

ishwar Chandra Garg Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Nov-12-1999

Reported in : 2000(2)AWC1362

Judge : S.H.A. Raja and; Kamal Kishore, JJ.

Appeal No. : Writ Petition No. 267 (S/B) of 1994

Appellant : ishwar Chandra Garg

Respondent : State of U.P. and Another

Advocate for Def. : C.S.C.

Advocate for Pet/Ap. : Amit Bose, Adv.

Judgement :

S.H.A. Raza and Kamal Kishore, JJ.

1. It is well-settled by the Hon'ble Supreme Court in the case of P. D. Agarwal v. State of U. P., 1987 (3) SCC 622. that the seniority of Assistant Engineer shall be from the date of his substantive appointment either on temporary or permanent post. According to the Rules, an Assistant Engineer will become a member of service if he is appointed substantively either on temporary or permanent post, meaning thereby; that the appointment should be in accordance with rules. The post of Assistant Engineer which is a feeder post for the purpose of determination

of the seniority is from two sources ; one through process of promotion and secondly by direct recruitment. The post of Assistant Engineer is within the purview of the PublicService Commission. If a person is selected by the Public Service Commission, then according to the seriatim of select list, the appointment orders would be issued. When in pursuance of the appointment order, a person joins a post, then he becomes a member of the service, so his seniority will reckon from the date of his appointment, in substantive capacity.

2. According to the allegations contained in the writ petition, the petitioner was initially appointed as an Assistant Engineer (Civil) in the U. P. Public Works Department by an order dated 28.10.1972. The U. P. Public Service Commission issued an advertisement in the year 1976 to hold a combined State Engineering Service Examination in the year 1973. In the said advertisement, it was clearly mentioned that for each category of the post, separate application was required. It was clearly indicated in the advertisement that the post of Assistant Engineer for Public Works Department (Civil), Public Works Department (EM), Irrigation (Civil) and Irrigation (Mechanical) wherein separate categories. The petitioner was selected as an Assistant Engineer in the Irrigation Department and accordingly on 28.10.1978, he was appointed as Assistant Engineer in the Irrigation Department. On 9.8.1979 the petitioner was appointed as Assistant Engineer in the U. P. Public Works Department.

3. By means of the present writ petition, the petitioner wants to reckon his seniority with effect from 1977 when he was selected for appointment on the post of Assistant Engineer by the U. P. Public Service Commission, Allahabad which selection was accepted by the State Government. The petitioner also wants that his name be placed at serial No. 981 of the seniority list of Assistant Engineers of U. P. Public Works Department as contained in Annexure-9. Over and above Sarvsri I. C. Garg, Mahesh Chand Govind, Babu Ram and Mahesh Prasad Sinha who were not arrayed as parties to the present writ petition.

4. As far as the case of I. C. Garg is concerned, he was appointed on the post of Assistant Engineer in U. P. Public Works Department on 9.8.1979 and he Joined on the basis of the aforesaid order on 9.8.1979. The petitioner never joined on the

post of Engineer in Public Works Department, as he was appointed by the Irrigation Department. The petitioner was selected by the Public Service Commission for the year 1977 for the Irrigation Department and not for the Public Works Department. The Public Service Commission held a competitive examination for the year 1976-77 and on the basis of that selection the petitioner was appointed on the post of Assistant Engineer in Public Works Department on 9.8.1979 which he joined on 9.8.1979. In the seniority list published on 20.4.1989, his name was placed at serial No. 1120. According to the Rules on the basis of the merit list of Public Service Commission, the seniority of the petitioner cannot be fixed in the Public Works Department on the basis of selection made in the Irrigation Department. As the Assistant Engineers of 1976-78 batch did not come within the zone of eligibility for promotion to the post of Executive Engineer, the petitioner's name was not considered for promotion to the post of Executive Engineer, his case could be considered for promotion according to the Rules whenever he will come within the field of eligibility.

5. It was asserted in the counter-affidavit that the case of I. C. Garg stands on different footing as he was appointed as Assistant Engineer on 9.8.1979 in the U. P. Public Works Department while the petitioner was never appointed by the Public Service Commission and the facts of the case of Babu Ram and Ram Kumar Sinha were also different than the case of the petitioner. Mahesh Chand Govil was assigned seniority in compliance of the order dated 20.10.1990 passed by the Hon'ble Supreme Court, while the case of the petitioner was not covered by any decision of the Hon'ble Supreme Court. The petitioner cannot derive any benefits from the judgment and orders passed in the various cases as his case stands on different footing.

6. Learned counsel for the petitioner relying upon the decision in the case of Vijay Kumar Shrotriya v. State of U. P. and others, JT 1998 (1) SC 692, submitted that the earlier service rendered in the irrigation department by the petitioner ought to have been considered in reckoning his seniority in the Public Works Department.

7. Before dealing with the law laid down in the case of Sri Shrotriya, we first have to look into the facts of that case. On 25.8.1962 Sri Shrotriya was appointed on ad

hoc basis as Assistant Engineer in the Irrigation Department. In September, 1962, an Interview was held in the Combined Service of U. P. for the post of Assistant Engineers in Public Works Department and irrigation Department by the U. P. Public Service Commission. Sri Shrotriya was recommended at serial No. 55. He was allotted Public Works Department on 29th July, 1963. The Public Works Department approved Sri Shrotriya's appointment and indicated his merit at serial No. 21. On 8.8.1963, the Chief Engineer, Public Works Department issued a letter of his appointment, but Sri Shrotriya was not relieved by the Irrigation Department inspite of the fact that he had given his consent to Join the Public Works Department, through his letter dated 10.5.1963. As a result of which Sri Shrotriya was constrained to work In the Irrigation Department. In 1965 another competitive examination was held by the Commission for substantive permanent vacancies in the Public Works Department. On 13.9.1967 Sri Shrotriya was again selected and appointed through letter dated 23rd November. 1967. On 1.1.1968 Sri Shrotriya joined the post of Assistant Engineer in Public Works Department. By means of the Government order dated 9.10.1968 it was directed that Assistant Engineers in Public Works Department. Irrigation Department and L.S.G.E. Department who came through competitive examination and are working in any of the said departments, if allocated to any such other departments, they would be deemed to have been transferred from one department to other.

8. In June, 1972 Sri Shrotriya was promoted to the post of Executive Engineer, Public Works Department. It has been asserted that his promotion on the post of Executive Engineer was never challenged, but for the first time when his promotion on the post of Superintending Engineer became due then that controversy was raised.

9. Being aggrieved against his non-promotion on the post of Superintending Engineer, Sri Shrotriya filed a claim petition before the U. P. Public Service Tribunal on 22nd June, 1992. The Tribunal allowed the claim petition and directed the respondents to consider the posting of Sri Shrotriya as Superintending Engineer on the basis of service record as that existed on 12.12.1962. The Tribunal further held that the basis of such placement would have also been in accordance with the merit list, issued by the Public Service Commission and thus

Sri Shrotriya would be entitled to other consequential benefits. Accordingly the Government fixed his seniority at serial No. 319A but it was recorded that this would be subject to the orders of the higher courts, where the matter of finalisation on the principles of seniority was still pending. Thereafter a decision came in the case of Gokran Singh v. State of U. P., W.P. No. 4396 of 1999. The High Court in that case relying upon the view expressed in P. D. Agarwal and others v. State of U. P. and others, 1987 (3) SCC 622, held that in the matter of inter se dispute, the claim of seniority by a person could only be from the date he becomes the member of the service. In other words. It would be from the date, one Joined the Public Works Department from the Irrigation Department. In the case of Shri Shrotriya, it would only be when he Joined Public Works Department, after 1965, selection. Any period prior to it, would not be admissible, although the State Government itself treated such cases, according to Mr. Shrotriya, to be a case of transfer from Irrigation Department to the Public Works Department for stated reason :

'8. We find, the appellant in this case could not be faulted as in spite of he being selected through 1962 combined selection examination and he having consented was not relieved by the Irrigation Department due to his requirement in that department. This fact as stated earlier, is also recorded in Government's Office Memorandum No. 402 EPOR, 12.3.1993. 915/91 dated 20th February. 1993. This is also referred in the letter of the Joint Secretary. Government of U. P., Irrigation Department, to the Joint Secretary. Public Works Department. dated 15th September. 1992. The main reason, to reject the claim by the Government is the decision of Gokaran Singh, (supra) which was also the basis of the impugned judgment of the High Court viz., relying on P. D. Aggarwal's case (supra). This decision merely declares, a claim of seniority could only be from the date one is borne in service. But the question still is as to when did the appellant enter service or could be said to have been borne in ' service. If the appellant could be said to have entered service only on his appointment in the Public Works Department as a result of combined examination held in 1965, he would be borne in service then. But in case his selection and appointment in pursuance to the combined selection examination of 1962 is accepted thus he would be borne in service then, we find he not being relieved from the Irrigation Department for public purpose coupled

with the policy in such cases to treat it to be a case of transfer for all this, we unhesitatingly borne to the irresistible conclusion that the appellant would be treated to have been borne in service on the date when he was appointed through 1962 combined selection examination and not in 1965 examination. We have already referred to various letters as also the decision of the Government treating such placement in the departments inter se to be a case of transfer. The Government throughout has also treated the appellant to be a case of transfer from Irrigation Department to Public Works Department. His claim was only rejected by the Government as aforesaid in view of the decision in the case of Gokaran Singh (supra) relying on P. D. Aggarwal (supra), about this we would be referring later.

11. Regarding the question of length of service for computing seniority whether could it be only from the date of his appointment on permanent post in the year 1965 or will also include the period when he was appointed on the temporary post in the year 1962, the law is well-settled. A person even appointed on a substantive vacancy on a temporary post after due approval by the Public Service Commission if fulfils all other essential criteria as prescribed he shall be deemed to be borne in service from such date of his appointment. In other words his entire length of service from that date should be reckoned in computing seniority. This point is well settled and is reasserted in the aforesaid case of P. D. Aggarwal (supra) itself.

12. We further find this question whether the said period to be computed for the purpose of seniority was a matter which the Government ought to have considered and we feel must have been considered while appointing him as Executive Engineer in Public Works Department which was in the year 1972. He suffered from the same disability for the post of Executive Engineer as is pointed now for the post of Superintending Engineer. But after due consideration then after appointing him two decades back, none challenging it then, to raise it now, has no justiciable reasons to stand. By that time the policy of the Government was also well known which is evident from the aforesaid G.O. of 1960. When the question of appointment as Superintending Engineer came up for consideration in the year 1990 i.e., more than 21 years after appellant's appointment as Executive Engineer. We do not find, it was proper for the Government to revert back and deprive the

appellant by withdrawing his seniority by excluding the period he worked in the Irrigation Department.

13. Even otherwise, we find from the record that the Government's own stand and its policy accepted the stand of the appellant but the reason for this change was only in view of the decision of the High Court as aforesaid. In the case of Gokaran Singh relying on the case of P. D. Aggarwal, the High Court committed wrong by wrong application of the principle of P. D. Aggarwal. The same is not eroded or violated when the appellant's appointment to the P.W.D. is treated to be by way of transfer from Irrigation Department.

15. We find that both, the Government's Order dated 19th August, 1993 and the impugned order of the High Court are not sustainable in the eye of law and are hereby quashed. On the facts of the case we hold that the appellant's service in the Irrigation Department since after he was selected and appointed in 1962 in the P.W.D. through combined service examination, cannot be excluded for fixing his seniority in the P.W.D. Hence the period, the appellant worked in the Irrigation Department be treated to be valid period for computing his seniority in the P.W.D.

10. It is thus evident that the facts of question of law involved in Sri Shrotriya's case is not applicable to the fact of the case of the petitioner as he was never borne in the service of Public Works Department, hence he cannot claim to reckon his seniority from the date he was appointed in the Irrigation Department.

11. It is pertinent to mention here that after the decision of the Hon'ble Supreme Court in P. D. Aggarwal case (supra), a seniority list of Assistant Engineers was issued. Several writ petitions were filed before the Hon'ble Supreme Court under Article 32 of the Constitution of India as well as before this Court assailing the said seniority list. Considering the various pronouncements made earlier by the Hon'ble Supreme Court, a Division Bench of the Hon'ble Supreme Court observed that the matter should be decided by a larger Bench. But subsequently all the writ petitions which were pending before the Hon'ble Supreme Court were remitted to this Court. Similar petitions which were also filed at Lucknow Bench of Allahabad High Court. All the writ petitions were clubbed together and a Division Bench of this Court in which amongst one of us (S.H.A. Raza) was a member, decided the same on 14th

July, 1994. The leading Writ Petition No. 6191 (S/B) of 1993, S. N. Misra v. State of U. P. The Division Bench while disposing of the petition gave the following directions :

(a) Assistant Engineers on Civil and Mechanical side working in the Irrigation Department who were directly recruited by selection through the Public Service Commission should be assigned their seniority in order of merit, assigned to them, by the Public Service Commission, from the date they became the member of service in accordance with Rule 3 of the said 1934 Rules and 1936 Rules that is from the date of their substantive appointment to the post of Assistant Engineers.

(b) Assistant Engineers who were provisionally appointed without prior selection/approval of Public Service Commission and had been approved by the Public Service Commission, later on, should be assigned their seniority in order of merit from the date they became member of service in terms of Rule 3 of 1934 and 1936 Rules that is from the date of their substantive appointment to the post of Assistant Engineers.

(c) The seniority of Assistant Engineers, whose services were regularised under Regularisation Rules, would reckon from the date, when such ad hoc appointees after regularisation in accordance with the concerned Rules, have become the member of the service.

(d) All efforts should be made that the conditions of recruitment as provided under Rule 5, pertaining to promotion from Subordinate Engineering Service to Class I Engineering Service should strictly be complied with in making selection by promotion from the Subordinate Engineering Service to Class II services, but their seniority would reckon from the date they became the member of service in accordance with Rule 3 of 1934 and 1936 Rules, that is from the date of their substantive appointment to the post of Assistant Engineers.

12. It is well-settled proposition of law as held In Direct Recruitment case, that once the question of seniority has been finally settled by the pronouncement of the Court, then that cannot be unsettled. The controversy of P.W.D. Engineers working in Irrigation Department has been closed for all the time to come after the

decision of Hon'ble Supreme Court in P. D. Aggarwal (supra) and S. N. Misra(supra). Hence this Court is not Inclined to open the Pandora box of the seniority again and again. The petitioner will only reckon his seniority from the date he became the member of the service in Public Works Department in pursuance of the selection made by the Public Service Commission. He cannot compute the period of service which he had rendered in the Irrigation Department.

13. The writ petition is devoid of merits. It is accordingly dismissed.

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