

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1098 OF 2008

1. Union of India
Through Secretary Railway Board,
Railway Board, Ministry of Railway,
Rail Bhavan, New Delhi.
2. General Manger,
Central Railway,
Head Quarter Office,
Mumbai CST,
Mumbai 400 001.

..Petitioners.

vs.

Ramesh Kumar Mishra,
Assistant Engineer (Horticulture),
Mumbai Division,
Central Railway, Mumbai.

..Respondent.

Mr. Suresh Kumar with Ms. Sangeeta Yadav for the Petitioners.
Mr. G.S.Walia for the Respondent.

CORAM : ANOOP V. MOHTA &
A.S. GADKARI, JJ.
DATE : 16th November, 2016

ORAL JUDGMENT: (Per ANOOP V. MOHTA, J.)

The petitioners have challenged order dated 3.8.2007 passed by the Central Administrative Tribunal, Mumbai (CAT) whereby the respondent's original application has been allowed thereby quashed and set aside order dated 11.12.2003 and directed the petitioner (respondent) to count his period of services rendered on an ad-hoc basis towards the seniority of Divisional Engineer (Horticulture).

The learned Tribunal has passed the operative order as under:

“14. In this backdrop, we quash and set aside the impugned order dated 11.12.2003 and direct the responders to treat the period of ad hoc service as regular towards eligibility for promotion to senior scale and accordingly his date of promotion to Senior Scale will be antedated and treated as 01.11.1996 instead of 3.9.2002 with all consequential benefits.

15. The O.A. stands allowed in terms of prayer clause 8(a) and (c). No order as to costs.”

2. Heard the learned counsel for the parties and read and refer the Judgment of the Supreme Court in Direct Recruitment Class II Engineering Officers' Association vs. State of Maharashtra 1990(2) SCC 715.

3. The learned counsel for the petitioner submitted that the respondent was appointed as Horticulture Inspector in Grade Rs.250-380 (AS) on 9.11.1972 through direct recruitment by the Railway Recruitment board and posted in Mumbai CST. The respondent was put to officiate in grade Rs.700-900 as Horticulture Inspector on 21.7.1978.

Notification was issued by the petitioners dated 5.12.1997 calling application from eligible candidates having educational qualification as stated therein for selection for the post of AEN (Horticulture). There was no response to the said advertisement.

The Railway Board was requested vide this Railway's letter dated 14.1.1998 to relax the prescribed qualification conditions.

4. Accordingly a notification with the approval of CE/CPO was issued and selection was conducted for which only the respondent was found eligible to appear for written test. The respondent qualified in both written and viva versa. As a result of the selection, the constituted selection board on 30.7.2002 recommended the name of the respondent and he was placed on the panel for promotion to ex-cadre Group "B" post (ex cadre post of AEN/horticulture) and an order was issued clearly stating that the incumbent of the ex cadre post AEN/Hort. would not be eligible for promotion to Group "A"/Jr. scale of IRSE and he would have to get selected to the regular Grup "B" post of AEN as per provision of statutory recruitment for the post of Group "B" post of AEN for further promoton to Group "A"/IRSE. (letter No. E(GP) 82/2/92 dated 23.8.2001).

5. The respondent has made a representation dated 11.3.2003 and 18.8.2003 to the petitioner which was replied vide letter dated 11.12.2003. There was no positive order passed.

The respondent had filed Original Application NO.518 of 2004 before the Hon'ble Tribunal challenging the impugned letter dated 11.12.2003.

6. There is no serious issue that the initial appointment of the respondent was made by following the procedure laid down by the rules by inviting application after due advertisement and as no one else qualified and available

ultimately the petitioner though appointed on ad-hoc basis but continued his service uninterruptedly till the regularization of the services in accordance with the rules. There is no serious issue that the respondent has been working on the post being qualified and eligible though appointed on ad-hoc basis. The fact that he has been working on the post, continuously till the date of the decision, not to have been over looked while considering the future benefits including the promotion, if any. Merely because he was appointed on the ad-hoc basis the period of officiating service from the date of appointment till regularization in our view ought not to have been dis-carded. There is no dispute that once the appointment is made as per the rules, all the relevant benefits including the seniority has to be counted from the date of joining the service and not only from the date of the confirmation unless it is provided in the rules or regulations.

7. The submissions so made by the learned counsel appearing for the petitioners challenging impugned order referring to office order dated 1.11.1993 and/or rules related regulations provided in manual and communication dated 5.12.1997 with regard to selection for the post of AEN Horticulture including the communication dated 23.8.2001 whereby the condition of eligibility was prescribed in no way are of any basis to interfere with the reasoned order passed by the learned Tribunal. There is no specific provision read or pointed out to show that the appointment so made by the respondent was by not following the due procedure. The uninterrupted continuity of service further support the case that he was qualified and working on the post that eventually lead

into regularizing his post. The impugned order of setting aside the action of the petitioners is well within the frame of law and record.

8. The relevant extract of the Judgment so cited by the learned counsel appearing for the parties specifically Para 47 Clause (A) and (B) Direct recruitment Class II (supra) are reproduced as under.

A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.”

9. This Judgment though on different facts but still supports the case of the respondent and even in view of the observations supports the impugned order so passed as we have already noted that the initial appointment so made was by following due process of law and the respondent was appointed and allowed to work till the regularization of his service. The Supreme Court has also considered the similar

contentions so raised by the counsel for the parties in the present case by observing Clause (A) & (B) of Para 47 of the Judgment as reproduced. We are inclined to observe that this Judgment covers the case of the respondent specifically in view of the observations as made in Clause 47(B) as reproduced herein above.

10. Therefore, taking over all view of the matter in the present facts and in view of the observations so made by the Hon'ble Supreme Court directly apply the position of law (cited supra) to the present matter. As far as position of law is concerned as the respondent's case falls within the ambit of clause (B) we see no reason to disturb the findings so given by the learned Tribunal. Even otherwise the respondent has been working uninterruptedly and as appointed by following due process of law cannot be denied all the benefits in accordance with law, by taking into consideration the period of officiating services.

11. After hearing the learned counsel appearing for the respective parties and considering the rival contentions we are inclined to dismiss the present petition as there is no case made out of perversity or illegality which goes to the root of the matter which requires High Court's interference in writ jurisdiction.

12. Petition is therefore, dismissed. No costs.

(A.S.GADKARI, J.)

(ANOOP V. MOHTA,J.)