

Vinod Kumar Vs. State Public Services Tribunal and ors.

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SooperKanoon Citation : sooperkanoon.com/462684

Court : Allahabad

Decided On : Jan-30-2002

Reported in : 2002(2)AWC1032; (2002)2UPLBEC1418

Judge : G.P. Mathur and ;R.P. Misra, JJ.

Acts : Uttar Pradesh Regularisation of ad hoc Appointments (On Posts Within the Purview of Public Service Commission) Rules, 1979 - Rule 10

Appeal No. : C.M.W.P. No. 43903 of 2000

Appellant : Vinod Kumar

Respondent : State Public Services Tribunal and ors.

Advocate for Def. : V.K. Barman, ;R.G. Padia, ;Pankaj Barman and ;Prakash Padia, ;Gauri Shanker Mishra, Advs. and ;S.C. Tiwari, S.C.

Advocate for Pet/Ap. : A.K. Singh, Adv.

Disposition : Writ petition allowed

Judgement :

G.P. Mathur, J.

1. This writ petition under Article 226 of the Constitution has been filed for quashing of the judgment and order dated 20.7.2000 of the U. P. Public Services

Tribunal, Luck now (hereinafter referred to as the Tribunal) in Claim Petition No. 83/11 of 1991.

2. The petitioners Vinod Kumar and respondent Nos. 7 to 10 were appointed as Assistant Planners on ad hoc basis in the Town and Country Planning Department of the State Government on 10.2.1984. Thereafter, respondent Nos. 2, 3, 14 to 17 were also appointed on the same post on ad hoc basis on 20.5.1986. The U. P. Public Service Commission (hereinafter referred to as the Commission) issued an advertisement on 7.3.1987 for making selection on 22 posts of Assistant Planners/ Assistant Town Planners. The Commission after holding Interview declared a list of the selected candidates on 31.7.1989. Respondent Nos. 2, 3, 7, 8, 10, 11, 13 to 16 who were already working on ad hoc basis were included in the said list. The list of the selected candidates was forwarded by the Commission to the State Government which was received by it on 18.10.1989. The Governor of U. P. made U. P. Regularisation of ad hoc Appointments (On Posts Within the Purview of Public Service Commission) (Second Amendment) Rules, 1989, exercising power under Article 309 of the Constitution and the same were published on 7.8.1989 by which the benefit of regularisation was extended to persons directly appointed on ad hoc basis on or before October 1, 1986. On 3.11.1991 the State Government sought option from such ad hoc employees, who had been selected by the Commission, for their appointment on the basis of the recommendation made by the Commission, but none of them gave any option. The State Government then passed an order on 15.3.1991 regularising the appointment of the petitioner and respondent Nos, 2, 3, 7 to 17. Thereafter the State Government issued appointment orders to those candidates who had been selected by the Commission (other than those who were working on ad hoc basis) on 10.12.1992 and 7.9.1993. A seniority-list was also circulated on 8.5.1995 in which the seniority of the petitioner and respondent Nos. 2, 3, 7 to 17 was fixed from the date of their regularisation, i.e., 15.3.1991 and the seniority of the other candidates selected by the Commission (other than those who were working on ad (basis) was fixed from the date of their appointment, i.e., 10.12.1992 and 7.9.1993.

3. Respondent Nos. 2 and 3, namely. Km, Niti Dwivedi and Vijay Pal Sharma, filed a claim petition under Section 4 of the U. P. Public Services Tribunal Act, 1976,

praying that it be declared that they were appointed as regular Assistant Planners on 31.7.1989. the date on which the result was declared by the Commission, accord them seniority as per recommendation of the Commission and to quash the Government order dated 15.3.1991. After hearing the parties, the Tribunal allowed the claim petition on 20.7.2000 and the operative portion of the order reads as follows :

The petition is allowed to the extent that in the seniority list, the candidates recommended by the U. P. Public Service Commission including the petitioners will be placed above in the serial to those who have been regularised as ad hoc appointees and not recommended by the U. P. Public Service Commission. Both the parties have to bear their own costs.'

4. We have heard Sri A. K. Singh for the writ petitioners. S/Sri V. K, Burman and R. G. Padia, Senior Advocates, for the contesting respondents and have examined the record.

5. The main submission of the writ petitioner is that the services of those who were working on ad hoc basis were regularised under the Regularisation Rules and order to that effect was passed on 15.3.1991 by the State Government. In this order, the persons were placed in the same order of seniority in which they had been initially appointed. Though, some of these ad hoc employees were selected by the Commission but no appointment order was issued to them on the basis of the selection made by the Commission. The appointment orders were Issued to the selected candidates (other than ad hoc appointees) on 10.12.1992 and 7.9.1993 on the basis of the selection made by the Commission. Therefore, the Impugned order passed by the Tribunal directing that in the seniority list, the candidates recommended by the Commission will be placed above to those who had not been recommended by the Commission but had been regularised, is contrary to law. Learned counsel for the contesting respondents have, on the other hand, supported the order of the Tribunal and have submitted that such ad hoc employees who had been selected by the Commission have to be placed above those who had been regularised in service and they cannot be placed below those who had not been selected.

6. There is no dispute that the writ petitioner Vinod Kumar and respondent Nos. 7, 8, 9 and 10 were appointed on ad hoc basis on 10.2.1984 as Assistant Planners in the Town and Country Planning Department of the State Government. Thereafter, respondent Nos. 2, 3, 14 to 17 were appointed in the same capacity, namely, on ad hoc basis on 20.5.1986. The Commission issued an advertisement for the post of Assistant Planners/Assistant Town Planners on 7.3.1987. All the ad hoc appointees also applied in pursuance to the advertisement. One important feature of the case is that respondent Nos. 2 and 7 filed C.M. Writ Petition No. 5712 of 1989 on 27.7.1989. wherein the principal prayer made was regularisation of their ad hoc appointments. In this writ petition, an interim order was passed to the effect that if any appointment was made the same shall be subject to further orders of the Court. The Commission declared the result on 31.7.1989 and within a week thereafter the U. P. Regularisation of Ad Hoc Appointments (On Posts Within the Purview of the Public Service Commission) (Second Amendment) Rules, 1989, which were made by the Governor under proviso to Article 309 of the Constitution were published on 7.8.1989. Rule 2 of these Rules inserted a new Rule 10 after Rule 9 of the U. P. Regularisation of Ad Hoc Appointments (On Posts Within the Purview of Public Service Commission) Rules, 1979 and the same reads as follows :

'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 Regularisation of Ad Hoc Appointments (On Posts Within the Purview of the Public Service Commission) (Second Amendment) Rules. 1989.'

Rule 4 (1) of the 1979 Rules read as follows :

'(1) Any person who-

(i) was directly appointed, on ad hoc basis before 1.1.1977 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 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 to permanent or temporary vacancy as may be available on the basis of his record or suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.'

7. The effect of the 1989 Rules was that if any person possessing requisite qualification prescribed for regular appointment was directly appointed on ad hoc basis on or before 1.10.1986 and was continuing in service on the date of commencement of the Rules, and had completed three years' continuous service, he became entitled to be considered for regular appointment in permanent or temporary vacancy before any regular appointment was made in such vacancy in accordance with the relevant service Rules. Therefore, all employees including the petitioner who were appointed on ad hoc basis as Assistant Planner on 10.2.1984 and 20.5.1986 became entitled to be considered for regular appointment before any regular appointment could be made. Though the list of the selected candidates had been prepared by the Commission on 31.7.1989. but no appointment order was issued to the selected candidates, probably on account of the fact that within a week of the declaration of the result, the 1989 Rules were made on 7.8,1989 and the persons appointed on ad hoc basis acquired a right to be considered for regular appointment. The State Government sought option from the selected candidates on 11.3.1991 for making their appointment on the basis of the recommendation made by the Commission. The respondent Nos. 2, 3 or any other ad hoc appointee who was selected by the Commission did not give any option for appointment on the basis of the recommendation made by the Commission. Thereafter, the State Government issued an order on 15.3.1991, regularising the services of the petitioner, respondent Nos. 2, 3 and 7 to 17 fixing their seniority in the same order in which they had been placed at the time of their initial ad hoc appointment. These facts clearly show that the appointment of respondent Nos. 2 and 3 has not been made on the basis of the selection made by the Commission. On the contrary, their services have been regularised under the Regularisation Rules of 1989 and, consequently, their seniority has to be reckoned

in the same order in which they had been placed in the seniority list of the ad hoc employees whose services have been regularised.

8. It is noteworthy that respondent Nos. 2 and 7 themselves filed C.M. Writ Petition No. 5712 of 1989 in the Lucknow Bench, praying for regularisation of their ad hoc appointments. This writ petition was dismissed as having become infructuous on 21.8.1991 as the State Government had already issued an order on 15.3.1991 for regularising their services. This shows that respondent Nos. 2 and 7 themselves wanted their services to be regularised. Therefore, it is not open to these respondents to contend that the order of regularisation passed by the State Government on 15.3.1991 is illegal.

9. The Tribunal has also recorded a finding in paragraph 10 of the judgment that the regularisation of the ad hoc appointees had been made in view of the Rules applicable at that time and also the directions of the High Court in C.M. Writ Petition No. 5712 of 1989.

10. The reasons given by the Tribunal for allowing the claim petition will be clear from the observations made in paragraph 13 of the Judgment and the relevant part thereof is being reproduced below :

'.....There is also no assertion by the parties that the list prepared by U. P. P.S.C. had been cancelled. So it is established from the record that the list prepared by the U. P. P.S.C. has never been cancelled. The list prepared by the U. P. P.S.C. recommending the names for appointment to the post of Assistant Planner/Assistant Town Planner was submitted in 1989 and so the appointment should have been made on the basis from such list. The candidates recommended for the appointment in the list by the U. P. P.S.C. are said to be appointees according to rules and procedure, whereas the ad hoc appointees are not appointees according to rules and they are said to be back-door entry in the service. So the candidates of the list prepared by the U. P. P.S.C. and also working as ad hoc appointees should be placed above in the seniority list to those who had not been recommended by the U. P. P.S.C. but regularised under rules. In this way, the O.Ps. should have prepared the seniority list placing the recommended candidates above to those who have been regularised on the basis

of Ad hoc Appointments Regularisation Rules.....'

11. In our opinion, the view taken by the Tribunal that the appointment should have been made on the basis of the 'list prepared by the Commission is contrary by law. Similarly, the observation that 'the ad hoc appointees are not appointees according to rules and they are said to be back-door entry in the service' is contrary to the finding recorded in paragraph 10 of the judgment and is also not legally correct. Rule 4 of Regularisation of Ad hoc Appointments (On Posts Within the Purview of Public Service Commission) Rules, 1979, clearly lays down that any person who was directly appointed on ad hoc basis, who possesses requisite qualification and had completed three years' continuous service and was continuing in service on the date of commencement of the Rules shall be considered for regular appointment on the basis of his record and suitability before any regular appointment was made in accordance with relevant service Rules. The effect of the Second Amendment Rules, 1989, was that the benefit of the Rules became available to a person directly appointed on ad hoc basis on or before 1.10.1986 who was continuing in service as such on the date of the commencement of the Rules, namely, on 7.8.1989. Consequently the writ petitioner became entitled to be considered for regular appointment and the State Government regularised his services by the order dated 15.3.1991. Therefore, it cannot be said that the appointment of the writ petitioner is not according to Rules or that he is a back-door entry in the service.

12. It is well-settled by a catena of decisions of the Apex Court that selection made by the Commission cannot give a candidate any right to get an appointment order. In *State of Haryana v. Sitbash Chander Marwaha and others*, AIR 1973 SC 2216, it was held that the mere fact that the candidate's name appeared in the list prepared by the Commission, does not entitle him to be appointed. In *Jatindra Kumar v. State of Punjab*, AIR 1984 SC 1850, it was held that a person cannot claim that the Government must accept the recommendation of the Commission. It was further observed that the process of selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. This question was again examined by a Constitution Bench in *Shankarsan Dash v. Union of India*, AIR

1991 SC 1612, and it was held as under:

'It cannot be said that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an Indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies.'

13. The facts of the case show that though the result of the selection made by the Commission had been declared on 31.7.1989, the State Government did not issue appointment order to any selected candidates as it was considering the matter of regularisation of ad hoc employees in view of the 1989 Regularisation Rules which had been promulgated just a week after the result had been declared by the Commission. Thereafter, the State Government considered the matter of regularisation and passed an order on 15.3.1991 for regularising the services of ad hoc employees. The appointment orders to candidates other than ad hoc employees, who had been selected by the Commission, were issued a long time thereafter on 10.12.1992 and 7.9.1993. The respondent Nos. 2 and 3 who filed the claim petition before the Tribunal and who have been directed to be placed above the writ petitioner do not owe their appointment to the selection made by the Commission. They have become regular members of the service on the basis of the order of regularisation passed by the State Government on 15.3.1991. Therefore, they cannot get any benefit of the fact that they had also been selected by the Commission and they cannot claim any seniority on its basis. The order of Tribunal by which they had been directed to be placed above those ad hoc employees who have not been selected by the Commission is clearly illegal.

14. In the result, the writ petition succeeds and is hereby allowed. The impugned judgment and order dated 20.7.2000 of the Tribunal is quashed.

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