

DELHI HIGH COURT

Municipal Corporation of Delhi

Vs.

Kewal Krishan Bhatia (Delhi)

LPA No. 159 of 1977.

(D.K. Kapur and Mrs. S.U. Nanda Bhandare, JJ.)

12.7.1985

ORDER

D. K. Kapur, J.

1. A number of connected writ petitions and Letters Patent Appeals have been heard by us together, or one after the other, as many points in these appeals and writ petitions are common. The cases are concerned with the appointment to the post of Assistant Engineer or Executive Engineer in the Municipal Corporation of Delhi. There are two types of appointments one by promotion and one by direct appointment. In the case of these appointments S. 96 of the Delhi Municipal Corporation Act was operative which required consultation with the Union Public Service Commission. The U.P.S.C. (Consultation by the Delhi Municipal Corporation) Regulations 1959 were made under S. 97(1) for the purpose of regulating the form of consultation. These regulations show that there are three types of appointments, (a) by promotion, (b) by transfer on deputation and (c) by direct recruitment. The cases before us relate to appointments on promotion as well as appointments by direct recruitment. For the purpose of convenience the cases in which appointment by promotion are involved are dealt with as one group and the cases relating to appointment by direct recruitment are treated as another group. The cases relating to promotion are the present case, LPA 159/77 and LPA 55/78 and LPA 8/78. These appeals are directed against the judgment of Chadha, J., Parkash Narain, J. (as his Lordship then was) and Anand, J. respectively and also C.W. 238/80 and C.W. 748/80.

2. The present judgment involves one point which is separate from the others

and one common point. The petitioner before the Court in CW 371/75 is the first respondent in this appeal. He had challenged resolution No. 626 dt. 3-9-74 and wanted to have the same quashed. He also wanted his seniority to be fixed by giving the benefit of his ad hoc service as Executive Engineer on the basis of the D.B. judgment in *Ishwar Chander Sangar v. D.E.S.U.*¹ He further wanted the selection by the DPC to be quashed and a direction that a fresh DPC be convened.

3. It is necessary first to deal with the question of the Departmental Promotion Committee. The learned single Judge has quashed the proceedings of the D.P.C. on the ground that one of its members Sri J.P. Goyal, Municipal Engineer, was himself a candidate for selection. We agree that this is a fatal defect in the Constitution of the D.P.C. and have no hesitation in upholding the order directing a new D.P.C. to be constituted.

4. This brings us to the main question as to whether the period prior to the regularization has to be taken into consideration for the purpose of seniority. For the purpose of convenience, a few of the facts relating to this case have to be stated. The petitioner was originally an Assistant Engineer (Civil) who was promoted to the post of the Executive Engineer (Civil) on an ad hoc basis with effect from Mar. 30, 1966. This ad hoc appointment was extended from year to year by the Corporation in consultation with the U.P.S.C. In Mar. 1970 and in May, 1970 administrative warnings were given to the petitioner. The petitioner's appointment was regularized at a meeting of the D.P.C. on 14th Aug. 1970 in accordance with the Regulations aforementioned and he was placed at serial No. 15. Later the warning given to him were withdrawn and the charges leveled against him were also withdrawn. The case of the petitioner was referred again to the U.P.S.C. for reconsideration and a second D.P.C. was constituted. In this DPC as already mentioned, Sri J.P. Goyal, who was also a candidate for selection, was a member. This D.P.C. recommended that the original position assigned to the petitioner on 14th Aug. 1970 still stood. It is the second D.P.C. which was challenged and we have already observed above that the same is invalid.

5. Shortly, for the purpose of seniority, the question is whether the petitioner's seniority is to date back to Mar. 30, 1966 when he was initially appointed on an ad hoc basis or whether his seniority is to rank from 14th Aug. 1970 when he was selected by the D.P.C.

6. The learned single Judge has followed the judgment of a Division Bench in *Ishwar Chander Sangar v. D.E.S.U.*² decided on 28th May, 1970 to hold that as the ad hoc appointment of the petitioner respondent No.1 was continued in consultation with the U.P.S.C., there was nothing to distinguish this case from the D.B. Judgment in Ishwar Chander Sangar's case.

7. The Municipal Corporation in its appeal has pointed out that the opposite view has been taken in the case of *Rameshwar Aggarwal v. MCD*, which is a case concerned with direct recruitment. As it happens that judgment is under appeal separately. That case is concerned with direct recruits and it was decided on its own facts. It has no bearing on the present case. We are delivering judgment separately in that case.

8. There are two other judgments which have taken a different view. These are *J.P. Gupta v. M.C.D.*³, decided by H.L. Anand, J. on 23rd Sept. 1977 (reported in 1978 Lab IC NOC 35) which is under appeal before us as LPA 8/78, and *Laskar Singh v. MCD*,⁴ (reported in 1978 Serv LJ 695) by Parkash Narain, J. (as his Lordship then was), which is the subject matter of LPA 55/78 before us. It so happens that all the three learned single Judges have referred to the case of *Ishwar Chander Sangar v. DESU*,⁵ decided by a Division Bench of this Court on 28th May, 1970 but taken different views about the same.

9. According to Chadha, J. in the judgment under appeal, the case is not distinguishable at all. So, he has followed the same. On the other hand, Anand, J. found that that judgment was applicable but distinguished it by reference to Rule 6 of the Delhi Administration Seniority Rules, 1965. In the third judgment by Parkash Narain, J. (as his Lordship then was) a different line has been taken. It has been held that Sangar's case did not reverse the judgment of Deshpande, J. in Ramesh Chander's case (reported in ILR (1970) 1 Delhi 310). It does not appear to be correct because Deshpande, J. had held that an ad hoc appointment after one year was invalid because of the proviso to S. 96 of the Delhi Municipal Corporation Act. On the other hand the Division Bench held that ad hoc appointment could be continued beyond one year in consultation with J.P.S.C.

10. It is now necessary to quote a passage from Ishwar Chander Sangar's case which has led to the controversy.

".....The matter of regularization of the appointments was taken up by the

Corporation authorities as early as 1963, but the same was pending with the Service Commission till 1965. Ultimately, the Departmental Promotion Committee was constituted by the Service Commission and the Committee considered the cases of respondents 6 and 7 and some others on their merits. The Committee, after such consideration of the merits, recommended the officiating promotion of respondents 6 and 7 to the grade of Executive Engineers in their meeting on 13th May, 1965. The said recommendation was approved by the Service Commission, and the approval was communicated to the Corporation authorities on 10-6-1965. It was this approval on recommendation by the Departmental Promotion Committees that was styled or referred to as regularisation. In other words, respondents 6 and 7 were appointed to act as Executive Engineers in 1960 for a short period in view of the urgency which existed at that time. Normally, their cases should have been considered by the Service Commission on merits within that period. For reasons for which respondents 6 and 7 were not responsible, the consideration of their appointments on merits did not take place. In the circumstances, the Service Commission agreed to the continuation of the acting appointments. Then, on a subsequent date, the cases of respondents 6 and 7 were considered on merits by the Departmental Promotion Committee, and the Committee recommended the officiating promotions of respondents 6 and 7 to the grade of Executive Engineers. As already stated, the recommendation was approved by the Service Commission. Thus, what was done by the Service Commission through the Departmental Promotion Committee in 1965 was a consideration of the merits of respondents 6 and 7, and in approval of their appointments as Executive Engineers. A consideration of these various facts shows, in our opinion that by the regularization of the acting appointments of respondents 6 and 7, what was done by the service commission was to agree to or approve of the appointments of respondents 6 and 7 made in 1960, after considering the merits of the said respondents. The regularization was not a fresh selection on the date of the regularization, but was only in the nature of the Service Commission satisfying itself through the Departmental Promotion Committee that the officers who were already appointed in 1960, though for acting for a short period, had the necessary merits for their appointment as Executive Engineers. In this

view, the regularization by the Service Commission in 1965 really amounts to an agreement to or approval of the appointments made in 1960. In other words, the regularization relates back to 27-12-1960, the date on which respondents 6 and 7 were appointed to act as Executive Engineers. It follows that in considering the seniority of respondents 6 and 7 the period during which they were holding the posts as Acting Executive Engineers is to be taken into consideration."

11. We consider that unless there is something wrong with this passage, we should consider ourselves bound by the same. If the facts are more or less the same, we cannot see how to distinguish this line of reasoning. The facts are simple in the present case. The petitioner-respondent No. 1 was appointed on an ad hoc basis on 30th Mar, 1966 and was regularized by the D.P.C. on 14th Aug. 1970 which is about 4 years later. In Sangar's case the regularization was five years later. In principle and effect there is no difference between the two cases.

12. It is interesting to note that the time gap between the ad hoc appointment and the regularization in this case and also in the other cases has really resulted from the method by which the Municipal Corporation and the U.P.S.C. have been operating the provisions of Ss. 96 and 97 of the Delhi Municipal Corporation Act. All appointments to a post whose minimum salary was ₹ 350/- had to be made at the relevant time after consultation with the U.P.S.C. Either this provision is mandatory or it is directory.

Assuming that the Corporation though it had to consult the UPSC it would forward the relevant documents to the Commission for making an appointment by promotion. The procedure for making this appointment is provided by Part III of UPSC (Consultation by Delhi Municipal Corporation) Regulations 1959, already referred to. There are several steps envisaged by these Regulations. Firstly, a list of officers eligible for promotion arranged in the order of seniority has to be forwarded to the Commission giving reasons for supersession of any officer that may be involved. The Commission has then to give its own views after considering the records. This is in a case where the promotion is on the basis of seniority alone. If the promotion is to be made by selection according to merit, then a D.P.C. constituted by the Commissioner or the General Manager, as the case may be, in consultation with the Commission has to make

the selection. This D.P.C. consists of a member of UPSC and some nominee or nominees of the Corporation. The recommendations of the D.P.C. are then forwarded to the Commission which eventually communicates its advice to the Municipal Corporation. It has become an unfortunate part of such appointments that because of the delay involved, the proviso to S. 96 is resorted to. That proviso is to the effect that consultation is not necessary with the Commission if an acting or temporary appointment is made for a period not exceeding one year. The result is that an ad hoc appointment is made for a period of one year and as the final appointment has not been made, this appointment is periodically extended in consultation with the UPSC.

In the case of Ishwar Chander Sangar, the D.B. noted that the extension beyond one year was in consultation with the UPSC, but the learned single Judge from whose judgment he appeal has come before the Bench, was Deshpande, J. who had observed that to make appointment for one year and then to renew it, was a fraud on the Section. In any case, the proviso is so worded that it appears that an ad hoc appointment can be made for a period of one year and then renewed periodically in consultation with UPSC till a regular appointment is made. The question still remains that if an ad hoc appointee is regularized after a gap of several years, whether his seniority is to date back from the date of original appointment or whether it is to be deemed to be a fresh appointment? The very concept of regularization and acceptance of a previously appointed person seems to imply an approval of the previous appointment and not a fresh selection. This is the reasoning of the D.B. There is now ample authority by the Supreme Court, that an ad hoc appointment continued from year to year is to get seniority in the absence of any specific rule, from the date of the initial appointment and not from the date of the regularization. We think that this principle is now fully accepted and therefore, the appointment of the petitioner in this case was rightly held to date back to his initial appointment. The only exception would be one where the ad hoc appointment is made for a temporary period for some other purpose, such as leave of absence of a person, or a short period appointment limited to a work job. An ad hoc appointment continued for a long time is a step towards the regular appointment.

13. As already observed we find no reason to differ from the view of the D.B. in Ishwar Chander Sangar's case and, therefore, we affirm the judgment under appeal and dismiss the appeal Respondent No. 1 will get costs Counsel fee ₹

250/-.

Appeal dismissed.

Cases Referred.

1. LPA 110/69.
2. LPA 110/69
3. CW 1379 of 1973
4. CW 416/76 decided on 8th May, 1978
- 5.LPA 110/69