

Dr. Anil Kumar Mathur Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : May-07-1985

Reported in : 1985(1)WLN697

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Writ Petition Nos. 362 and 482 of 1985

Appellant : Dr. Anil Kumar Mathur

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

M.C. Jain, J.

1. These two writ petition involve a common question as to the constitutionality of the explanation appended to Sub-sections (4) and (5) of Section 11 of the Rajasthan Universities' Teachers & Officers (Selection for Appointment) Act, 1984 (for short 'the Act').

2. I may state a few relevant facts of both cases. In S.B.Civil Writ petition No. 482/85 the petitioner was appointed Lecturer in Chemistry as a result of direct recruitment after direct selection. He was called for interview on August 24, 1968, and his name was recommended by the Selection Committee which was accepted

by the Syndicate vide resolution No. 6 dated September 14, 1968. In the order of merit he was at No. 1. Annexure 2 is the report of the Selection Committee which shows that 11 names were recommended in the order of merit. Non-petitioners Nos. 3 to 8 were below the rank of the petitioner. Non-petitioner No. 3 Dr. A.M. Bhandari was at No. 7, non-petitioner No. 4 Dr. B.S. Sankhla was at No. 2, non-petitioner No. 5 Dr. R.K. Chauhan was at No. 4, non-petitioner No. 6 Dr. B.K. Tak was at No. 5, non-petitioner No. 7 Dr. O.P. Kachhawaha was at No. 6 and non-petitioner No. 8 Dr. K.C.K. Mathur was at No. 9. The Syndicate of the University also adopted the rule of seniority vide its resolution dated January 7, 1984 according to which seniority of persons appointed as a result of one and the same selection by open recruitment shall be in accordance with the merit determined by the Selection Committee irrespective of the date of joining.

3. It is an admitted case of both the parties that in order to provide promotional opportunities to deserving teachers, the University introduced personal promotion scheme by creating ex-cadre posts. That Scheme was introduced in the year 1978. The scheme was not statutory in character and was challenged before this Court but the same was upheld though the challenge was on some other grounds different from the ground on which the statutory scheme is now under challenge in these writ petitions. The statutory character was given to the scheme by embodying it in Section 11 of the Act. In connection with the implementation of the scheme under Section 11, eligibility lists were notified from time to time. In the case of Dr. Anil Kumar Mathur, the eligibility list Ann. 8 was notified on February 11, 1985 in which the petitioner was shown at No. 28 on the basis of his date of joining on October 28, 1968. Non-petitioners Nos. 3 to 8 were shown above the petitioner and their names appear from No. 22 to 27 in the list Ann. 8. The eligibility list has been published on the basis of date of joining of respondents Nos. 3 to 8. They joined earlier to the petitioner. Except Dr. A.M. Bhandari, who joined on September 3, 1966 after first regular selection the non-petitioners joined on one and the same date, i.e. on September 26, 1968. According to the letter of appointment the petitioner was required to join before 1st November, 1968 and he joined on 28-10-1968. The eligibility list has been prepared on the basis of continuous service whether before selection or after regular selection. The petitioner has also produced another notification dated February 14, 1985 Ann. 9

but that notification is not very material so far as the present case is concerned.

4. In the Writ Petition No. 362/1985 the petitioner Kailash Chandra Arora was appointed Lecturer in the Department of Structural Engineering in the Faculty of Engineering as a result of Selection Committee. In all, the Selection Committee recommended five names. The petitioner was shown at No. 2 whereas non-petitioner No. 3 was shown at No. 3 in order of merit. All along the petitioner was shown as senior to non-petitioner No. 3 as would be evident from Ex. 5. In connection with personal promotion from Lecturers to Readers, the petitioner's name was shown in the eligibility list Ex. 7 at No. 6 whereas the name of non-petitioner No. 3 was shown at No. 5, above the petitioner on the basis of date of joining. The petitioner joined on December 16, 1966 whereas non-petitioner No. 3. joined on 8-12-1965 before regular selection. In the final notification dated 11-2-1985 Ex. 10 after hearing the petitioner the same position was maintained and the non-petitioner No. 3 was shown above the petitioner.

5. In the first writ petition Anx. 8 is under challenge and in the second writ petition Ex. 10 is under challenge.

6. The common ground of challenge in both the writ petitions is that the explanation appended to Sub-sections (4) and (5) of Section 11 of the Act is violative of Article 14 of the Constitution in as much as the date of joining has been made the basis of reckoning seniority and the date of joining is a fortuitous circumstance which has been rightly ignored while laying down the rule of seniority by the Syndicate.

7. For the proper appreciation of adjudication of the controversy, it would be profitable to reproduce the relevant provisions contained in Section 11 of the Act:

(11) Personal promotion against ex-cadre posts (1)-Not with standing anything contained in the relevant law or in this Act, State Government may, in order to provide promotional opportunities to stagnant deserving teachers, create ex-cadre posts of Professors or Readers in each faculty of a University to the extent of one-third of eligible persons as on 1st January of each of year.

(4) The ex-cadre posts of Professors created in a year shall be filled in by personal promotion on the basis of merit alone from amongst Readers, who:

(a) have been regularly selected to the post of a Reader;

(b) have, after regular selection, put in continuous tea years' service as on the 1st day of January of the year in which such promotion is to be considered; and

(c) possess the qualifications laid down in the relevant law of the University concerned for appointment to the post of Professor.

(5) The ex-cadre posts of Readers shall be filled in by personal promotion on the basis of seniority-cum-merit from amongst Lecturers, who,:

(a) have been regularly selected on the post of a Lecturer;

(b) have, after regular selection, put in, on the 1st day of January of the year in which such personal promotion is to be considered,-

(i) continuous fifteen years' service as Lecturer; or

(ii) continuous twelve years' service as Lecturer subject to his possessing the qualifications as laid down in the relevant law of the University concerned, for appointment to the post of a Reader.

Explanation: For the purpose of seniority and counting of years of service as Reader or as Lecturer, under Clause(b) respectively of Sub-sections (4) and (5), the service rendered as Lecturer or Vice-Principal or Principal after regular selection as Lecturer in a college established or run by the State Government or in a University as also the service rendered, in an ad hoc or temporary immediately before regular selection shall also be taken into account'.

(6) For the purpose of consideration for personal promotion to any of the categories of ex-cadre posts referred to in Sub-section (4) and Sub-section (5), the Vice-Chancellor of the University concerned shall prepare separate eligibility lists of Lecturers and Readers who are eligible under this section to be considered for such promotion on ex-cadre posts of Professors or Readers allocated to a

department of a faculty by the committee referred to in Sub-section (3).

(7)

(8) The committee referred to in Sub-section (7) shall consider the cases of all eligible Lecturers and Readers for personal promotion to the ex-cadre posts of Reader or, as the case may be, of Professor of a department of a faculty of the University to which such post is allocated under this section and in doing so, shall take into account the service record, the Annual Performance Appraisal Reports (including Special Performance Appraisal Report), the academic work done, disciplinary proceedings initiated and penalties, if any, imposed on such Lecturers or, as the case may be, such Readers. The Committee may also take personal interview of such eligible Lecturers and Readers to test their suitability. It shall prepare a list containing names of Lecturers and Readers found suitable for personal promotion to such ex-cadre posts in order of preference.

Explanation: The expression 'academic work' in this sub-section shall mean and include guidance of research work, publication of books and research-papers in standard journals.

8. A look to the relevant provisions of Section 11 would show that for personal promotion to the ex-cadre posts of Readers, the criteria provided is seniority-cum-merit and those Lecturers would be eligible for consideration who have been regularly selected on the post of Lecturer and have, after regular selection, put in continuous 15 years service as a Lecturer or put in continuous 12 years service as Lecturer, provided they possess qualifications laid down in the relevant for the appointment to the post of a Reader. The reckoning of years of service would be as on the 1st day of January of the year in which personal promotion is considered. What has been provided is only continuous service of 15 years on the first day of January of the year in which promotion is considered or 12 years service on that date. In the absence of explanation the seniority would have been reckoned according to the criteria laid down in Sub-section (5). The explanation gives us the legislative intent as to what period will be taken into account for the purposes of seniority and counting of years of service. The explanation provides that for the purposes of seniority and counting of years of service, the service

rendered as Lecturer or Vice-Principal or Principal after regular Selection as Lecturer in a college established or run by the State Government in a University as also the service rendered in an ad-hoc or temporary capacity immediately before regular selection shall also be taken into account. It would appear from the explanation that the scope of Sub-section (5) for the purposes of reckoning seniority and counting of years of service has been widened. It has been widened in the sense that for the purposes of seniority and counting of years, if anyone has rendered any service in an ad hoc or temporary capacity immediately before regular selection shall also be taken into consideration and not only that, even that service would be taken into consideration which has been rendered by any Lecturer as Lecturer or as Principal or Principal after regular selection in a college established or run by the State Government or even in a University. Thus if in any University or College run by the State Government any service has been rendered as Lecturer that will also be taken into account for the purpose of seniority and counting of years.

9. The expressions 'University' and 'University concerned' have been defined in Clauses (10) and (11) of Section 2. 'University' means a University established in Rajasthan by an Act of the State Legislature and 'University concerned' means the University in which a vacancy in the post of a teacher or an officer is to be filled up or an ex-cadre post of a Professor or a Reader is to be filled up, by personal promotion of a Reader or, as the case may be, of a Lecturer, in accordance with and under this Act. Thus any University established by an Act would be a University in this Act and 'University concerned' in an expression used in connection with a vacancy in a particular University as provided in Clause (xi).

10. Mr. Mridul appearing in the first writ petition for Dr. Anil Kumar Mathur first of all submitted that the expression 'University' occurring in the explanation should not be interpreted as defined in Clause (x) of Section 2 of the Act and it should be given the meaning that this expression excludes the University of Jodhpur. In case it is so construed, then in that situation any service rendered in the University of Jodhpur would not be considered for the purpose of seniority and counting of years of service. I am unable to agree with this submission of Mr. Mridul. The explanation in my opinion makes a provision for any service rendered as Lecturer

in any of the Universities as established by an Act of the State Legislature. Unless the subject or context otherwise requires, the expression defined in the Act has to be given the meaning as defined under the Act, and a different meaning cannot be given to it. A different meaning can only be given when the subject or context otherwise requires. In my opinion the subject or context does not require giving of a different meaning. As considered above, the object of the explanation appears to be that any service rendered in any University established under an Act of the State Legislature after regular selection shall be taken into account for purposes of seniority and counting years of service. Not only that, even when any service is rendered on ad-hoc basis, even that shall be taken into account. Section 11 is restricted to implementation of the scheme of personal promotion to ex-cadre post of Readers and Professors. The Legislature in its wisdom thought it proper to provide for implementation of such a scheme on the basis of actual service rendered. If such is the object of the Legislature then a different meaning cannot be put to the expression 'University' occurring in the explanation. Thus the first submission of Mr. Mridul to my mind has no force.

11. It is next urged by the learned Counsel for the petitioners that under the rule of seniority as laid down by the Syndicate the petitioners are senior to the non-petitioners and that seniority has been given a go-bye by the Legislature in the explanation. Merit has been ignored and date of joining has been made predominant for the purpose of seniority in counting of years of service. Date of joining is a fortuitous circumstance and any criteria made on the basis of fortuitous circumstance would be arbitrary and would be violative of guarantee of equality enshrined in Articles 14 and 16 of the Constitution and so the criteria adopted in Section 11 is liable to be struck down. Even under Sub-section (5) eligibility list has to be drawn on the basis of continuous 15 years of service reckoned after regular selection based on the date of joining then to that extent even Sub-section (5) would be violative of Articles 14 and 16 of the Constitution. Although under Sub-section (5) those persons are not eligible to be considered who have rendered service in ad-hoc or temporary capacity immediately before regular selection. Clauses (a) and (b) of Sub-section (5) make a provision only for regularly selected Lecturers and Sub-section (5) does not take into consideration any service rendered before regular selection. It appears as already stated that the

explanation widens the scope of the main provision. The main provision does not take into consideration service rendered in ad-hoc or temporary capacity but the explanation does take into account such service. The explanation would be considered to be the part of law as enacted by the State Legislature so the explanation can widen the scope of the main provision.

12. Mr. Mridul tried to support his contention by placing reliance on some case law. I may have advert to the decisions relied upon by him.

13. In *Dr. Amarjit Singh Ahluwalia v. The State of Punjab and Ors.* 1975 (1) SLR 171 the question was whether the appellant was given proper rank in the joint seniority list of officers belonging to the Provincial Civil Medical Service Class I after its reorganisation on 15th July, 1964. There were two cadres which were integrated viz., Provincial Civil Medical Service and Public Health Service both comprised of two classes Class I and Class II and each had its own separate ranking for seniority and channel of promotion. The post of District Medical Officer of Health was a post in Class II of the Public Health service while the post of Assistant Director Health Services was a post in class I of that service. The appellant was in class II of Public Health Service along with one Dr. Jagjeet Singh, who was senior to him. Respondents Nos. 3-19 were also in class II of PCMS before their promotion by order dated April 8, 1964, Some posts in class I of PCMS fell vacant and it was decided to make promotion out of Class-II Officers of PCMS. Therefore, on April 8, 1964 an order was issued promoting respondents Nos. 3 to 19 to Class I. The order was of-course issued on 8-4-1964 but the respondents No. 3 to 19 assumed charge of the higher posts on various dates between 27-4-1964 to 11-5-1964, although the order was to take immediate effect. The appellant was appointed to work on the higher posts of Assistant Director from 25-4-1964 and Dr. Jagjeet Singh was on deputation with the defence Department. The question that arose was that when on the promoted posts respondents No. 3 to 19 assumed charge after 25-4-1964 on which date the appellant was appointed on the post of Assistant Director, which was in Class I of Public Health Service, their seniority could not be above the appellant. Seniority of respondents Nos. 3 to 19 was reckoned from the date of issue of order of appointment viz. 8-4-1964 irrespective of as to when they assumed charge of the higher post. In that case

Clause 2(ii) laid down the test for determining seniority and the test was the length of continuous service from the date of appointment in the group. Bhagwati, J. considered as to what is the date of appointment and it was considered that the date of appointment may be considered in three different ways. It may be from the date when one assumes charge of the post or when the appointment is with immediate effect then the date of order of appointment can be considered to be the date of appointment and the appointment may be appointment simpliciter without saying as to when the appointment shall take effect. In the ruler or the test in Clause 2(ii) the expression 'from the date of appointment' was given the meaning that it will be from the date of order of appointment and length of continuous service was to be reckoned from the date of order of appointment. The appointment to the post in that case was with immediate effect and so on that basis the date of appointment was considered to be from the date of order of appointment and that criteria was there already in the rule for determining seniority in the integrated cadre.

14. The argument has been developed that for seniority in the present case as well, the appointment of the petitioner should be considered from the date of the resolution of the Syndicate and continuous service of the petitioner should be reckoned from that date. The resolution of the Syndicate is dated 14-9-1968. It may be mentioned that on the basis of the exposition made in Dr. Amarjeet Singh's case the argument is not open to be developed. In Clause 2(ii) of the memorandum there was a clear provision as to how length of continuous service is to be reckoned, it was from the date of appointment and the appointment was with immediate effect, such is not the case of the petitioner. 14-9-1964 is the date of resolution accepting the recommendation of the Selection Committee. The appointment follows thereafter. Even after acceptance of the recommendation of the resolution by the Syndicate appointments may be made or may not be made. The appointment letter in fact was issued on September 25, 1968, Anx. 3. The appointment letters in both the cases are similar and they provide that the appointment will be on probation of one year from the date of joining of duty. From the letter of appointment it would be clear that in accordance with Amarjeet Singh's case, it would be the first category of appointment, that is, the appointment with effect from the date the incumbent assumes the charge of the post. So on this

basis Dr. Amarjeet Singh's case does not at all help the petitioners. In the aforesaid case, therefore, it was observed that it is too obvious that so far as respondents Nos. 3 to 19 were concerned, the date of their appointment was 8th April, 1964 and the length of their continuous service in PCMS Class I was required to be reckoned from that date and it was on that basis further observed that it is true that respondents Nos. 3 to 19 did not assume charge of their respective posts of promotion until after 26th April, 1964, but that makes no difference because the length of continuous service is to be counted from the date of appointment on the hypothesis that once the appointment is effective the person concerned is in the post and his service in the post is deemed to have commenced though under the rules governing his conditions of service he may not be entitled to the salary and allowances attached to the post until he assumes charge of the post.

15. The next case relied upon in *Dr. Satyabrata Dutta Choudhary v. State of Assam and Ors.* (1976) 1 SLR 189. In that case the Government had notified instructions dated February 2, 1964 in regard to the seniority of the persons appointed under Regulation 3(e) and 3 (f) of the Regulations. The appointment of the appellants and respondents Nos. 4 to 6 were regularised in one batch after reference to the Public Service Commission by the order dated December 9, 1963 and so their inter-se seniority had to be determined according to the merit list of the Commission. The seniority list was fixed on the recommendation of the Commission. The contention of the appellants was that they joined as Assistant Professors on an earlier date and so they were entitled to rank senior to respondents Nos. 4, 5 and 6 irrespective of the result of the final recruitment through the Service Commission. In view of the instructions issued by the Government, period prior to consultation of the Service Commission was not reckoned for purpose of seniority on the basis of instructions issued by the Government. In that connection it was observed that the appellants and respondents Nos. 4, 5 and 6 were initially appointed Assistant Professors under Regulation 3(e) of the Regulations on an officiating basis to avoid delay, and it was obligatory in terms of that regulation to consult the Service Commission as soon as possible. The appointments were the defeasible, and could not give rise to any legal right in favour of the parties, so it was futile to contend that as the appellants

joined as Assistant Professors on an earlier date and so they were entitled to rank senior, to respondents Nos. 4, 5 and 6. Consultation with the Public Service Commission was a must and officiating appointment was not considered to be a regular appointment and after regular appointment the seniority was fixed on the basis of preferences given by the Commission. The question which arises in the present case are whether such a criteria can be laid down by the legislature for counting of years of service which may take into account the previous service irrespective of regular selection or not. Such a question did not arise for consideration in that case.

16. In *Tejinder Singh Sandhu v. State of Punjab and Ors.* 1978) 2 SLR 115 the appellant took charge of the promoted post earlier to respondents Nos. 2 & 3. The appellant was junior to respondents in Class-III as well as in Class-II services. The respondents were appointed as Joint Directors of Agriculture on the basis of their seniority. It was observed in this case that taking charge on divergent date is a mere fortuitous circumstance. The question that arose for decision in that case was that whether the appellant is entitled to be recorded as senior to respondents No. 2 and 3 by virtue of his continuous officiation in the Class-I post and because he had completed his probation before respondents Nos. 2 and 3 completed. The appellant and respondents Nos. 2 and 3 originally belonged to Class-III services. They were later appointed on direct recruitment of class II Officers in the Agricultural Department of the State with effect from September 24, 1956, July 13, 1956 and May 1, 1956 respectively. In view of the different dates of appointment by direct recruitment, the appellant was junior to respondents Nos. 2 and 3. Subsequently they were promoted to Class II service of the Punjab Government Department. Appellant and respondent No. 3 were promoted to Class I service of the Punjab Government on August 2, 1965. On the date of promotion appellant happened to be working at Chandigarh itself and was able to take charge of his new post immediately after the date of his appointment, viz., August 4, 1965. Respondent No. 3 was serving at Kulu so he could take charge only when he was relieved. He was able to take charge as Dy. Director on August 18, 1965, 14 days after the appellant had taken over the charge of his post. Respondent No. 2 was promoted in 1966 but it was for the reason that he was working on deputation with the Ludhiana Agricultural University, so he could not be promoted until he was

reverted to the State service. As respondents Nos. 2 and 3 could not take charge of the promoted post because of fortuitous circumstance it was held that the dates of taking over charge after the appellant would not affect their seniority. It may be mentioned that the appellant could not have even been promoted on an ad hoc basis as well earlier to respondents Nos. 2 and 3 as admittedly the appellant was junior to them. When promotion itself could not have been effected before his seniors are promoted, then he cannot be allowed to gain seniority over his seniors. On behalf of the appellant reference was made to one memorandum for fixation of seniority but it was held that the memorandum has no application as it refers to temporary officers appointed to the Punjab Agricultural Service Class I and II. There was a Rule 16 which provided that seniority of members of the service shall be determined according to the date of confirmation in the service. There was Rule 16 of the Punjab Agricultural Service Class I Rules, 1947 and under those rules it was held that there cannot be any doubt that the appellant must rank lower in seniority than respondents Nos. 2 and 3. Rule 16 provides that seniority of members of the Service shall be determined according to the date of confirmation in the service and the appellant could not even be confirmed earlier to respondents Nos. 2 and 3. Relying on the observation of fortuitous circumstance by the counsel for the petitioners it is contended that when a criteria is based on any fortuitous circumstance that criteria should not be considered to be valid criteria and should be considered as an arbitrary criteria violative of Articles 14 and 16. Though the authority does not directly deal with the question involved in the present cases, but reliance has been placed on the observations of fortuitous circumstance now has been considered by the Supreme Court.

17. The next case relied upon is a Division Bench decision of this Court in Syed Shamin Ahmed v. The State and Ors. 1981 (1) SLR 100. It is also a case similar to Tejender Singh's case(supra) where as similar observation relating to fortuitous circumstance has been made. That case has been relied on in S.S. Ahmed's case, in which case the appellant joined on January 6, 1965 but in the circular, the emphasis is on the year of passing the competitive examination held by the Commission and not on the date of joining. The appellant was already LDC in the Forest Department and he was relieved from there on January 5, 1965 and he joined as L.D.C. in the Secretariat on the next date of his being relieved from the

Forest Department, Under Rule 23 of the 1956 Rules the Commission has to arrange the names of selected candidates in order of merit on the basis of their suitability for the particular post. There was a specific rule that seniority inter se of the employees appointed from the list prepared by the Commission remains the same as contained in the list and merely because an employee for some reason could not join earlier, it will not affect his seniority contained in the list prepared by the Commission recommending the names of the candidates for appointment. A circular was issued by the State Government on October 8, 1969 but in violation of the circular respondents Nos. 3 to 145 were confirmed earlier, so the orders of the Government confirming the respondents before the appellant in violation of the circular were held liable to be quashed.

18. In *Wing Commander J. Kumar v. Union of India* : [1982]3SCR453 , reliance has been placed on some observations made in para 19. In that case the question was whether the seniority of officers in the R & D Organization should be based on the date of permanent secondment in the Organization. There was a Rule 16 which contains the regulation that in the past also the seniority of service officers permanently seconded to the R & D Organisation was being reckoned on the basis of their dates of attainment of substantive rank of Major/Sqn. Ldr/Lt. Cdr. subject to any penalty/loss of seniority that an officer might suffer subsequently. The appellant's contention was that prior to the coming into force of the impugned rule, he had acquired a vested right to have his seniority in the R & D reckoned with reference to the date of his Permanent Secondment and to have all officers joining the Organization on subsequent dates ranked only below him. This plea was negatived and it was observed that the entry of a service officer into the R & D is to a large extent dependent on fortuitous circumstances related to the exigencies and needs that arise in the Organization from time to time. It is certainly not based on the result of any comparative evaluation of his merit, ability or suitability as against those of his co-officers in the concerned parent service. Such being the factual situation, we are of the view that it will not be reasonable, just or fair to determine the seniority of the permanently seconded service personnel merely on the basis of the date of their secondment to the Organization. The question of constitutionality of Rule 16 being violative of Articles 14 and 16 was also considered and the contention was negatived and it was observed that the

appellant's contention that the secondment to the R & D is based on his 'selection' is incorrect, the basic premise on which the appellant has founded his plea that the date of secondment should be the determinative factor for reckoning seniority in the R & D cadre falls to the ground. In the R & D Organization service officers were taken from different departments. Joining of the R & D Organization was considered a fortuitous circumstance.

19. It may be mentioned that in one of the cases cited by learned Counsel for the petitioners, a rule like the rule contained in Sub-section (5) and the explanation of Section 11 was under consideration. Would it be unconstitutional, if the Legislature takes into consideration the past services rendered in a University or in an Institution run by the State Government after regular selection or before regular selection? The Legislature enacted a provision under Section 11 to improve the lot of the stagnant deserving teachers who have put in sufficient number of years of service for giving personal promotion. The Legislature adopted the criteria of number of years of service and provided how the number of years of service is to be counted. The number of years of service before regular selection or after regular selection has been made the basis for drawing up of the eligibility list and showing seniority therein on the basis of continuous number of years in service. If merit has been ignored by the Legislature for the purpose of consideration of seniority, can it be said that it is violative of Articles 14 and 16? It is true that date of joining may be fortuitous circumstance. For geographic reason or other reasons, some of the persons on regular selection may immediately join and others may not join on the same date and may join later on, although they may rank in the selection list above the candidates who joined earlier. If such a criteria would have been adopted, then candidates who have actually put in service on an ad hoc or temporary basis would not have been taken into consideration at all and only the regularly selected candidates could be taken into consideration but the Legislature intended to take into consideration the service of such Lecturers as well, who had rendered service in an ad hoc or temporary capacity. If a provision was to be made for them, then the service rendered by them would have to be taken into consideration and continuous service would be reckoned from the date they joined in whatever capacity. Two different rules could not have been enacted and only one provision has been made to be applicable uniformly to all and that uniform rule

could only be the total period of service rendered in whatever capacity and if the total period of service is made the basis, then in that situation, date of joining necessarily assumes significance and from the point of view if as a result of regular selection some who joined earlier and who rendered more service as compared to those who joined later then their earlier service can be taken into account. The general rule of seniority can be on the basis of actual service, at least for giving personal promotion.

20. In *Baleshwar Dass v. State of U.P.* 1980 (3) SLR 422 reference was made to the case of *N.K. Chauhan v. State of Gujrat* : [1977]1SCR1037 in which the Supreme Court observed that seniority, normally, is measured by length of continuous officiating service the actual is easily accepted as the legal. It was further observed that an appointee to a permanent post acquires certain rights which one who fills a temporary post cannot claim. Nevertheless, when the post is not purely temporary or ad hoc or of short duration or of an adventitious nature, the holder of such temporary post cannot be degraded to the position of one who by accident of circumstances or for a fugitive tenure occupies the temporary post for a fleeting term. We must make this distinction not only to be truthful to the facts of service life but also to do justice to those who have otherwise rendered long and satisfactory work in the Irrigation Department.

21. In *O.P. Doval and Ors. v. Chief Secretary, Government of U.P.* AIR 1984 (4) SC 329, the question was of seniority and promotion and there was a rule of continuous officiation after temporary appointments subsequent approval by the PSC was obtained. It was observed that it would relate back to the dates of initial appointments for the purpose of reckoning seniority on the basis of the general rule of continuous officiation in absence of any particular rule framed in that regard. In that the case the seniority was fixed on the basis of date of approval/selection by the PSC resulting in supersession of earlier appointees by their juniors, it was held that it was violative of Article 14 and 16, so the seniority list was quashed and fresh list was ordered to be made.

22. In para 15, the question considered was from what date the service is to be reckoned It was urged that any appointment of stop gap nature or pending the

selection by the Public Service Commission cannot be taken into account for reckoning seniority. In other words it was urged that to be in the cadre and to enjoy place in the seniority list, the service rendered in a substantive capacity can alone be taken into consideration. This contention was not accepted and it was observed that:

We find it difficult to accept this bald and wide submission. Each case will depend upon its facts and circumstances, If a stop gap appointment is made and the appointee appears before the Public Service Commission when the latter proceeds to select the candidates and is selected, we see no justification for ignoring his past service. At any rate, there is no justification for two persons selected in the same manner being differently treated

23. It was further observed that in fact a fair rule of seniority should ordinarily take into account the past service if the stop gap arrangement is followed by confirmation and this view was based on the observations made by the Supreme Court in Baleshwar Dass's case (supra).

24. If the matter is examined in the light of the observations made in the aforesaid two cases, then it cannot be said that it was illegal or unconstitutional to take into consideration the past service rendered before regular selection if subsequently the candidates have been regularly selected and on that basis if service rendered after regular selection is also taken into consideration, then that can also be made the legitimate basis for counting seniority and number of years of service. It may be noted that there is no clear rule to that effect in Section 11. When a criteria based service rendered is adopted for the purpose of effecting personal promotion, in my opinion, such a rule is not open to attack on the ground of violation of guarantee of equality. I, therefore, hold that the criteria laid down in Sub-section (5) and the explanation appended thereto is valid and constitutional and is not violative of Articles 14 and 16 of the Constitution.

25. It may be stated that seniority alone is not the criteria, seniority-cum-merit is the criteria and each individual's performance would be taken into account by the Committee constituted for the purpose. Sub-section (8) to Section 11 makes it clear that suitability has to be tested and adjudged by the Committee. If the

candidates are found suitable by the Committee and if ranking is made according to the rule provided in Sub-section (5) and the explanation then such persons would be given the benefit of personal promotion under Section 11. Looking to the object of Section 11, in my opinion the attack on the aforesaid provision is unfounded. No other point has been urged before me.

26. In the result these writ petitions have no force and so they are hereby dismissed.

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