" are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous."

17. The above principles are undisputed. Question of their application has arisen from time to time in different fact situations. Question to be decided in each case was whether the ad hoc appointment was stop gap and fortuitous as against being to an existing vacancy which continued and initial appointment was made after due selection without violating the rules, if any.

18. The scheme of the working of the Rules in the Department shows that right from 1979, the Department has been making direct recruitment after due selection and by applying the 1979 Rules which rules have been extended from time to time to subsequent recruitments, services were regularized. Validity of the scheme of these recruitments is not under challenge. In such circumstances, when the rules provide that such ad hoc appointments have to be regularized and seniority counted from the date of appointment, the writ petitioner could not be deprived of the past service rendered by him from 12th June, 1985 till the date of regularization. It is not a case of appointments made without due selection or without vacancy or without qualification or in violation of rules. The larger Bench failed to

observe that the appointment of the writ petitioner was not de hors the rules nor by way of stop gap arrangement. The rules had the effect of treating the appointment as a regular appointment from initial date of appointment. In these circumstances, the principle laid down in K.C. Joshi was not applicable. It is not a case where service rendered is either fortuitous or against rules or by way of stop gap arrangement. Applying the principle laid down in Direct Recruit Class II Engineering Officers' Association, the writ petitioner is entitled to count service from 12th June, 1985. Moreover, the department has allowed the benefit of past service to other similarly placed incumbents as observed in the judgment giving rise to the appeal of the department.

19. Accordingly, we are unable to approve the view taken by the larger Bench to the extent it proceeds on the assumption that past service of the writ petitioner was by way of stop gap arrangement or contrary to the rules.

20. We, therefore, direct the State to redetermine the seniority after hearing the affected parties within six months. It is made clear that benefit of redetermination of seniority at this stage will not disturb holding of posts by any incumbent and except for benefit in pension other benefits to which the writ petitioner may be found entitled will be given only on notional basis.

21. The appeal of the writ petitioner is accordingly allowed to the above extent and appeal of the State is accordingly dismissed.

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[1] 1990 (2) SCC 715

[2] 1993 (3) SCC 371

[3] 1992 Supp.(1) SCC 272

[4] 2000 (8) SCC 25