

# SUPREME COURT OF INDIA

Vinod Giri Goswami

VS.

State of Uttarakhand

C.A.No.1606 of 2020

(L.Nageswara Rao and Hemant Gupta,JJ.,)

14.02.2020

## JUDGMENT

**L.Nageswara Rao,J.,**

SLP(Civil)No.2779 of 2012

1. The above Appeals relate to the inter se seniority dispute between the direct recruits and the promotee Deputy Collectors in the State of Uttarakhand.

2. Civil Writ Petition No.187 of 2010 was filed by promotee Deputy Collectors challenging the final Seniority List dated 09.08.2010. They sought a direction to the Principal Secretary, Department of Appointment and Personnel, Government of Uttarakhand, Dehradun to count the entire period of their continuous service from the dates of their ad hoc appointment for the purpose of seniority in accordance with the proviso to Rule 24(4) of the Uttaranchal Civil Services (Executive Branch) Rules, 2005 (hereinafter referred to as 'the 2005 Rules'). It was averred in the Writ Petition that the Respondents were initially appointed as Naib Tehsildars and thereafter promoted and confirmed as Tehsildars. They pleaded that the vacancies of Deputy Collectors in the promotion quota were not filled up due to the allocation of Provincial Civil Services Officers not being finalised after the formation of the State of Uttarakhand. According to them, a number of vacancies in the promotion quota of Deputy Collectors were available but not filled up. The Writ Petitioners were promoted on ad hoc basis on 11.02.2004, 28.02.2004 and 14.07.2004 and the direct recruits who were appointed in the year 2005 were shown as seniors to them in the final Seniority List that was prepared on 09.08.2010. They relied upon the proviso to Rule 24(4) of the 2005 Rules to claim that the entire continuous officiating service rendered by them should be taken into account for the purpose of determining their seniority as Deputy Collectors. Writ Petition Nos.188 of 2010 and 220 of 2010 were filed by the promotee Deputy Collectors seeking relief similar to the one prayed for in Writ Petition No.187 of 2010. All the three Writ Petitions were heard together. The High Court of Uttarakhand at Nainital allowed the Writ Petitions and struck down the seniority list dated 09.08.2010. The State Government was directed to prepare a final

seniority list of Deputy Collectors within six months from the date of the judgment while treating the Writ Petitioners as having been appointed on a regular basis with effect from the respective dates of their initial ad hoc appointment in 2004. Relying upon the proviso to sub-rule (2) of Rule 20 of the U.P. Civil Servant (Executive Branch) Rules, 1982 (hereinafter referred to as 'the 1982 Rules'), the High Court held that the Petitioners were entitled to count their seniority from the date of their initial appointments. By referring to the judgment of this Court in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & Ors'*, the High Court was of the opinion that an ad hoc appointee shall be entitled to count the entire service for seniority from the date of ad hoc appointment to the date of regularisation if he was in continuous service, without any interruption, till the date of his regularisation. The High Court observed that although the initial appointments of the Writ Petitioners were not in accordance with the procedure prescribed for making appointment, they cannot be deprived of the benefit of the service rendered by them on ad hoc basis for the purpose of seniority and promotion. Accordingly, the High Court by its judgment dated 07.09.2011 allowed the Writ Petition Nos.187 of 2010, 188 of 2010 and 220 of 2010. Later, Writ Petition No.58 of 2011 on 30.11.2011 was disposed of in terms of the judgment in Writ Petition No187 of 2010 and other Writ Petitions.

3. Civil Appeal @ S.L.P. (Civil) Nos.6847-6848 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.9885-9886 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.9910-9911 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.33762-33763 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.33759-33760 of 2012 and Civil Appeal @ S.L.P. (Civil) Nos.33750-33751 of 2012 and Civil Appeal @ S.L.P. (Civil) No. 2779 of 2012 were filed by the direct recruit Deputy Collectors and the State of Uttarakhand assailing the legality of the judgment dated 07.09.2011 in Writ Petition Nos.187 of 2010, 188 of 2010, 220 of 2010 and the judgment dated 30.11.2011 in Writ Petition No.58 of 2011. During the course of hearing of the above Special Leave Petitions, this Court by an order dated 11.03.2015 directed the State Government to determine the deficiencies in the direct recruit/ promotee quota in the category of Deputy Collectors from year to year since the formation of the State in the year 2000. This Court was of the opinion that the said exercise was necessary for the purpose of deciding the adjustment of the direct recruits/ promotees in the quota earmarked for them. In compliance of the directions issued by this Court on 11.03.2015, the Government of Uttarakhand determined the year-wise vacancies for direct recruits and promotees from 2000 onwards. On the basis of the Office Memorandum dated 21.10.2015, the final Seniority List of Deputy Collectors was prepared by the State Government on 11.01.2017. Thereafter, during the course of the hearing of the Appeals on 25.04.2018, an objection was taken on behalf of the Respondents/ promotees to the Office Memorandum dated 21.10.2015 that the quota earmarked for promotees was shown to have been occupied by officers who continued to work in the State of Uttar Pradesh till their retirement. The promotees contended that the personnel who did not join in the State of Uttarakhand in spite of their allocation cannot be shown to have occupied the quota for promotees to the detriment of the Respondents in the above Appeals. As the dispute relating to the correctness of the Office Memorandum dated 21.10.2015 was raised for the first time by both sides, this Court permitted the promotees to approach the High Court for resolution of

their grievances.

4. Writ Petition No.299 of 2018 was filed by Bhagwat Kishore Mishra and 11 others questioning the Office Memorandum dated 21.10.2015 relating to the determination of year-wise vacancies of Deputy Collectors w.e.f. 2000-2001 to 2006-2007. By a judgment dated 22.05.2019, the High Court disposed of the Writ Petition holding that the year-wise vacancy position of Deputy Collectors (Entry Level) of the promotees and the direct recruit quota for the period from 2000-2001 to 2006-2007 has been correctly reflected in the Office Memorandum dated 21.10.2015. According to the High Court, final allotment orders under the Uttar Pradesh Reorganization Act, 2000 (hereinafter referred to as 'the Act') started from 23.04.2004 and ended on 02.10.2015. As per Section 73(2) of the said Act, the officers in the cadre of Deputy Collectors (Entry Level) have been deemed to be allotted to State of Uttarakhand w.e.f. 09.11.2000. Thereafter, the High Court was satisfied with the exercise conducted by the Government in computation of the year-wise vacancy position for direct recruits and allottees from 2000-2001 to 2006-2007. In such view, the High Court upheld the Office Memorandum dated 21.10.2015. Civil Appeal @ S.L.P. (Civi l) No.18604 of 2019 has been filed by the unsuccessful promotee Deputy Collectors challenging the judgment of the High Court which upheld the Office Memorandum dated 21.10.2015.

5. It was contended on behalf of the promotees that the judgment of the High Court dated 07.09.2011 directing the benefit of the ad hoc service to be given to the promotes does not call for interference. They relied upon the proviso to sub-rule (4) of Rule 24 of the 2005 Rules to submit that they have a right to claim that the period of continuous officiation prior to the dates of their regular appointment should be counted for seniority. It was argued that the initial promotion on ad hoc basis in the year 2004 was after a process of selection. They were continuously discharging their duties as Deputy Collectors till they were selected by the Public Service Commission and regularly appointed in the year 2007. If their service from 2004 is treated as regular, the direct recruits who were appointed in 2005 cannot be shown as seniors to them in the seniority list of Deputy Collectors. The grievance raised by them regarding the Office Memorandum that was issued by the Government of Uttarakhand on 21.10.2015 is that the Deputy Collectors who were allotted to the State of Uttarakhand but continued to work in the State of Uttar Pradesh were shown to have occupied the post of Deputy Collectors in the promote quota. According to them, some of the Deputy Collectors who continued to work in the State of Uttar Pradesh have retired on attaining the age of superannuation. For all practical purposes including the payment of pension, they cannot be treated to have held a civil post in the State of Uttarakhand. Inclusion of their names in the seniority list of Deputy Collectors has been done only to deprive the promotees the legitimate seniority to which they were entitled. The implementation of the judgments dated 30.11.2011 in Writ Petition No.58 of 2011 and 07.09.2011 in Writ Petition Nos.187 of 2010, 188 of 2010, 220 of 2010 and the deletion of those Deputy Collectors who never worked in the State of Uttarakhand from the promotee quota would result in the promotees being accorded their rightful place in the seniority list.

6. On the other hand, the direct recruits submitted that the promotee Deputy Collectors are

not entitled to claim benefit of their ad hoc service as their initial appointments in 2004 were contrary to the Rules. They alleged that some of the promotees were not confirmed in the post of Tehsildar and in any event, the recruitment process as prescribed by the relevant rules was not followed while making the stop gap arrangement in the year 2004. It was the case of the direct recruits that the substantive appointment of the promotees was only in 2007 and in no event could they claim the benefit of services rendered by them in accordance with the Uttaranchal Government Servant Seniority Rules, 2002 (hereinafter referred to as 'the 2002 Rules'). The direct recruits justified the judgment of the High Court dated 22.05.2019 by arguing that the adjustment of the direct recruits and promotees was done strictly in accordance with the Act and the applicable Rules.

7. On behalf of the State of Uttarakhand, it was contended that no final order with respect to allocation of Deputy Collectors could be passed in view of the interim orders passed by the Uttarakhand High Court and this Court. Though the allotment of Deputy Collectors commenced in 2000, the exercise ultimately was concluded only on 02.09.2015. All allotments made of the Deputy Collectors who were shown to have occupied the promotee quota were made w.e.f. 09.11.2000. Though it is a fact that some officers who were allotted to the State of Uttarakhand continued to work in the State of Uttar Pradesh and retired there, for all practical purposes they would have to be treated as employees of the State of Uttarakhand after the final allotment has been made. It was submitted by the learned counsel for the State of Uttarakhand that due care and caution was taken in ensuring that the allotment of promotees and direct recruits was done year-wise by taking into account the vacancies that were available within the quota earmarked for direct recruits and the promotees.

8. Before we proceed further, it is relevant to refer to the statutory regime. The reorganization of the State of Uttar Pradesh was undertaken in the year 2000 pursuant to which the Uttaranchal State was formed. The Uttar Pradesh Reorganization Act, 2000 (referred to as 'the Act') came into effect from 09.11.2000. Section 73 of the Act of 2000 deals with the allotment of public servants who were serving in the State of Uttar Pradesh before the Act of 2000 came into force. According to sub-Section 2 of Section 73, the Central Government is empowered to determine final allotment of personnel to the respective successor State and is entitled to specify the date with effect from which such allotment would take effect or deemed to have taken effect.

9. Recruitments to the post of Deputy Collector were originally governed by the U.P. Civil Servant (Executive Branch), Rules, 1982. A Deputy Collector is appointed by direct recruitment through a competitive examination conducted by the Public Service Commission and by promotion from amongst the permanent Tehsildars. Rule 16 provides the procedure for recruitment under the 1982 Rules in respect of promotions according to which the criteria for promotion would be merit which would be determined in accordance with the Uttar Pradesh Promotion by Selection in consultation with Public Service Commission (Procedure) Rules, 1970. Part VI of the 1982 Rules dealt with the Appointment, Probation, Confirmation and Seniority. Rule 23 thereof pertains to Seniority which shall be determined from the date of substantive appointment. The proviso to Rule

23 postulates that persons appointed in excess of their quota shall be brought down in seniority.

10. The Uttarakhand Civil Services (Executive Branch) Rules, 2005 were notified on 17.01.2006. 'Substantive appointment' is defined in Rule 3(i) which is as follows:

"(i) "Substantive appointment" means an appointment not being an ad hoc appointment, on a post in the cadre of the service and made after selection in accordance with the rules and, if there are no rules, in accordance with the procedure prescribed for the time being by executive instruction issued by the Government."

Rule 24(4) which is in pari materia with Rule 20(2) of the 1982 Rules empowers the appointing authority to make appointments on temporary or ad hoc basis according to the list prepared under sub-Rule 1. Sub-Rule 1 of Rule 24 provides that appointment by promotion shall be made on the basis of the list prepared under Rule 16. The list prepared under Rule 16 is on the basis of the merit determined in accordance with the Uttar Pradesh Promotion by Selection in consultation with Public Service Commission (Procedure) Rules, 1970. In case no candidate is available according to the list prepared under Rule 24(1), appointments can be made on an ad hoc basis from amongst the qualified candidates. Such appointments can be made only for a period of one year. A person who is promoted on a temporary basis, and subsequently approved by the Commission is conferred a benefit under the proviso to sub-rule (4) of Rule 24 to claim the entire continuous service rendered by him on a post within the promotee quota.

11. It is also relevant to refer to the Uttaranchal Government Servant Seniority Rules, 2002. 'Substantive appointment' is defined in Rule 4(h) as : "An appointment not being an ad hoc appointment on a post in the cadre of the service made after selection in accordance with the service rules relating to that service. Seniority shall be determined from the date of the order of substantive appointment when appointments are made by them by promotion or by direct recruitment."

12. Essentially, two points require to be determined in these Appeals. The first relates to the right of the promotees to count the period of their ad hoc service for the purpose of seniority. The second pertains to the correctness of the Office Memorandum dated 21.10.2015. In Direct Recruit Class II Engineering Officers' Association (supra), this Court held that the seniority of a person has to be counted from the date of his initial appointment if he was appointed in a post in accordance with the Rules. The corollary 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 determining seniority. It was further held that the period of officiation can be counted if the initial appointment is not made by following the procedure laid down by the Rules but the appointees continued in the post uninterruptedly till the regularisation of his service in accordance with the Rules. This Court settled a controversy relating to the application of

the principles laid down in Direct Recruit Class II Engineering Officers' Association (supra) by a judgment in *State of West Bengal & Ors. v. Aghore Nath Dey & Ors*<sup>2</sup>. It was held as follows:

"22. There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is dear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed 'according to rules'. The corollary set out in conclusion (A), then is, that 'where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such posts cannot be taken into account for considering the seniority'. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stopgap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority.

23. This being the obvious inference from conclusion (A), the question is whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the corollary in conclusion (A), since the two conclusions cannot be read in conflict with each other.

24. The question, therefore, is of the category which would be covered by conclusion (B) excluding there from the cases covered by the corollary in conclusion (A).

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 dear 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 regu/arisation 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 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 regu/arisation, 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)."

13. In the instant case, the promotees were appointed on ad hoc basis in the year 2004. There is no dispute regarding their appointment on a regular basis in the year 2007. According to the 1982 Rules and the 2005 Rules, appointment by promotion to the post of Deputy Collector shall be as per the Promotion for Selection in consultation with the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970. Procedure for promotion is laid down in the 1970 Rules which provide that the eligibility list or lists have to be forwarded by the State Government to the Commission which conducts the selection. The appointment of the promotees in the year 2004 is on ad hoc basis for a period of one year without following the procedure prescribed under the Uttaranchal Promotion by Selection in consultation with Public Service Commission (Procedure) Rules, 2003. As the promotions in 2004 were made in clear violation of the Rules, the promotees are not entitled to claim seniority from the dates of initial appointments as Deputy Collectors. The High Court committed an error in treating the ad hoc appointments of the promotees to be only procedurally defective to give them the benefit of the ad hoc service by applying the judgment in Direct Recruit Class II Engineering Officers' Association (supra). The High Court further went wrong in holding that the promotees were entitled for the benefit of ad hoc service in view of proviso to sub-rule (4) of Rule 24 of 2005 Rules. No doubt, according to the proviso to sub-rule (4) Rule 24 a promotee is entitled to count ad hoc service provided he continuously worked till he is regularly promoted in a post within the promotee quota. No finding is recorded by the High Court on this very important prerequisite whether promotees appointed on ad hoc basis in 2004 continuously worked in a post within the promotee quota. On the other hand, it is clear from the Office Memorandum dated 21.10.2015 that only 2 posts were available in the promotee quota during 2003-2004. Those posts also were allotted to promotees who worked in Uttar Pradesh throughout their career and never joined in the State of Uttarakhand. Admittedly, they are seniors to promotees in the instant case. Therefore, the High Court was not right in giving the benefit of ad hoc service to the promotees on the basis that the proviso to Rule 24(4) of 2005 Rules comes into play. In view of the above,

we do not think it necessary to adjudicate the dispute relating to the proviso to Rule 24 which exists in the English translation and does not find place in the Hindi copy.

14. A close scrutiny of the Office Memorandum dated 21.10.2015 would show that the exercise done by the State of Uttarakhand in the matter of identification of vacancies within the direct recruit and promotee quota from 2000-2001 to 2006-2007 is correct. The objection of the promotees is that the Deputy Collectors who were allotted to Uttarakhand never worked in the State of Uttarakhand and they continued to work in the State of Uttar Pradesh from which they retired. The grievance of the promotees is that if such officers are included in the seniority list, the promotees will suffer as they would be placed below the direct recruits who were appointed in the year 2005. The allotment process was delayed due to some officers continuing in Uttar Pradesh on the strength of interim orders in Writ Petitions filed by them challenging the allotment orders. Some of them have retired on attaining the age of superannuation while working in Uttar Pradesh. The allotment process ultimately was finalised on 02.09.2015. After the final allocation, persons who did not join in Uttarakhand and retired in Uttar Pradesh have to be treated as employees of the successor State of Uttarakhand. Moreover, the allotment was made w.e.f. 09.11.2000 which leaves no doubt that they cannot be ignored while finalising the quota for promotees and deciding the allotment of slots for the personnel in the order of their seniority.

15. In view of our conclusion that the promotees are not entitled to count their ad hoc service for the purpose of computing their seniority. For the aforementioned reasons, the Civil Appeal @ S.L.P. (Civil) No.2779 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.6847-6848 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.9885- 9886 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.9910- 9911 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.33762- 33763 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.33750- 33751 of 2012, Civil Appeal @ S.L.P. (Civil) Nos.33759- 33760 of 2012 are allowed and the Civil Appeal @ S.L.P. (Civil) No.18604 of 2019 is dismissed.

Judgment Referred.

<sup>1</sup>(1990) 2 SCC 0715

<sup>2</sup>(1993) 3 SCC 0371