

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6104/1997@@
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Harihar Prasad & Ors. ..Appellants

Vs.

State of U.P. & Ors. ..Respondents

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.SP2

This appeal is directed against the judgment of the Allahabad High Court dismissing the Writ Petition filed by five appellants before us, who were recruited as Assistant Public Prosecutor on the basis of a competitive examination held by the Public Service Commission. Subsequent to the Criminal Procedure Code, 1973 came into force conferring power on the State Government to appoint Assistant Public Prosecutor in different Courts of Magistrates under section 25 of the said Code, it appears that the Government of Uttar Pradesh framed a set of rules called the Uttar Pradesh Appointment of Assistant Public Prosecutor Rules, 1974 (hereinafter referred to as the 1974 Rules). Under the said rules, rule 4 provided that any future appointment to the post of Assistant Public Prosecutor Senior Grade, Assistant Public Prosecutor etc. has to be made by the State Government in accordance with such rules or General Orders as the State Government may, from time to time, make in that behalf. There does not appear to be any such rule until 1991. The Government, however, has been appointing Assistant Public Prosecutor on ad-hoc basis. The respondents are such ad-hoc appointees, who are appointed as Assistant Public Prosecutor on ad-hoc basis subsequent to 1st of January, 1977. In the year 1979, a rule was framed for regularisation of ad-hoc appointments in respect of ad-hoc appointments in the State of Uttar Pradesh, which may be called the Regularisation Rules 1979. The said Regularisation Rule undoubtedly applies to the regularisation of the Assistant Public Prosecutors, who were appointed on ad-hoc basis. Rule 4(1) of 1979 Regularisation Rules contemplated regularisation of those ad-hoc appointees, who had the requisite qualifications, and who had completed three years of continuous service on the date of coming into force of the rules a right of being considered for regular appointment in permanent or temporary vacancy, as the case may be. The

present respondents admittedly were not covered by the aforesaid Regularisation Rules 1979. The aforesaid rules 1979 did contain a rule of seniority, which is rule 7. The said rule may be quoted hereinafter in extenso.

"Seniority: 7(1) A person appointed under these rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with these rules and shall in all cases, be placed below the persons appointed in accordance with the relevant service rules, or as the case may be, the regular prescribed procedure; prior to the appointment of such person under these rules.

(2) If two or more persons are appointed together, their seniority inter se shall be determined in the order mentioned in the order of appointment."

Rule 8 of the aforesaid Regularisation Rules further indicated that the services of ad-hoc appointees, who are found unsuitable on their suitability being tested, and who are not covered by the sub-rule (1) of Rule 4 or who are not covered by sub-rule (1) of Rule 4, their services should be terminated forthwith, and on such termination the appointees will be entitled to receive one month's pay. The present respondents not being covered under sub-rule(1) of Rule 4, their services ought to have been terminated in accordance with said rule 8. Be that as it may, the respondents were continuing on ad-hoc basis. The Government of Uttar Pradesh framed yet another set of rules called the Regularisation of Ad-hoc Appointments(Amendment) Rules of 1984. Under the amendment rules, a rule 9 to the main rule was added, and by virtue of the aforesaid amendment rule, person appointed on ad-hoc basis before May 1, 1983 and continuing in service as such on the date of the main rules came into force were entitled to be considered for regularisation. It is because of these rules, the respondents became eligible for being considered for regularisation. On 27.1.1982 the State Government sent a requisition to the Public Service Commission for appointment of 460 Assistant Public Prosecutors through a competitive examination. Be it be stated that Government at that stage was trying to make rules for appointment of the Assistant Public Prosecutors, and was in consultation with the Public Service Commission, but before finalisation of the said rules, which, in fact, was finalised in the year 1991, Government took a decision that all appointments to the post of Assistant Public Prosecutors would be made through a competitive examination by the Public Service Commission. Pursuant to the said advertisement, the present appellants appeared at the competitive examination and the written examination was held on 20th January, 1984, and they got appointed between 28.12.1984 to 5.2.1985. It may be stated that though there has been regularisation for 460 posts initially by the Government, the Government had sent a further intimation to the Public Service Commission on 16.1.1984 that they, in fact, want 253 posts, but notwithstanding the same, the Public Service Commission made a list of entire 460 posts. The present appellants while they were appointed by the State Government in the first lot of 257 posts of Assistant Public Prosecutor, it was stated therein that their appointments would be subject to any decision taken by the several Writ Petitions pending in the High Court. It is appropriate to notice at this stage that when advertisement was issued on 17.4.1982 for filling up of 460 posts of APO through competitive examination, the ad-hoc appointees filed a Writ Petition, and the Court therein passed some interim orders indicating that the process of selection may go on, but the services of ad-hoc appointees will not be terminated on the

ground of selection made through the competitive examination. Subsequently as the State Government did not appoint other selected candidates to the post of APO, some of them filed a Writ Petition praying that the State Government be directed to appoint all the candidates recommended by the Public Service Commission. In that Writ Petition, an interim order was passed on 15.4.1985 to the effect that the Government is restrained from making appointment from amongst the candidates (obviously referring to the ad-hoc appointees) whose names find place in the list made by the Public Service Commission by means of ad-hoc or regular appointments. It is because of this order, these respondents could not be regularised, though the selection committee adjudged their suitability and sent a list selecting them for being appointed on regular basis on 17.4.1985 after the vacation of the stay order the State Government appointed the ad-hoc appointees on regular basis with effect from 15.3.1994. Having appointed them on regular basis as the State Government thought that gross injustice is being perpetuated for determining the matter of seniority and the regularisation was delayed because of the interim order passed by the Court, a committee was constituted to indicate the principles of seniority vis-a-vis the persons directly recruited on the basis of competitive examination held by the Public Service Commission, and the persons, who were initially appointed on ad-hoc basis and whose services stood regularised under the Regularisation Rules. The said committee evolved a formula after due consideration, which is extracted below:

" (1) The Committee of Appointment of Regularised Adhoc Prosecution Officers shall be 22.3.84, the date on which the rules for regularisation were passed by the Government.

(2) The selected prosecution officers appointed in 1985 and 1991 on the basis of examination conducted by Public Service Commission in 1982 and 1987 shall be considered to be appointed from the date of their appointment and in seniority list, they shall be placed after the appointments made in 1977-78, on adhoc basis and regularised on 22.3.84."

The aforesaid principles were assailed by filing a Writ Petition attacking the principles in question for inter-se-seniority. The High Court on consideration having found the principles to be in accordance with rules and no injustice having committed and appropriate equities having worked out did not interfere with those principles evolved and hence the present appeal. Apart from the aforesaid rules mentioned above, it would also be necessary to examine the provisions contained in Uttar Pradesh Prosecuting Officer Service Rules, 1991 dealing with the recruitment and conditions of service of these prosecuting officers including Assistant Public Prosecutor and Uttar Pradesh Government Servants Seniority Rules, 1991 dealing with seniority of all the Government servants.

Mr. P.P. Rao, the learned senior counsel appearing for the appellants contended that the seniority of ad-hoc appointees like the respondents, whose services stood regularised under the Regularisation Rules has to be determined under Rule 7 of the Regularisation Rules of 1979, and necessarily therefore so far as the respondents are concerned, their services from 15.3.1994 would count for their seniority in the cadre. In that view of the matter, the two principles evolved by the committee cannot be sustained in law. He further contended that once by set of statutory rules dealing with the question of seniority of these ad-hoc appointees, whose services stood regularised, it would not be

permissible for the State Government to get the seniority adjudged by a set of administrative instructions or orders on the basis of a report of an expert committee, and High Court therefore was in error in upholding the principles evolved by the committee for the determination of the seniority as per the Office Memorandum dated 7.7.1994. Mr. Dwivedi, the learned senior counsel for the State of U.P. and Mr. P.N. Mishra, the learned senior counsel appearing for the respondents, whose services stood regularised under the Regularisation Rules, on the other hand, contended that in view of the amended regularisation rules, their services could have been regularised on being selected by the selection committee, and therefore the order in their favour in 1994 was the consequence of the interim order passed by the High Court. In such interim orders their right to be appointed on regular basis once they have been selected by a selection committee under the Regularisation Rules should not be taken away. According to them in the special contingencies, which had occurred in the case in hand, Government had no other option than to evolve an equitable principle for determining of inter-se-seniority between the direct recruits recruited through the competitive examination held by the Public Service Commission, and the ad-hoc appointees, who were regularised under the provisions of the Regularisation Rules, and that principle having been evolved by a duly appointed committee, which committee took into account all the relevant and germane factors, the principle evolved therein cannot be faulted with, and High Court therefore was wholly justified in upholding the said two principles, and the impugned order does not require any interference by this Court under Article 136 of the Constitution.

In view of the rival submissions at the Bar, the question for consideration is whether in view of the rule 7 of the Regularisation Rules 1979, which indicates the principle for determination of seniority could be altered by Office Memorandum on the basis of a committee being constituted, and on their recommendation. It is too well settled that a rule framed under proviso to Article 309 cannot be altered or modified by an administrative instruction. The Regularisation Rule of 1979 has been framed in exercise of power conferred under the proviso to Article 309 of the Constitution. Rule 7 thereof unequivocally indicates that a person appointed under these rules shall be entitled to seniority only from the date of the order of appointment after selection in accordance with the rules and shall in all cases, be placed below the persons appointed in accordance with the relevant service rules, or as the case may be. By virtue of the amended rules of 1984 and insertion of rule 9 to the main rule of amendment, the ad-hoc appointees before May 1, 1983 could be entitled to be considered for their regularisation, but so far as their seniority in the cadre is concerned, rule 7 will equally apply. In this view of the matter on a literal construction to the rule 7 being given, the ad-hoc appointees like the respondents could be given their seniority with effect from the date of the order in their favour, which is dated 15th March, 1994. But while construing the provisions one cannot lose sight of the consequences that had emanated on account of several interim orders passed by the Court, which prevented the State Government from making orders of appointment on regular basis in favour of these respondents, who were selected by the selection committee and the recommendation was of the committee on 17.4.1985. The two other rules, namely, U.P. Prosecuting Officers Service Rule of 1991, which deals with the appointment and all service conditions of the prosecuting officers in the State of U.P. and rule 22 thereof deals with the seniority stipulates that the

seniority has to be determined in accordance the U.P. Government Servant Seniority Rule 1991. The seniority rule of 1991 more particularly rule 5,6,7 and 8 thereof will have no application to the case in hand inasmuch as there is no provision therein to deal with the question of seniority of the ad-hoc appointees, whose services stood regualrised under the pr

Item No.101(P.H.)

COURT No. 3

SEC.XI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

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Harihar Prasad & Ors.

Appellant (s)

VERSUS

State of U.P. & Ors.

Respondent(s)

(With appln.for directions and O.R.)

Date : 22.11.2001 This appeal was called on for hearing today.@@
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CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIAK
HON'BLE MRS JUSTICE RUMA PAL

For Appellant (s)

For Respondent (s)

UPON hearing counsel the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....J.
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.SP1

(Y.P.Dhamija)
Court Master

(Suneet Bala Sharma)
Court Master

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