

Neutral Citation No. - 2024: AHC-LKO:9818-DB

Court No. - 1

Case :- WRIT - A No. - 4931 of 2019

Petitioner :- Saheem Ahmad Khan And Anr.

Respondent :- State Of U.P. Thru. Prin. Secy. Panchayati Raj Section 2 Andor

Counsel for Petitioner :- Shambhoo Sharan Lal Sriva, Anand Mani Tripathi, Shishir Chandra

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Brij Raj Singh,J.

1. Heard Shri Anand Mani Tripathi, learned counsel for the Petitioners and learned Additional Chief Standing Counsel for the State-respondent nos.1 and 4.
2. None has appeared on behalf of respondent nos. 2 and 3 in spite of service.
3. By way of this writ petition, the petitioners have sought for the following reliefs:

“(i) issue a writ, order or direction in the nature of certiorari thereby set aside the judgment and order dated 20.11.2018 passed by learned State Public Services Tribunal, Indira Bhawan Lucknow in Claim Petition No.1540 of 2013 (Saheem Ahmad Khan and another vs. State of U.P. and others) as contained in Annexure No.1 to this writ petition ;

(ii) issue a writ, order or direction in the nature of certiorari thereby quashing the impugned office memo dated 31.10.2012 indicating therein as Annexure no.1 to the Claim Petition issued by the State Government in so far as it relates to rejection of representation/objection submitted by the Petitioners against the tentative seniority list and the opposite party no.1 may be directed to place the name of the Petitioners in the final seniority list in the same seriatim in which their names are placed in regularisation order dated 27.07.2006 issued by the State Government amongst the

Junior Engineers regularised vide order dated 27.07.2006 with all consequential benefits.

(iii) issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioners in the interest of justice ;

(iv) allow the writ petition in favour of the petitioners.”

4. As per the pleadings available on record, it emerges that the petitioners were appointed on ad-hoc basis on 26.05.1995. Thereafter, their services were regularised vide letter dated 27.7.2006 in conformity with the provisions of Uttar Pradesh Zila Panchayat Regularisation of Ad-hoc Appointments (on the posts within the purview of U.P. Public Service Commission) Rules, 1979 (hereinafter referred to as “Rules, 1979”). The regularisation order indicates that 70 Junior Engineers were regularised on 27.07.2006 in which the name of the petitioner No.1 finds place at Serial No.30 and Petitioner no.2 is at serial no.33 whereas name of respondent no.2 finds place at serial no.41 and respondent no.3 at serial no.69 respectively. The competent authority issued provisional seniority list on 17.05.2012 inviting objections from the employees in which the Petitioner No.1 was placed at Serial No.232 and Petitioner no.2 was placed at Serial No.237 whereas respondent nos.2 and 3 were placed at Serial Nos.178 and 181 respectively.

5. The petitioners filed their objections on 23.05.2012 against the tentative seniority list which was decided by the competent authority, vide letter dated 31.10.2012 which was challenged by the petitioners before the U.P. Public Services Tribunal (in short ‘Tribunal’). The Tribunal after affording opportunity to the concerned parties dismissed the claim

petition filed by the petitioners against which the present writ petition has been filed.

6. It has been submitted by learned counsel for the petitioners that in the regularisation order dated 27.07.2006, the names of petitioner nos. 1 and 2 find place at Serial No.30, 32 respectively whereas respondent nos. 2 and 3 were standing at Serial No.41 and 69 respectively but the competent authority has erroneously placed the petitioners at Serial Nos.232 and 237 by fixing the seniority of respondent nos.2 and 3 at Serial Nos. 178 and 181 respectively. Learned counsel for the Petitioners has relied upon Sub-Rule 2 of Rule 7 of Rules, 1979 and has submitted that the petitioners' seniority has been disturbed in violation of the above mentioned Rules.

7. Learned counsel for the petitioners has placed reliance on U.P. Zila Panchayats (Central Transferable Cadre) Rules, 1966 (in short 'Rules, 1966') ; Rules, 1979 (supra) and The Uttar Pradesh Government Servants Seniority Rules, 1991 (hereinafter referred to as 'Rules, 1991'). The relevant provisions of Rules, 1966 pertaining to the present issue is quoted below :

(i) Rule 21 of Rules, 1966 in which the issue of seniority as postulated is quoted below :

“21. Seniority.-The seniority of persons substantively appointed in the cadre shall be determined in accordance with Uttar Pradesh Government Servant's Seniority rule, 1991, as amended from time to time.”

(ii) Rules 4 to 7 of Rules 1979, are relevant for said purpose read as under :

“4. Regularisation of ad hoc appointments : (1) any person who-

(i) was directly appointed on ad-hoc basis before January 1, 1977 and is continuing in service as such on the date of commencement of these rules;

(ii) possessed requisite qualifications prescribed 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 regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or order.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward classes and other categories shall be made in accordance with the order of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule' (1) the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary.

(4) The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority, as determined from the date of order of appointment 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 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 the selected candidates, the names in the list being arranged in order of seniority and forward it to the appointing authority.

5. Appointments:- The appointing authority shall, subject to the provisions of sub-rule (2) of rule 4, make appointments from the list prepared under sub-rule (6) of the said rule in the order in which their names stand in the list.

6. Appointments be deemed to be under the relevant service rules etc.:- Appointments made under these rules shall be

deemed to be under the relevant service rules, or orders, if any.

7. Seniority-(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 persons 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.”

(iii) Rule 9 of Rules, 1991 reads as under :

“9. Preparation of seniority.--(1). As soon as may be after appointments are made to a service, the appointing authority shall prepare a tentative seniority list of the persons appointed substantively to the service in accordance with the provisions of these rules.

(2). The tentative seniority list shall be calculated amongst the persons concerned inviting objections, by a notice of reasonable period, which shall not be less than seven days from the date of circulation of the tentative seniority list.

(3). No objections against the vires or validity of these rules shall be entertainable.

(4). The appointing authority shall, after disposing off the objection by a reasoned order, issue a final seniority list.

(5). It shall not be necessary to prepare a seniority list of the cadre to which appointments are made only by promotion from a single feeding cadre.”

8. On the other hand, learned Additional Chief Standing Counsel for the respondents has taken a categorical stand that while the services of the ad-hoc employees were regularised by the order dated 27.07.2006, wherein, it was provided that *inter se* seniority between the candidates would be determined later on, therefore, the tentative seniority list was issued and the objections of the aggrieved employees on being received were considered by the competent authority. The final seniority list was issued on 31.10.2012 in conformity to Rules, 1991.

The Selection Committee constituted for regularisation of *ad-hoc* Junior Engineers prepared separate list of Junior Engineers belonging to General Category, Other backward Class and Scheduled Caste under Rule 7 read with Rule 4 of Rules, 1979 as amended from time to time which provides that *inter se* seniority of employees belonging to General category, Other Backward Castes and Scheduled Caste category has to be determined according to the seriatim in consequence thereof the selection committee had placed the respondent nos. 2 and 3 at Serial No.1 in their respective category on the basis of seniority.

9. It is vehemently submitted by Additional Chief Standing Counsel that in the list prepared by the Selection Committee, it is clear that the respondent no. 2 Kamlesh Kumar was appointed on the post of Junior Engineer vide letter dated 06.02.1989 on *ad-hoc* and has been placed at Serial No.1 in the Scheduled Caste category. Similarly, respondent no. 3 Laxmikant Yadav who was also appointed on *ad-hoc* basis on 06.06.1987 was also placed at Serial No.1 in the list of Other Backward Class candidates. The regularisation order provides that *inter se* seniority of the candidates will be determined by a separate order. The Additional Chief Standing Counsel has further submitted that the competent authority while deciding the objection of the petitioners have considered relevant Rules and accordingly, rejected the objections filed by the petitioners. The relevant portion of the objection decided by the competent authority in the impugned order dated 31.10.2012 reads as under :-

"श्री प्रद्युम्न कुमार त्रिपाठी एवं श्री सहीम खॉ, अवर अभियंतागण, जिला पंचायत, सीतापुर द्वारा आपत्ति प्रस्तुत करते हुए उल्लिखित किया गया है कि शासन द्वारा उक्त ज्येष्ठता सूची के साथ इंगित की गयी नियुक्ति की तिथि के सापेक्ष यह माना गया है कि विनियमितीकरण की तिथि ज्येष्ठता का आधार है, जैसा कि सरकारी सेवक ज्येष्ठता नियमावली, 1991 के भाग-3, नियम-9 (1) में स्पष्ट है कि जब तदर्थ नियुक्ति की गयी हो, तो संगत विनियमितीकरण नियमावली अथवा संगत नियमावली के अधीन तदर्थ सेवकों को नियमित नियुक्ति की तिथि से ज्येष्ठता निर्धारित की जायेगी। यदि एक ही तिथि को कई सेवकों का विनियमितीकरण हुआ है, तो नियमित नियुक्ति के आदेश में जिस क्रम में उनके नाम अवस्थित हो, उसी क्रम में उनकी ज्येष्ठता निर्धारित की जायेगी। विनियमितीकरण के उपरांत शासन के आदेश दिनांक 27.7.06 द्वारा जो विनियमितीकरण का आदेश जारी किया गया है उसमें 70 अवर अभियंताओं का विनियमितीकरण एक ही तिथि में हुआ है, जिसमें प्रार्थी क्रमांक-33 पर अंकित है, परंतु अनंतिम ज्येष्ठता सूची में क्रमांक-175 से लेकर क्रमांक-244 तक के नियुक्त अभ्यर्थी जिनकी नियुक्ति दिनांक 27.7.06 दर्शायी गयी है, में प्रार्थी को 62 वें नम्बर (क्रमांक -237) पर दर्शाया गया है। विनियमितीकरण आदेश दिनांक 27.7.06 में श्री लक्ष्मीकान्त यादव को क्रमांक-41 तथा श्री कमलेश कुमार को क्रमांक-69 पर दर्शाया गया है, जबकि जारी अनंतिम ज्येष्ठता सूची में इनको क्रमशः 4 थे स्थान (क्रमांक -178) व 7 वें स्थान (क्रमांक -181) पर दर्शाया गया है। इस संबंध में उ०प्र० सरकारी सेवक ज्येष्ठता नियमावली, 1991 के भाग-3 के नियम-9 (1) के प्राविधानों की अनदेखी की गयी है। अतः उ०प्र० सरकारी सेवक ज्येष्ठता नियमावली, 1991 के भाग-3 के नियम-9 (1) में दिये गये प्राविधानों के तहत विनियमितीकरण आदेश दिनांक 27.7.06 में इंगित क्रम में ही ज्येष्ठता का निर्धारण किया जाना न्यायोचित बताया गया है।

उ०प्र० सरकारी सेवक ज्येष्ठता नियमावली, 1991 के भाग-3 के नियम-9 (1) में ऐसा कोई प्राविधान नहीं है कि जैसा कि श्री प्रद्युम्न कुमार त्रिपाठी एवं श्री सहीम खॉ, अवर अभियंतागण द्वारा उल्लिखित किया गया है। उ०प्र० जिला पंचायत (लोक सेवा आयोग के क्षेत्रान्तर्गत पदों पर) विनियमितीकरण नियमावली, 1979 (यथा संशोधित) के नियम-7 सपठित नियम-4 के अंतर्गत जिला पंचायतों में तदर्थ रूप से नियुक्त अवर अभियंताओं का विनियमितीकरण किये जाने हेतु गठित चयन समिति द्वारा सामान्य श्रेणी, अन्य पिछड़ा वर्ग एवं अनुसूचित जाति के अवर अभियंताओं के विनियमितीकरण हेतु पृथक-पृथक सूची संस्तुत की गयी है। उक्त

विनियमितीकरण नियमावली, 1979 (यथासंशोधित) के निमम-7 सपठित नियम-4 के अंतर्गत एक श्रेणी के अवर अभियंताओं की ज्येष्ठता विनियमितीकरण समिति की संस्तुति के क्रम में और तीनों श्रेणियों (सामान्य, अन्य पिछड़ा वर्ग एवं अनुसूचित जाति) की परस्पर ज्येष्ठता उस क्रम में निर्धारित की गयी है जिस क्रम में उक्त तदर्थ अवर अभियंताओं का विनियमितीकरण किये जाने हेतु चयन समिति द्वारा विचार किया गया है। अतः श्री प्रद्युम्न कुमार त्रिपाठी एवं श्री सहीम अहमद खॉं, अवर अभियंतागण की आपत्ति स्वीकार योग्य नहीं है। "

10. After considering the rival contentions raised by learned counsel for the parties and pleadings available on record, it is apparent that while placing the employees in the final seniority list the *inter se* seniority was determined as per the select list of ad-hoc appointment. Respondent no.3 Shri Laxmikant Yadav, who was appointed on ad-hoc basis on 06.06.1987 in the Other backward category and respondent no. 2 Kamlesh Kumar who was also appointed on 06.02.1989 in Scheduled Caste category are senior to the petitioners, who were initially appointed on 26.06.1995. The regularisation order of the petitioners as well as respondent nos. 2 and 3 have been issued by order dated 27.07.2006 which mentions that a separate *inter se* seniority list would be issued later on. The authority considered objection of the petitioners as well as respondent nos.2 and 3 by relying Rules, 1991 and 1979 wherein no infirmity is detected.

11. A conjoint reading of Rules 1966 ; Rules 1979 as well as Rules, 1991 if considered together, the issue in hand is crystal clear that respondent nos. 2 and 3 are senior to petitioners and a tentative seniority list was issued under Rules, 1991 in which it is mentioned that a separate *inter se* seniority list would be issued later on, which indicates that final seniority has been

issued after considering *inter se* seniority. Presently, it is an admitted case of the petitioners that they were appointed on *ad-hoc* basis in the year 26.05.1995 whereas respondent nos.2 and 3 were appointed on *ad-hoc* basis on 06.02.1989 and 06.06.1987 respectively. It is, thus, clear that the seniority has been fixed as per Rules, 1991 read with Rules 4 and 7 of Rules, 1979. There is no violation of any legal provision while the seniority list was prepared.

12. Thus, the finding recorded by the Tribunal does not suffer from any perversity or illegality. The writ petition is devoid of merits and is accordingly, **dismissed**.

(Brij Raj Singh, J.) (Attau Rahman Masoodi, J.)

Order Date :- 25.01.2024

Pks