

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Rakesh Kumar Panwar and Others Vs. State of U.P. and Another

Rakesh Kumar Panwar and Others Vs. State of U.P. and Another

SooperKanoon Citation : sooperkanoon.com/480691

Court : Allahabad

Decided On : Jun-26-2000

Reported in : 2000(3)AWC2309; (2000)3UPLBEC2121

Judge : R.R.K. Trivedi and ;M.C. Jain, JJ.

Acts : [Uttar Pradesh Urban Planning and Development Act, 1973](#) - Sections 2(5), 3, 4, 5, 5A, 5(2) and 59(3), (4) and (5); Uttar Pradesh Development Authorities (Centralised Services) Rules, 1985 - Rules 2, 3, 8, 14, 18, 20A, 20A(1), (2), (3), (4), (6) and (7), 25, 25(4) and 39; Uttar Pradesh Palika (Centralised) Services Rules, 1966; [Constitution of India](#) - Articles 32, 33 and 226; Uttar Pradesh Development Authorities Centralised Services (Amendment) Rules, 1992; Uttar Pradesh Public Service Commission (Limitation of Functions) Regulation, 1954 - Regulation 5(A)

Appeal No. : Special Appeal No. 792 of 1997, Connected with 21 other Special Appeals

Appellant : Rakesh Kumar Panwar and Others

Respondent : State of U.P. and Another

Advocate for Def. : S.C. Budhwar, ;H.N. Singh, ;Ashok Mehta (C.S.) and ;J.N. Sharma, Advs.

Advocate for Pet/Ap. : Dinesh Dwivedi, ;S.K. Chaturvedi, ;Ravi Kiran Jain, ;Vinod Sinha and ;S.K. Pandey, Advs.

Judgement :

R.R.K. Trivedi, J.

1. In this bunch of special appeals, judgment dated 8.9.1997 passed by the learned single Judge has been questioned by which Civil Misc. Writ Petition No. 19071 of 1995 and four other writ petitions were finally disposed of. Petitioners in the aforesaid five writ petitions are Junior Engineers serving in Allahabad Development Authority on ad hoc basis for several years. They claimed regularisation of their services as Junior Engineers and payment of regular salary, learned single Judge by the impugned order dated 8.9.1997 disposed of the writ petitions by the following order :

'In the aforesaid view of the matter, the nature of exercise in regard to the selection in making ad hoc appointments on regular basis for filling up the substantive vacancies in the posts of Junior Engineers which has been undertaken by the respondent Development Authority cannot be sustained in law.

In the result, the questions framed in the earlier part of this judgment are decided accordingly.

Vide an interim order of this Court, the implementation of the result of the selection held for making ad hoc appointment on regular basis had been stayed. The entire proceedings culminating in the declaration of the result referred to hereinabove which had been stayed being manifestly illegal and vitiated in law deserves to be and are hereby quashed.

The respondent authority shall now proceed to fill up the substantive vacancies in question expeditiously in accordance with law and taking into consideration the observations and directions indicated hereinabove.

In the circumstances, however, it shall be ensured that till the exercise of regularisation in accordance with law is completed as directed herein-above and the vacancies in question are filled up, the services of the Junior Engineers/ petitioners who were in service on 10.2.1992 with three years service to their

credit by that date and are still continuing to be in service, shall not be dispensed with and they will be entitled to the payment of salary/wages etc. in the same manner as provided to the Junior Engineers in the case of Ram Kishan (supra) by the Apex Court.

The reliefs claimed in the writ petitions except to the extent indicated above shall stand refused.

The writ petitions are disposed of finally with the directions and observations indicated hereinabove.

There shall, however, be no order as to costs.'

2. Aggrieved by the aforesaid order, Junior Engineers who were selected for regular appointment by the order of the State Government dated 22.7.1997 have challenged the order in special appeals. State Government has also challenged the order dated 8.9.1997 by filing separate special appeals. Some of the writ petitions have also challenged the order of the learned single Judge by filing separate special appeals challenging that part of the order by which their other reliefs have been refused.

3. Before entering into consideration of the questions raised before us challenging the order of the learned single Judge, it is necessary to mention brief facts in which the present controversy has arisen. The facts are that State Government in exercise of its power under Section 4 of U. P. Urban Planning and Development Act, 1973 (hereinafter referred to as the Act) constituted various development authorities for different towns which were declared as development areas under Section 3 of the Act. Section 5 of the Act contained provisions for providing staff to such development authorities. Section 5 is being reproduced below :

'5. Staff of the Authority--(1) The State Government may appoint two suitable persons respectively as the Secretary and the chief accounts officer of the authority who shall exercise such powers and perform such duties as may be prescribed by regulations or delegated to them by the authority or its Vice-Chairman.

(2) Subject to such control and restrictions as may be determined by general or special order of the State Government, the Authority may appoint such number of other officers and employees as may be necessary for the efficient performance of its functions and may determine their designations and grades.

(3) The Secretary, the Chief Accounts Officer and other officers and employees of the Authority shall be entitled to receive from the funds of the authority such salaries and allowances and shall be governed by such other conditions of service as may be determined by regulations made in that behalf.

15A. Creation of Centralised Services--(1) Notwithstanding anything to the contrary contained in Section 5 or in any other law for the time being in force, the State Government may at any time, by notification, create one or more 'Development Authorities Centralised Services' for such posts, other than the posts mentioned in sub-section (4) of Section 59, as the State Government may deem fit, common to all the development authorities, and may prescribe the manner and conditions of recruitment to, and the terms and conditions of service of persons appointed to such service.

(2) Upon creation of a Development Authorities Centralised Service, a person serving on the posts included in such service immediately before such creation, not being a person governed by the U. P. Palika (Centralised) Services Rules, 1966 or serving on deputation, shall, unless he opts otherwise, be absorbed in such service.-

(a) finally, if he was already confirmed in his post, and

(b) provisionally, if he was holding temporary or officiating appointment.

(3) A person referred to in sub-section (2) may, within three months from the creation of such Development Authorities Centralised Service communicate to the Government in the Housing Department, his option not to be absorbed in such Centralised Service, failing which he shall be deemed to have opted for final or provisional, as the case may be, absorption in such Centralised Service.

(4) Suitability of a person absorbed provisionally, for final absorption in a development authorities Centralised Service, shall be examined in the manner prescribed and if found suitable he shall be absorbed finally.

(5) The services of an employee who opts against absorption or who is not found suitable for final absorption, shall stand determined and he shall, without prejudice to his claim to any leave, pension, provident fund or gratuity which he would have been entitled to be entitled to receive as compensation from the development authority concerned, as amount equal to-

(a) three months' salary, if he was a permanent employee ;

(b) one month's salary, if he was a temporary employee.

Explanation--For the purposes of this sub-section the term 'salary' includes dearness allowance, personal pay and special pay, if any.

(6) It shall be lawful for the State Government or any officer authorised by it in this behalf, to transfer any person holding any post in a Development Authorities Centralised Service from one Development Authority to another.'

4. Section 5A, mentioned above, was inserted by amending the Act w.e.f. 20.10.1984, which provided for creation of Development Authority Centralised Services for such posts as the State Government may deem fit, common to all the development authorities and to prescribe by rules the manner and conditions of recruitment to and the terms and conditions of the services of persons appointed to such services. The State Government in exercise of powers under Section 5A of the Act made rules known as the U. P. Development Authorities Centralised Services (hereinafter referred to as the Rules) which came in force on 25.6.1985 Rules, 1985--Rule 3 of the aforesaid rules provided the categories of the posts included in the cadre of Centralised Services. The post of (Awar Abhiyanta) Junior Engineers was one of such services mentioned against item No. 3 with the heading engineers. Rule 8 of the rules provided for sources of recruitment to the posts of Junior Engineers, which services are mentioned in Schedule II, which provides that the post be filled in by direct recruitment only through Public Service

Commission. Rule 18 provided for the manner of recruitment through Public Service Commission.

5. The development authorities, however, appointed from time to time various persons as Junior Engineers on daily wage/work charge contract basis. As these Junior Engineers appointed in the manner stated above were continued for long time, they were agitating the claim before the State Government for regularisation of their services. State Government by the letter dated 11.10.1989 addressed to Vice-chairman of all the development authorities in the State directed that as a matter of settlement. State Government has taken decision that those daily wage employees who have worked for 240 days in every year be kept on regular salary. The development authorities were also required to submit the demand to the Government within 15 days. By the letter dated 8.1.1992, it was also communicated that daily wage employees who satisfied the aforesaid requirements are being considered for regularisation and their services may not be dispensed with during this period. As long time elapsed and the services of such Junior Engineers were not regularised, the Assistant Engineers and Junior Engineers working under the Ghaziabad Development Authority approached Hon'ble Supreme Court by filing writ petitions under Article 32 of the [Constitution of India](#). These writ petitions were disposed of finally with the directions to regularise them. The order dated 21.2.1991 is being reproduced below :

'These petitions are under Article 33 of the [Constitution of India](#) on behalf of an Act of Engineers classified as Assistant Engineers and Junior Engineers working under the Ghaziabad Development Authority (GDA for short) on basis of daily wages. It is stated that the Assistant Engineers are paid at the rate of Rs. 60 per day while the Junior Engineers are being paid Rs. 40 per day and the conditions of employment are such that on holidays they are not paid and if they are absent on any day they lose the wages. It is pointed out that some of the petitioners have been in employment on such terms for three to four years and all their attempts to have regularisation of their services have borne no fruit.

Mr. O.P. Rana, counsel appearing for GDA took some time to take instructions when the matter was last heard and concrete suggestions have been made

available by both the sides today. After hearing counsel for the parties to dispose of these four writ petitions by making the following directions :

(1) Both categories of petitioners shall now be taken as temporary employees of GDA from 1st March, 1991, with liberty to the authority to screen the petitioners and other similarly situated who have not come before the Court but are working under the 'authority' in regard to their qualifications as also suitability.

(2) The Assistant Engineers shall be paid fixed pay of Rs. 2,750 and the Junior Engineers Rs. 2,500 per month.

(3) The appointments on temporary basis shall be against the particular projects undertaken by GDA subject to the condition of employment in any other project if available, on completion of the one project. These Engineers have to be adjusted against available work in other projects so that their services may be continued.

(4) In the event of any particular Engineer working for more than one year in one or more projects in terms of the above term, in the case of an Assistant Engineer, there would be an increment of Rs. 50 and a similar increment of Rs. 40 for a Junior Engineer per annum.

(5) Mr. Rana has been fair enough to indicate that apart from the fixed pay subject to annual increment as indicated above, these petitioners shall be entitled to the normal perks and other allowances excepting D.A. admissible to similar category of officers employed under GDA. We are told under Uttar Pradesh Rules recruitment on regular basis is to be through Public Service Commission. We direct the authority to take steps through the State of Uttar Pradesh to obtain regularisation of the petitioners as far as possible preferably within nine months from now so that by the end of the year the process of regularisation may, as far as practicable be completed.

The State of Uttar Pradesh is represented before us and counsel appearing for it has been put to notice of the order. At the time of regularisation the period spent on duty shall be adjusted against the age prescription and the Public Service Commission would take into account the past service to consider if any weightage

should be given and performance under the authority may be taken into account for such purpose.

Mr. Rana has assured us and we believe it shall be worked out in terms of our order that vacancies arising hereinafter shall be given to the petitioners already who are in employment. Steps for regularisation may be taken by the authorities within three months from now. The Vice-Chairman of the authority is authorised to comply with our order and make such direction as may be necessary to implement it. At the request of Mr. Rana the process which is contemplated by our order may be completed from 1st May, 1991, giving benefit of the order from 1st March, 1991.

These writ petitions are disposed of accordingly. No costs.'

6. After the aforesaid order, Hon'ble Supreme Court also passed orders dated 15.7.1991, 4.9.1991, 7.1.1992, 8.10.1992, 7.12.1992, 13.1.1993 and 26.2.1993 on various applications filed by the parties. However, for the present controversy, the order dated 4.9.1991 is very relevant and it is being reproduced below ;

'We have heard counsel for the parties. On February 21, 1991, in Writ Petition No. 853 of 1990, after hearing the petitioners therein as also the Ghaziabad Development Authority, respondent No. 1, we make an order which, inter alia, directed :

'The State of Uttar Pradesh is represented before us and counsel appearing for it has been put to notice of the order. At the time of regularisation the period spent on duty shall be adjusted against the age prescription and the Public Service Commission would take into account the past service to consider if any weight age should be given and performance under the authority may be taken into account for such purpose.' There is no dispute before us at present that the Ghaziabad Development Authority has regularised the petitioners from dally wage basis to monthly-based employment. The question is one of recruitment into U. P. Development Centralised Service. For that purpose, we understand that there are a set of rules and requirement is through the State Public Service Commission. Our direction on February 21, 1991, is obviously not intended to require

regularisation opposite/contrary to the rules in force. We intended to condone the age qualification, by requiring previous employment to be taken into account and we left to the State Public Service Commission to consider whether on the basis of the past service and performance credit could be given to the petitioners when they became candidates for regularisation.

I.A. No. 7 of 1991 has been filed which calls in question a part of our direction. This application for clarification is dismissed as there is nothing to be clarified.

I.A. No. 9 of 1991 is dismissed as the relief claimed is the same as in W.P. No. 833 of 1991 which we propose to deal with separately.

I.A. No. 8 of 1991 is an application of the Junior Engineers which is covered by our order in the main writ petition since disposed of. We have already fixed their monthly remuneration at Rs. 1,750 per month taking into account their entitlements otherwise, we do not think we should interfere with that order now. Once they are regularised on being selected they would be entitled to their grade pay-scale. This application is, therefore, dismissed too.

Writ Petition No. 833 of 1991

Issue notice making it returnable in four weeks. No interim ex parte order.'

7. It appears that Junior Engineers serving in other development authorities also approached this Court by filing writ petitions under Article 226, which were also disposed of finally with similar direction to the State Government to consider Junior Engineers for regularisation. During this period. State Government amended Rules by U. P. Development Authorities Centralised Services (III Amendment) Rules. 1992, and inserted Rule 20A w.e.f. 10.2.1992 providing for regularisation of ad hoc appointments. As Rule 20A is very relevant for resolving the controversy involved in these appeals, it is being reproduced below :

'20A--Regularisation of ad hoc appointment--(1) Any person who:

(i) was directly appointed on ad hoc basis on or before October 1, 1986 and is continuing in service, as such on the date of commencement of these Rules ;

(ii) Possessed requisite qualifications prescribed under Rule 14 for regular appointment at the time of such ad hoc appointment : and

(iii) Has completed or, as the case may be, after he has completed three years' continuous service, shall be considered for appointment in permanent or temporary vacancy as may be available on the basis of his service record and suitability before any regular appointment is made in such vacancy in accordance with the provisions contained in these Rules.

(2) In making regular appointment under these Rules, reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (1), the Government shall constitute a selection committee and consultation with the commission shall not be necessary.

(4) An eligibility list of the candidates, shall be prepared and arranged the names of the candidates shall be order of seniority as determined from the date of order of their ad hoc appointment by the appointing authority and if two or more persons are appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with their character rolls and such other service records pertaining to them, as may be considered necessary to judge their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4).

(6) The Selection Committee shall prepare a list of selected candidates, the names in the list being arranged in order of seniority, and forward it to the Government.

(7) The Government shall, subject to the provisions of sub-rule (2) of this Rule, make appointment from the list prepared under sub-rule (6) of this Rule in order in 'Which their names stand in the list.

(8) Appointment made under sub-rule (7) shall be deemed to be made under relevant provisions contained in Rule 25.

(9) A person appointed under this Rule shall be entitled to seniority only from the date of order of appointment after selection in accordance with this Rule and shall, in all cases, be placed below the persons appointed in accordance with the procedure for direct recruitment contained in Part V of these Rules prior to the appointment of such person under this Rule.

(10) If two or more persons are appointed together under this Rule, their seniority interest shall be determined in the order mentioned in the order of appointment.

(11) The services of a person, appointed on ad hoc basis who is not found suitable or whose case is not covered by sub-rule (1) of this rule shall be terminated forthwith and on such termination, he shall be entitled to receive one month's pay.'

8. Sub-rule (3) of Rule 20A clearly provided that for the purposes of regularisation under sub-rule (1), the Government shall constitute selection committee and consultation with the Commission shall not be necessary. However, matter was referred to Public Service Commission on 5.1.1993, but Commission, by letter dated 16.5.1994 declined to give opinion in the matter of regularisation on the ground that it is beyond its purview.

9. State Government by order dated 10.9.1996 addressed to all the development authorities of the State required to submit the list of such Assistant Engineers/Junior Engineers who have completed three years' service on 1.3.1996 and they worked satisfactorily for 240 days in each year as the matter for their regularisation is under consideration before the State Government. It was further required that information should be based on record and concerned Assistant Engineers/ Junior Engineers must be in actual service and complete information must reach by 20.9.1996.

10. By another letter dated 4.2.1997 addressed to all Vice Chairmen of Development Authorities of the State required to submit the lists of all Junior Engineers who have worked for 240 days. The letter, which is very relevant for the

present controversy, is being reproduced below :

^v[k.M izrklk flag y[ku fnukd 4-2-1997izeq[k lfpo m-iz- 'kkluA

lsok esa]

mik/;{k

leLr vkokl fodkl izkf/kdj.k] m-iz-

vuqHkkx&5

egksn;]

bl ekg essa fodkl izkf/kdj.kkssaesa dk;Zjr Msyhostsl@oxZ pktZ@lafonk ij dk;Zjr
lgk;d vfHk;Urkvksa ,oa vojvfHk;Urkvksa dh Ldzsfuax djds fu;fef fu;qfDr nsus dh
dk;Zokgh gks jgh g SA

blds fy, vko';d gS fd vkids;gk tks Hkh ,sls vfHk;Urk dk;Zjr gSa mudks v);kfof/kd
lwpuK 'klu ds ikl miyC/kgks vkSj mUgSa mDr Ldzsfuax gsrq mifLFkr gksus dh
lwpuK ns nh tk;A bl laca/k esavkidks O;fDrxr :i ls izekfir djuk iM+sXk fd Ldzsfuax
gsrq Hksts tk jgs ukemUghsa O;fDr;ksa ds gksa tks mDr :i esa orZeku le; esa
dk;Zjr gSa vkSj ftUgkasus240 fnuksa dh yxkrkj lsok iwjh dj yH g SA vkids ;gk Hksth
xbZ fy LV esa ukeksads vkxs ewy fu;qfDr dh frfFk vkSj orZeku esa dk;Z dJus o
osru izklr dJus dkfooj.k nksuksa dh iqf'V gksuk vko';d g SA

,dkf/kfodkl izkf/kdj.kksa ls ,slsuke Hkh izklr gks pqds gSa tks igys fdlh :i esas dk;Z
dj pqds gSaA ;g dk;Zokgh 'kkluds fu.kZ; ds foijhr g SA d`i;k mijksDr vk/kkj ij ukeksa
dks izekfir djds Hkstusdh d`ik dJsa vkSj lqfuf'pr dJsa fd vki }kjk izekfir lwph 'kklu dks
gj n'kk esa11 Qjoh] 1997 rd fey tk;saA

Hkonh;

v[k.M izrki flag

izeq[k lfpo**

11. State Government then constituted a screening committee, which interviewed the Junior Engineers serving in the development authorities of the State and whose names were forwarded to the State Government for consideration. The screening committee interviewed the candidates on 21, 22 and 23.2.1997 and submitted its report to the State Government. The State Government accepted the report by the order dated 22.7.1997, which has been quashed by the learned single Judge.

12. Learned single Judge for deciding the writ petitions pending before him formulated following questions, which have been decided by the impugned order :

1. Whether the proposed regularisation is in fact regularisation of irregular appointments as contemplated under the law and required to be done under the direction of the Apex Court in its decision in the case of Ram Kishan (supra) which is sought to be implemented by the State Government?

2. Whether the proposed regularisation of an irregular appointment is in accordance with statutory rules regulating the appointment of irregular appointments?

3. Whether the statutory rules regulating the appointments of irregular appointment is enforceable as it stands or any part of it suffers from any constitutional infirmity which can be severed removing the offending part, if any, and the petitioners are entitled to get their services regularised under the rules?

13. While answering the aforesaid questions, learned single Judge has held that appointments of Junior Engineers by various development authorities were under second proviso to sub-sections (3) and (5) of Section 59 of the Act and the power contemplated therein could not be curtailed or abridged by the rules, learned single Judge has further held that cut off date provided in sub-rule (1) of Rule 20A of the Rules, i.e., 1.10.1986 is arbitrary and has been fixed in mala fide exercise of power which suffers from vice of discrimination. Learned single Judge has further held that entire process of regularisation taking the cut off date as 4.2.1997 for the purposes of making ad hoc appointments on regular basis is manifestly illegal and stands vitiated in law. It has been held that zone of consideration for employees

appointed on irregular basis shall remain confined only to such employees who had completed or as the case may be after they had completed three years services by 10.2.1992, i.e., the date of enforcement of Rule 20A in question and were continuing in service on that date. Only such of the irregular employees will be entitled to be considered for regularisation as envisaged under Rule 20A of newly inserted Rule. No other appointed on irregular basis accepting those as indicated hereinabove is to be treated to be entitled for regularisation of his services.

14. We have heard Shri Dinesh Dwivedi, Shri S.K. Chaturvedi and Shri Ravi Kiran Jain, learned senior counsel for the appellants who have been selected by the screening committee for being appointed as ad hoc Junior Engineers on regular basis and Shri H.N. Singh and Shri S.C. Budhwar, learned senior counsel and Shri Ashok Mehta, learned Chief Standing Counsel, and Shri J.N. Sharma, for Allahabad Development Authority in opposition. We have also heard Shri Ashok Mehta on behalf of the appellant-State in Special Appeal filed against the judgment of learned single Judge and Shri. H.N. Singh and Shri S.C. Budhwar for the respondents. Shri. H.N. Singh and Shri S. C. Budhwar, learned Senior Counsel, Shri Vinod Sinha and Shri S.K. Pandey have addressed us for the petitioner-appellants in special appeals filed by the petitioners' against the judgment of learned single Judge and Shri J.N. Sharma and Shri Ashok Mehta for the respondents.

15. Shri Ashok Mehta, learned Chief Standing Counsel also placed before us the entire record relating to the screening committee which carried out the selection of the candidates for being appointed as ad hoc but on regular basis. After considering the rival submissions made by learned counsel for the parties, in our opinion, following questions require determination by us for deciding this bunch of special appeals :

1. What is the exact nature of appointments of Junior Engineers in development authorities of the State? Can they not be termed ad hoc appointees?
2. Whether the appointments of Junior Engineers, not being in accordance with the provisions of Centralised Service Rules, they cannot be regularised under Rule

20A of the Rules?

3. Whether the exercise for regularisation could be legally carried out de hors Rule 20A of the Rules and ignoring procedure provided therein?

4. Whether Rule 20A suffers from any illegality and constitutional infirmity as held by learned single Judge?

5. Whether the alleged regularisation could be again for appointment on ad hoc basis though on regular basis?

6. Whether the exercise carried out for regularisation of the Junior Engineers being under orders of Hon'ble Supreme Court observance of Rule 20A was not necessary?

7. Whether the procedure adopted by the screening committee for selecting candidates for regularisation was illegal and arbitrary and is liable to be quashed being in contravention of the procedure provided in Rule 20A of the Rules?

8. Whether the judgment of learned single Judge is liable to be set aside as it has been passed without affording any opportunity of hearing to the Junior Engineers who had been found suitable and selected for appointment on regular basis and as they were not parties in writ petitions decided by learned single Judge?

9. Whether the impugned judgment of learned single Judge cannot be sustained and is liable to be set aside as learned single Judge entered into the questions of validity of Rule 20A and selection proceedings for which there were no pleadings and challenge in the writ petitions?

10. Whether the judgment of learned single Judge is liable to be set aside as learned single Judge failed to consider and decide the question of illegal termination of the petitioners by Allahabad Development Authority, which was specifically challenged by the petitioners?

11. To what relief, if any, the present appellants are entitled to in present special appeals?

16. Before we proceed to consider aforesaid questions, it shall be appropriate at this stage to mention the facts, which we have noticed on perusal of record submitted before us by learned Chief Standing Counsel. The screening committee constituted by the State Government consisted of following members :

1. Principal Secretary, Awas Vikas Vibhag, U. P.
2. Commissioner, Awas Vikas Vibhag. U. P.
3. Special Secretary. Vigilance, and
4. Chief Engineer, Gorakhpur Development Authority.

Special Invitees:

1. Shri D.K. Mittal, Managing Director. U. P. Land Development Corporation Limited, and
2. Shri M.S. Tyagi, Chief Town Planner (Retd).

17. The Screening Committee in its proceedings has observed that order of Hon'ble Supreme Court dated 21.2.1991 and 4.9.1991 and order of Hon'ble High Court dated 7.1.1992 are binding and regularisation of Junior Engineers is necessary. Then it has observed that regularisation is not possible under the provisions of Centralised Services Rules, 1985, as amended in 1992. No reason, however, has been assigned as to why the regularisation is not possible under the provisions of Centralised Services Rules. In this report, it has been further observed that there are total 616 sanctioned posts of Junior Engineers out of which 331 posts are being occupied by appointments made on substantive basis. Besides above, 119 posts are occupied by ad hoc Junior Engineers appointed after 1.10.1986. 8 posts are occupied by Junior Engineers appointed on ad hoc basis before 1.10.1986. Thus, total 127 posts are occupied by ad hoc appointees. Total posts already occupied are 458. 3 Junior Engineers who were removed from services by Moradabad Development Authority are continuing in service on the basis of interim order passed by the Court. Thus, after excluding 461 occupied posts, 155 posts are available for the purposes of regularisation, 20 posts of Junior

Engineers, which have been requisitioned by U. P. Land Development Corporation on deputation basis, have also been taken into account by the committee. Thus, decision was taken to select 175 persons for regularisation. Out of the aforesaid, not more than 50% have been reserved for Schedule Caste, Schedule Tribe and Backward Classes. As per lists submitted by different development authorities, total number of Junior Engineers working on daily wages/work charge/contract basis were 455. The break-up for the same is as under :

- (a) Ghaziabad - 191 appointment between 1986 to 1991,
- (b) Gorakhpur - 27 appointment between 1987 to 1990,
- (c) Meerut - 76 appointment between 1986 to 1991,
- (d) Dehradun - 21 appointment between 1989 to 1991,
- (e) Allahabad - 9 appointment between 1985 to 1990,
- (f) Varanasi - 7 appointment between 1986 to 1991.
- (g) Lucknow - 96 appointment between 1985 to 1991.
- (h) Kanpur - 2 appointment between 1982 to 1983,
- (i) Nainital - 1 appointment in the year 1985,
- (j) Chitrakoot - 1 appointment in the year 1993.
- (k) Bulandshahr Khurja - 1 appointment in the year 1989,
- (l) Bareilly - 1 appointment in the year 1983,
- (m) Ayodhya - 5 appointment between 1988 to 1993,
- (n) Haridwar - 1 appointment in the year 1993,
- (o) Moradabad - 1 appointment in the year 1991.
- (p) Banda - 1 appointment in the year 1989,

(q) Jhansi - 3 appointment in the year 1986.

(r) Agra - 11 appointment between 1982 to 1990

Total 455

18. However, only 453 candidates were interviewed on 21, 22 and 23.2.1997. The criterion adopted by the aforesaid committee was that they fixed 100 marks for fixing grade awarded to the candidates interviewed. The break-up of 100 marks was as under :

1. For essential qualification for the post - 30 marks ;

2 . Additional/Special Qualification - 10 marks ;

3. Period of work under development authority - 2 marks per year with maximum limit of 10 marks :

4. Knowledge of subject/group discussion /practical - 30 ;

5. Service Record - 10 marks : and

6. Personality test - 10 marks.

On the basis of marks secured, the following grading could be awarded :

(i) 80 and above - A+

(ii) 70 to 79 - A

(iii) 65 to 69 - B+

(iv) 60 to 64 - B

(v) Below 60 - C

19. From the perusal of record, it is clear that procedure adopted by the screening committee for selecting candidates to appoint on regular basis is entirely different from the criterion prescribed under Rule 20A (1) (iii). In clause (iii) of sub-rule (1) of

Rule 20A, it has been provided that any ad hoc appointee who satisfies the conditions provided shall be considered for appointment in permanent or temporary vacancy as may be available, on the basis of his service record and suitability before any regular appointment is made in such vacancy in accordance with the provisions contained in the Rules. Justification for this deviation given in the report is that regularisation of Junior Engineers is not possible under Centralised Service Rules in other words under Rule 20A. Learned Chief Standing Counsel during his arguments submitted that any appointment made by the development authority after 25.6.1985 is illegal and without competence and such appointments can never be regularised. It has been submitted that under Rule 20A, benefit of regularisation can be granted to the ad hoc appointees who were appointed by the competent authority, i.e., State Government prior to 1.10.1986. Learned counsel appearing for the appellants-Junior Engineers who have been selected by the screening committee also submitted that Rule 20A of the Rules is not applicable and the regularisation has been done under the orders of Hon'ble Supreme Court. It has also been held that the appellants form different class having orders in their favour from Hon'ble Supreme Court.

20. From the aforesaid, it is clear that pivotal question for decision of these appeals is as to whether Rule 20A could be applicable to the Junior Engineer serving in development authorities on daily wages/work charge/contract basis. Learned single Judge answered this question by saying that these appointments were made by the development authorities in exercise of power conferred on them by second proviso to sub-sections (3) and (5) of Section 59 of the Act. We have minutely examined the provisions contained in Section 59 and, in our opinion, second proviso to sub-sections (3) and (5) could not be pressed into service for these purposes. Plain language used in second proviso indicates that it conferred power on the authority to take any work from such officers and other employees of Nagar Maha Palika and improvement Trust as it thinks proper and such officers and employees shall be under obligation to discharge such duty/function. The word 'employ' used in both the provisos is for the purposes of assigning particular work or duty and not appointment. The legislative intent is clear from the fact that second proviso similarly worded has been placed both after subsections (3) and (5) as they deal with the officers and employees of different bodies. If the

Legislature intended to confer power of appointment on development authority mentioning of it at one place would have been sufficient. Use of words 'such officers or other employees' in second proviso clearly indicates that it refers to the officers or other employees mentioned in the first proviso and sub-sections (3) and (5) of Section 59 of the Act. Thus, the view taken by learned single Judge cannot be approved.

21. Now it has to be seen, under which provisions contained in the Act or the Rules appointment of Junior Engineers on daily wage/work charge/contract basis can be justified. Section 5 sub-section (2) of the Act (quoted above) provided that subject to such control and restriction as may be determined by general or special order of the State Government, the authority may appoint such number of other officers and employees as may be necessary for the efficient performance of its function and may determine other designations and grades. Thus, subsection (5) of Section 2 conferred a plenary power on the development authority to appoint such number of other officers and employees as may be necessary for efficient performance. However, exercise of this power is subject to control and restrictions put by the State Government. Now it has to be seen how the State Government reacted in respect of these appointments. Reaction of the Government may be ascertained from various orders issued from time to time referring to these appointments. Some of which are given below :

1. The State Government vide letter dated 11.10.1989 addressed to all the development authorities directed that as the matter of settlement. State Government has taken decision that those daily wage employee who have worked for 240 days in every year be kept on regular salary. The development authorities were also required to submit the demand to the State Government within 15 days.

2. Second order in this connection is Government Order No. 4277/11-5-1990, DA/395/A/90 dated 16/17.10.1990. By this order. State Government directed that work charge staff may be employed to the extent of 1% of the total cost of scheme.

3. By Government Order dated 30.12.1991 (Annexure-3 to the supplementary-affidavit filed in Special Appeal No. 969 of 1997), the State Government took

notice of the appointment, saying that development authorities have made large number of irregular appointments which will create problem in future. The development authorities were required to submit following informations :

(a) How many posts are sanctioned in each cadre of Centralised and non-Centralised Services?

(b) Details of officers and employees of different cadre already working against the sanctioned posts.

(c) The dates of appointment of officers and employees appointed by the development authorities.

(d) The extent of expenditure on such appointments, in terms of percentage the total cost of the respective schemes.

4. The 'Government Order dated 8.1.1982 addressed to all the development authorities was to the effect that daily wage employees who have worked for 240 days in every year are being considered for regularisation and their services be not dispensed with.

22. From perusal of the aforesaid letters which are available on record, it is clear that the appointments of Junior Engineers on dally wages were made by development authorities in full knowledge of the State Government rather they were permitted to make appointments at one stage to the extent of 1% of the cost of project. For further expenditure, they were required to submit demand in subsequent letters. In these circumstances, it cannot be said that the appointment of Junior Engineers made by the development authorities were without any legal authority. Appointments were made for discharge of functions of the development authorities. Even under the Rules, the appointment of Junior Engineers by the development authorities can be justified though under Rule 2 (ii) appointing authority is Government. Under Rule 25 (4) the appointing authority may make appointments in temporary or officiating capacity from amongst the persons eligible for appointment under these Rules. Such appointments shall not last for the period exceeding one year or beyond the next selection under the Rules

whichever is earlier and where the post is within the purview of the Commission, the provisions of Regulation 5 (A) of the U. P. Public Service Commission (Limitation of functions) Regulation, 1954, shall apply. Rule 39 provides that the Government may delegate any of its power under these Rules to the Vice-Chairman of the development authorities or any other person, as it deems fit. Thus, under the Rules also, the Vice-Chairman of the development authority could make appointment on behalf of the State Government. From the letters mentioned above, delegation of power in favour of Vice Chairman, may be legitimately inferred as Rule 39 does not prescribe any formal procedure for making delegation of power in favour of Vice Chairman. If the State Government permitted to engage daily wagers to the extent of 1% of the cost of project, it carried with it the necessary sanction to make appointments. Thus, the plea raised by the learned Chief Standing Counsel that Rule 20A could not be applicable in case of Junior Engineers of development authorities appointed by Vice Chairman cannot be accepted. The aforesaid contention raised on behalf of the State Government cannot also be accepted for the reasons that no such plea was raised before Hon'ble Supreme Court at the time the order dated 21.2.1991, was passed. Hon'ble Supreme Court by the order dated 4.9.1991, on the other hand, made it clear that order dated 21.2.1991 never intended to require regularisation contrary to the Rules in force. Similar directions were given by this Court. If such Junior Engineers could not be regularised under Rule 20A, which was brought on the statute book after the aforesaid orders, the State Government ought to have raised this question before Hon'ble Supreme Court. In our opinion, the distinction tried to be raised on the basis of the order of appointment, in the facts and circumstances of the case, is purely technical and has no substance. The Junior Engineers could not be denied regularisation under Rule 20A. Full Bench of Punjab and Haryana High Court in the case of S.K. Verma and others v. State of Punjab and others. AIR 1979 (P&H;) 149, interpreted word ad hoc employee in following manner :

'9.To our mind, the term 'ad hoc employee' is conveniently used for a wholly temporary employee engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum of ease. The dictionary meaning of ad hoc in Webster's New International Dictionary has been given as pertaining to or for the sake of this case alone' In the Random

House Dictionary its meaning has been given as 'for this special purpose, with respect to this subject or thing',

10. Therefore, having regard to the ordinary meaning of the term, no distinction can reasonably be drawn betwixt a temporary employee whose services are terminable without notice or otherwise and an employee characterised as ad hoc and employed on similar terms. Indeed, it appears to us that in the gamut of service of law an ad hoc employee virtually stands at the lowest rung. As against the permanent, quasi-permanent, and temporary employee, the ad hoc one appears at the lowest level implying that he had been engaged casually, or for a stopgap arrangement for a short duration or fleeting purposes.'

23. Hon'ble Supreme Court in the case of State of Haryana and others v. Piara Singh and others. AIR 1992 SC 2130, in respect of work charge employee, daily wage workers and casual labour held in para 19 as under:

'19.While we agree that persons belonging to these categories continuing over a number of years have a right to claim regularisation and the authorities are under an obligation to consider their case for regularisation in a fair manner, keeping in view the principles enunciated by this Court.....'

24. From the record, it is clear that Junior Engineers involved in present appeals were serving for the last several years. In some cases for more than ten years and they were found entitled for being considered for regularisation in accordance with the Rules, by this Court as well as by Hon'ble Apex Court. Rule 20A was inserted in the rules subsequent to the orders passed by Hon'ble Supreme Court. The State had full knowledge of the orders. The State Government cannot now deny that the petitioners/Junior Engineers are not entitled for regularisation under the Centralised Services Rules.

25. From perusal of record, we have noticed that screening committee excluded 127 posts from consideration as they are being occupied by Junior Engineers appointed on ad hoc basis by the State Government. Out of these 127 posts, only 8 posts are such on which appointments on ad hoc basis were made before 1.10.1986. If the provisions of Rule 20A, as they stand, are applied, only eight

Junior Engineers could be considered for regularisation. 119 ad hoc Junior Engineers, admittedly, appointed after 1.10.1986 stand in the same position as the Junior Engineers who were petitioners before this Court and before Hon'ble Supreme Court. We do not find any legal and valid reason for excluding 127 posts from consideration by the screening committee. The petitioners/Junior Engineers could have been considered along with all the Junior Engineers appointed on ad hoc basis. Another important and related question in this regard is that screening committee has made selection for appointment again on ad hoc basis. Another important and related question in this regard is that screening committee has made selection for appointment again on ad hoc basis though on regular basis, thus opening a new head of appointment. This Court and Hon'ble Supreme Court in number of judgments have repeatedly said that ad hoc appointee cannot be replaced by another ad hoc appointee. In the present case. State Government though bound by the orders of this Court and Hon'ble Supreme Court has selected Junior Engineers for the purposes of again appointing them on ad hoc basis, though Hon'ble Supreme Court was assured that Junior Engineers serving for the last several years shall be given appointment on regular basis, which in other words mean that they shall become Junior Engineers of the cadre of Centralised Service. Thus, in our view, the selections made by screening committee and confirmed by State Government have rightly been set aside by the learned single Judge though reasons for the same may be slightly different. Legal position that when statutory Rule exists for the purposes of regularisation of ad hoc employees, it can only be in accordance with the Rules and that an ad hoc employee can be replaced by a regularly selected candidate and not by another ad hoc employee is now well-settled by judgments of Hon'ble Supreme Court and this Court. Some of them are being mentioned below :

* R. N. Nanjudappa v. Thimmalah and another, AIR 1978 SC 1767 :

* State of Orissa v. Sukant, JT 1993 (2) SC 579;

* J. and K. Public Service Commission and others v. Dr.

Narendra Mohan and others, JT 1993 (6) SC 593 ; and

* Subedar Singh and others v. District Judge, Mirzapur and others. 1997 (1) ESC 655 (All-DB).

26. Discussion with regard to the aforesaid aspect of the matter will not be complete if the view expressed by learned single Judge in respect of cut off date provided in Rule 20A of the Rules is not considered at this stage. Learned single Judge held the cut off date 1.10.1986 fixed in Rule 20A as arbitrary and illegal on the ground that it is contrary to the policy decision of the State, which was indicated in various letters issued earlier and is flagrant violation of the direction of the Apex Court in the case of Rom Kishon (supra). Learned single Judge held that the cut off date provided should be 10.2.1992 on which date Rule 20A came in force. Learned Chief Standing Counsel submitted that there was no pleading in any of the writ petitions challenging the cut off date provided in Rule 20A and the cut off date provided by the State Government in Rule 20A has been held to be illegal and arbitrary without giving appropriate opportunity. It is admitted position that in writ petitions, there was no pleading challenging the validity of Rule 20A. Learned single Judge also noticed this aspect of the matter. However, he opined that validity of Rule 20A can be gone into even without pleadings. The relevant paragraph of the impugned judgment is being reproduced below :

'In the present proceedings under Article 226, of the [Constitution of India](#), when it is brought to the notice of the Court that the statutory authority has acted with manifest illegality and its action is such which is ex-facie vitiated in law and has the effect of defeating or nullifying the very object of the Rule, it becomes imperative for this Court to interfere and pass appropriate orders setting the things right and enforce the rule of law creating a situation where the concerned authorities may rightly discharge their duties and responsibilities. As observed by the Apex Court in its decision in the case of Chaitanya Kumar v. State of Karnataka, AIR 1986 SC 825, when arbitrariness and perversion is writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the Court is concerned with the balancing of interests. It was further indicated that the Courts are not for perpetuating a public mischief,'

27. Hon'ble Supreme Court in the case of State of Haryana v. Piara Singh (supra) in similar circumstances where High Court has held the cut off date as illegal expressed legal position in following words :

'13.No particular attack was made as to this date in the High Court. Consequently the Government of Haryana had no opportunity of explaining as to why this particular date was fixed. Without giving such an opportunity. It cannot be held that the fixation of the said date is arbitrary. What is more relevant is that the High Court has not held that this particular date is arbitrary. According to it, fixation of any date whatsoever is arbitrary, because in its opinion the order must say that any and every person who completes the prescribed period of service must be regularised on completion of such period of service.....'

28. From the aforesaid view expressed by Hon'ble Supreme Court, it is clear that normally Court should not enter into a question, which has not been pleaded in the writ petition and other side had not got opportunity to meet the question. In the present case, however, it is admitted position that necessary pleadings were not there and the State Government could not place its case before learned single Judge justifying the cut off date 1.10.1986. However, as we are not approving order dated 22.7.1997 confirming selection by screening committee, which has been done ignoring Rule 20A we do not think it necessary to express any opinion about the alleged cut off date. The State Government is bound to implement the orders passed by this Court and Hon'ble Supreme Court by regularising the Junior Engineers serving in different authorities for the last several years. Even 119 Junior Engineers, who were appointed by the State Government do not satisfy the conditions provided in Rule 20A. The State is still continuing them on ad hoc basis. Remaining Junior Engineers who were engineers appointed by Vice Chairman of development authorities have been found by us holding similar position as Junior Engineers appointed by the State Government. The process of regularisation will have to be taken by the State Government of all the Junior Engineers including the aforesaid 119 Junior Engineers. Thus, we think it proper and just to leave it to the State Government to amend Rule 20A in such a manner that the order passed by the Apex Court and this Court may be complied with and the date fixed may be reasonable and fair to all the claimants. In the circumstances, it is also not

necessary for us to enter into the question whether the procedure adopted by the screening committee suffered from any illegality or not

29. For the reasons stated above Question Nos. 1 to 7 and 9 are decided accordingly.

30. Question No. 5--The impugned judgment of learned single Judge dated 8.9.1997 has also been questioned by the appellants on the ground that Junior Engineers who had been found suitable and selected for appointment on regular basis were not parties in writ petitions and the order was passed without affording them opportunity of hearing. It is true that before learned single Judge, the aforesaid Junior Engineers-appellants selected by the screening committee were not parties, however, as in appeals we have heard them at length and examined all the questions in detail and we have agreed with the learned single Judge that alleged selection by the screening committee cannot be sustained, we do not think it necessary to remit the question of regularisation for hearing by the learned single Judge as the order was passed by Hon'ble Supreme Court on 21.2.1991, more than nine years have passed but the question of regularisation has not yet been finalised. In the interest of justice, it is necessary to avoid any further delay. Under these circumstances, in our opinion, the State may be asked to finalise the question of regularisation as early as possible.

31. Question No. 10.--This question is relevant in respect of Special Appeal Nos. 551 of 1997 (arising out of Writ Petition No. 32437 of 1996), 552 of 1997 (arising out of Writ Petition No. 4715 of 1996), 553 of 1997 (arising out of Writ Petition No. 11680 of 1996), 554 of 1997 (arising out of Writ Petition no. 6114 of 1997) and 555 of 1997 (arising out of Writ Petition No. 4392 of 1996). The grievance of the appellants in these appeals is that their services were illegally terminated by the Development Authorities, Allahabad on 31.3.1995, 30.4.1994, 31.12.1994, 30.4.1994 and 30.9.1995 respectively, which were challenged by them before the learned single Judge in the aforesaid writ petitions. However, no finding has been recorded with regard to the question of termination and writ petitions have been decided on the basis of the impugned order dated 8.9.1997. It has also been submitted that orders of termination were passed orally without affording any

opportunity of hearing and without assigning any reason. It was also submitted that services of some of the Junior Engineers were extended at whims and the attitude adopted was discriminatory. Petitioners-appellants had already worked for number of years and they were entitled to continue on the posts.

32. Shri Sharma, learned counsel appearing for Allahabad Development Authority submitted that petitioners were engaged by the concerned Executive Engineers of the project and their services could be terminated without assigning any reason. We have considered the submissions of the learned counsel for the parties. The submission of the learned counsel for the appellants is correct that learned single Judge has not recorded any finding in any of the aforesaid writ petitions regarding the termination of services of petitioners. For the purposes of regularization, it was necessary that petitioner should have been in service on the crucial date. Petitioners of these writ petitions could not be considered for regularisation until the orders terminating their services were quashed by this Court. The substantial question involved in the aforesaid writ petitions thus has not been decided and in the ends of justice, it is necessary that the aforesaid writ petitions may be sent back to learned single Judge for deciding them afresh in accordance with law after hearing the parties. Since the matter of regularisation of services of Junior Engineers shall be considered again by the State Government under our order, we hope that this writ petitions shall be decided by learned single Judge on merits at an early date.³³ It was also submitted by Shri H.N. Singh that Writ Petition No. 8300 of 1998 has been transferred from Lucknow Bench to this Court and in this writ petition only selection by the screening committee and upheld by the State Government on 22.7.1997 has been challenged. As we have not approved the selection and the order dated 22.7.1997 has already been set aside, the Writ Petition No. 8300 of 1998 shall also stand decided finally by this order.

34. For the reasons stated above Special Appeal Nos. 792 of 1997, 534 Of 1997, 543 Of 1997, 559 of 1997, 560 of 1997, 561 of 1997, 562 of 1997, 738 of 1997, 829 of 1997, 831 of 1997, 968 of 1997, 969 of 1997, 970 of 1997, 971 of 1997, 972 of 1997, 995 of 1997 and Writ Petition No. 8300 of 1998 are disposed of finally with the direction that State Government shall reconsider the claim of regularisation of Junior Engineers in accordance with the provisions contained in

Rule 20A of U. P. Development Authority Centralised Services Rules, 1985 and in the light of the observations made in this order. It is further provided that the State Government shall be at liberty to amend Rule 20A of the aforesaid Rules suitably so that the orders of Hon'ble Supreme Court and this Court directing regularisation of Junior Engineers may be complied with reasonably and in fair manner.

35. By the order dated 21.2.1991. Hon'ble Supreme Court granted nine months time to complete the regularisation. More than nine years have already elapsed. In the circumstances, we direct that the matter of regularisation shall be completed within the period of six months from the date copy of this order is placed before the appropriate authority of the State Government.

36. Special Appeal Nos. 551, 552, 553, 554 and 555 of 1997 are allowed. The orders dated 8.9.1997 disposing of the writ petitions are set aside. The writ petitions shall now be listed before the appropriate Bench for deciding the writ petitions afresh in accordance with law after hearing the parties.

There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com