

Pardeshi Vs. Non-conventional Energy Development Agency, U.P., Lucknow and Others

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Court : Allahabad

Decided On : Sep-04-1997

Reported in : 1998(1)AWC462; (1997)3UPLBEC1898

Judge : O.P. Garg, J.

Acts : Uttar Pradesh Services Rules - Rules 2, 3, 20 and 38; [Constitution of India](#) - Articles 14, 16 and 226

Appeal No. : C.M.W.P. No. 22957 of 1995

Appellant : Pardeshi

Respondent : Non-conventional Energy Development Agency, U.P., Lucknow and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Arun Tandon, Adv.

Judgement :

O.P. Garg, J.

1. By means of the present writ petition, under Article 226 of the [Constitution of India](#), it is prayed that the order dated 17.6.1995 (Annexure 6 to the writ petition) as well as the final seniority list published on the same day by respondent No. 2, be quashed and the respondents be commanded to redetermine the seniority of the petitioner in service.

2. Counter and rejoinder-affidavits have been filed. Heard Sri Arun Tandon, learned counsel for the petitioner and Sri V. B. Misra, learned counsel for the respondents, at considerable length.

3. Initially the petitioner was appointed on contractual basis as Junior Engineer in Non-Conventional Energy Development Agency, Uttar Pradesh, Lucknow (for short the N.E.D.A.) and was posted in Solar Cold Storage at Baisali, Deoria in the year 1988 for a fixed period of three and a half years. The period of contractual appointment was extended by two more months. Subsequently, 79 posts of Junior Engineers were sanctioned on 30.10.1991. Fresh appointments and regularisation of the services of the employees working from before were made. The petitioner came to be appointed on regular basis for the first time with effect from 10.10.1991 and seniority list of the newly recruited and regularised candidates was drawn up in which the petitioner was shown at serial No. 56. The petitioner made a representation before the competent authority praying that the services rendered by him on contractual basis during the period 1988 onwards, be also reckoned for the purposes of determining the seniority. Since the petitioner could not get the relief from the department, he filed the present writ petition for the relief as aforesaid.

4. The case of the respondent in short is that the petitioner cannot take the advantage of the contractual service for the purposes of seniority and therefore, his seniority has been determined with effect from the date, i.e., 10.10.1991 on which he was appointed on regular basis.

5. The moot point for consideration in the present petition, therefore, is whether the petitioner is entitled to the benefits of the contractual service rendered by him prior to his regular appointment on 10.10.1991 for the purposes of seniority. The answer to this point is against the petitioner for the following reasons.

6. There are service rules governing the employees of N.E.D.A. These rules are known as Non-Conventional Energy Development Agency, U. P. Service Rules (in short 'Rules'). The petitioner falls in category of Scientific and Technical staff which is subject-matter of Chapter II. In Rule 38 (ii), it is provided that the vacancies may be filled by professionals on deputation or contract for a defined period and in clause (iii) it is provided that such appointments may be made on the consolidated fixed pay. In Rule 2 which deals with the applicability of the rules, it is mentioned that the rules shall not apply to those whose service conditions are regulated by a contract entered into by them with N.E.D.A. and that the services of such employees appointed on contract basis shall be regulated by the terms and conditions of the contract. Clause (xvii) of Rule 3 defines an 'Employee' which means and includes regular employee and temporary employee while clause (xviii) of the rules defines 'Regular Employee' to mean an employee appointed against a sanctioned post after regular selection, without limit of time, under N.E.D.A. Clause (xxvi) of Rule 3 further defines 'Contract Appointment' to mean an appointment against a post sanctioned for a fixed period on specific terms and conditions agreed upon between the N.E.D.A. and the employee concerned. Rule 20 of the rules deals with the inter se seniority of persons selected for appointment in a particular cadre by direct recruitment on the result of any one selection as well as inter se seniority of the persons appointed by promotion. A thorough study of the rules indicate that there is no provision that the persons who were appointed on contractual basis shall be entitled to claim the seniority on their regular appointment right from the date on which they are appointed on contractual basis. The petitioner was appointed initially on contractual basis for a fixed term and on fixed salary of Rs. 1.315.95 per month. His appointment was initially for a fixed period of three and a half years, and as the work in hand could not be completed, the contractual appointment was extended for another period of two months. At the time when the petitioner was appointed on contractual basis, no post of Junior Engineer was in existence on which he could be appointed. Seventy nine posts of Junior Engineers came into being for the first time in the year 1991. The petitioner, after regular selection, came to be appointed on 10.10.1991. The services rendered by him prior to 10.10.1991 on contractual basis cannot be reckoned for the purposes of seniority.

7. The above conclusion is fortified by innumerable decisions of the Supreme Court. Without burdening this judgment with plethora of rulings on the point, it would be sufficient to quote the seminal decision of the Supreme Court in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others*, (1990) 2 SCC 715, in which it was observed that 'the principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgments including those in *Baleshwar Dass v. State of U. P.* and *Delhi Water Supply and Sewage Disposed Committee v. R. K. Kashyap*, with which we are in agreement. In *Narender Chadha v. Union of India*, the Officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with rules prescribed for regular substantive appointments in the service'.

8. The Supreme Court summed up the decision under various heads. In paragraph 47 (A) of the report it was held that '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'.

9. 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.

10. The aforesaid case of the Supreme Court came to be considered in *State of West Bengal and others v. Aghore Nath Dey and others*, JT 1993 (2) SC 598, wherein it was held that the period of ad hoc temporary appointment for a fixed period, which was extended from time to time till regularisation of the service of the employees cannot be taken into consideration for the purposes of seniority. With regard to the conclusion in paragraphs 47 (A) and (B) of the *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others* (supra), the Supreme Court observed in *Aghore Nath Day's* case as following-

'.....conclusion (A) and (B) of the Constitution Bench in the *Maharashtra Engineers'* case.....have to be read harmoniously and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A).....It is clear 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 stop-gap 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 stop-gap 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. 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.'

11. In view of the well-embedded position of law, the admitted facts of the present case which are the foundation of the claim of the petitioner are sufficient to negative his claim. The period of service rendered by the petitioner on contractual basis prior to his regular appointment on creation of the post cannot be reckoned for the purposes of determining the seniority. The seniority of the petitioner has been rightly and appropriately determined with regard to the reference of the dates of appointment vis-a-vis other regularly appointed candidates. In nutshell, the period of contractual service of the petitioner cannot be taken into consideration for determining the seniority. The writ petition, therefore, fails and is accordingly dismissed.

12. There appears to be a controversy about the date of Joining of the petitioner on appointment on regular basis. According to him, he joined as Junior Engineer after his appointment on regular basis on 11.10.1991 while in the seniority list dated 18.2.1995, the date of Joining has been shown as 14.10.1991. If there is any clerical mistake about the date of Joining of the petitioner, this aspect of the matter may be considered by the respondents.