

SANTOSH KUMAR AND ORS.

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v.

G.R. CHAWLA AND ORS.

SEPTEMBER 10, 2003

[M.B. SHAH AND DR. AR. LAKSHMANAN, JJ.]

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Service Law :

U.P. Regularisation of Ad hoc Appointments (for posts within the purview of the PSC) Rules, 1979: Rules 4 and 7.

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Inspector of Drugs—Direct recruit Inspectors and regularised Inspectors—Inter-se seniority between—Public Service Commission sent recommendations to State Government giving a list of candidates including ad hoc drug inspectors—However, direct recruits appointed prior to regularisation of ad hoc Drug Inspectors—Held: The ad hoc drug inspectors who were regularised subsequent to the appointment of direct recruits are not entitled to claim seniority over direct recruits on the basis of continuous officiation—U.P. Inspector of Drugs (Services) Rules, 1980.

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The appellants were temporarily appointed as Inspectors of Drugs on *ad hoc* basis purely on stopgap arrangements. Subsequently, an advertisement for direct recruitment for the post of Inspector of Drugs was issued by the State Public Service Commission (PSC) under U.P. Inspector of Drugs (Services) Rules, 1980. The State PSC sent its recommendation to the State Government giving a list of candidates in order of merit, which also included the appellants. However, the appellants found their names in the said merit list below the respondents—direct recruits. The appellants, therefore, persuaded the State Government to initiate their regularisation under the U.P. Regularisation of *ad hoc* Appointments (for posts within the purview of the PSC) Rules, 1979. However, the direct recruits were appointed as Inspectors of Drugs prior to the regularisation and appointment of the appellants. Subsequently, the State Government issued a seniority list in which the appellants were allowed to steal a march over the respondents who became members of the service prior to the appellants. The respondents filed a writ petition before the High Court challenging

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A the said seniority list, which was allowed. Hence this appeal.

On behalf of the appellants, it was contended that the entire length of service of the appellants was entitled to be considered for the purpose of seniority; and that the *ad hoc* appointments must be treated as substantive appointments for the purpose of seniority.

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Dismissing the appeal, the Court

C HELD : 1.1. The appellants/writ petitioners who are *ad hoc* appointees are not entitled to claim seniority on the basis of continuous officiation. [563-F]

Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra, [1990] 2 SCC 715, referred to.

D 1.2. The respondents-direct recruits were appointed prior to the regularisation of the services of the appellants and, therefore, the appellants are not entitled to be regularised prior to the appointment/confirmation of the respondents under Rule 4 of the U.P. Regularisation of *Ad hoc* Appointments (for posts within the purview of the PSC) Rules, 1979. [567-G-H]

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 11961-11963 of 1996.

F From the Judgment and Order dated 6.5.94 of the Allahabad High Court in W.P. Nos. 1897/80, 731/91 and 309 of 1994.

WITH

C.A. Nos. 11964 and 11965 of 1996.

G Bhaskar P. Gupta, Dr. Sumant Bharadwaj, Ms. Mridula Ray Bharadwaj, Vivek Vishnoi, Punit Dutt Tyagi, Vinay Garg, Ms. Deepam Garg, Prakash Singh, Ashok K. Srivastava, J.M. Sharma (NP), Shrish Kumar Mishra and Irshad Ahmed (NP) for the appearing parties.

H The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. : The questions involved in these appeals are identical and they are being disposed of by this common judgment. A

These appeals are directed against the common judgment dated 06.05.1994 passed by the High Court of Judicature at Allahabad in Writ Petition Nos. 731 of 1991, 251 of 1994, 309 of 1994, 1897 of 1980 and 1663 of 1991. B

The facts, in short, are as follows:-

According to the appellants, they were eligible for appointment to the posts in question and the appointments were made on the basis of selection made pursuant to the public advertisement and after considering claims of all eligible candidates. In these circumstances, it was submitted that the entire length of service of the appellants is entitled to be considered for the purpose of seniority as held by the Constitution Bench of this Court in the case of *Direct Recruit Class II Engineering Officers' Associations v. State of Maharashtra and Ors.*, [1990] 2 SCC 715. However, the High Court held that *ad hoc* services cannot be counted for the purpose of seniority. It was further submitted that if the *ad hoc* appointment is made after satisfying all tests for regular appointment and after considering the claims of all eligible candidates, these appointments must be treated as substantive appointments for the purpose of seniority and that the High Court fell in error in excluding such period from seniority. C D E

The High Court pronounced the impugned judgment whereby it was held that the appellants/writ petitioners who are *ad hoc* appointees are not entitled to claim seniority on the basis of continuous officiation. It was also held that the direct recruit appointees/respondents were, in fact, appointed on 16.09.1982 and the corrections were made in their appointment letters *mala fide*. The High Court also disbelieved the affidavit filed on behalf of the State Government and the Director of Medical Services. Accordingly, the High Court quashed the seniority list and directed preparation of fresh seniority list in accordance with the guidelines mentioned therein. F G

In most of the writ petitions, dispute of *inter se* seniority has been raised. While raising dispute of seniority, the selection made by the Public H

A Service Commission (hereinafter referred to as "the PSC") was also challenged. In one or two of the writ petitions, recommendations of the PSC were accepted by the State Government. In the light of the facts and circumstances, the High Court held as follows:-

B "We hold that the *inter se* seniority of all the Inspectors of Drugs, whether promotees or direct selected by the Public Service Commission deserved to be determined in accordance with the merit prepared by the Public Service Commission. As far as those
C Drugs Inspectors who either did not appear before Public Service Commission or appeared but failed to be selected and whose services were regularised by the State Government would be placed below the persons selected by Public Service Commission in accordance with the Rule-7 of the Regularisation Rules.

D In view of what has been indicated herein above writ petitions bearing No. 731/91 *G. R. Chawla & Ors. v. State of U.P. & Ors.* and No. 251 [SB]/1994 *A. K. Pandey and Ors. v. State of U.P. & Ors.* partly succeeds. A writ in the nature of Certiorari quashing the order dated 12-1-1991 passed by Director General, Medical Health and Family Welfare, Govt. of U.P. determining
E the seniority of Inspectors of Drugs, is issued. Opposite parties are directed to re-determine the seniority of Inspectors of Drugs in the light of the observations mentioned in this order. Writ Petitions bearing Nos. 1897/80, 1663/91 and 309 [SB]/1994 are dismissed."

F Dis-satisfied with the above judgment, the writ petitioners have come up on appeal to this Court and contended that the High Court has completely ignored the pleadings of the appellants/writ petitioners and failed to appreciate that the controversy was not confined to the determination of seniority amongst the promotees and direct recruits but pertain to the
G appellants' claim for regularisation. Learned counsel for the appellants submitted that the appellants were appointed on the basis of public advertisement and on the recommendations of a newly constituted Selection Committee and after considering all the eligible candidates and that the appointees continued on the post uninterruptedly till regularisation in their
H services. In these circumstances, it was submitted that the entire length

of service of the appellants are entitled to be considered for the purpose of seniority. It was further argued that the appellants having been fully qualified and appointed after facing the Selection Committee duly constituted for the said purpose were entitled for regularisation prior to any direct recruitments as contained in Rule 4 (1) and Rule 7 of the Regularisation Rules. It was also submitted that the High Court has erred in reckoning the seniority of the respondents/direct recruits from 16/17.09.1982 which date was specifically scored out and for valid reasons, namely, to comply with the provisions of Rule 4(1) of the Regularization Rules. It was also further submitted that the High Court has failed to appreciate that the respondents actually joined the post after 23.09.1982 only and hence they could not have been granted seniority from 16/17.09.1982. It was also argued that the appellants became the members of the services from the date of joining the post and not from the date of their regularisation vide Government Order dated 22.09.1982. Learned counsel for the respondents, per contra, submitted that the High Court has dealt with every aspect/arguments led by both the parties before it in accordance with the principles laid down by this Court in a number of cases.

We have perused the judgment of the High Court. Three issues were raised before the High Court which read as under:

1. That the State Government has no authority to disturb the merit list of the PSC and adopt the policy of pick and choose out of the merit list prepared by the PSC;
2. That the officials of the Department of Medical Health and Family Welfare has no authority to manipulate the records in order to favour some of the candidates who have been regularised under the Regularisation Rules.
3. Even according to Rule 7 of the Regularisation Rules, the respondents herein were entitled to be placed above the candidates who have been regularised under the Regularisation Rules.

In order to appreciate the correct position, few facts as regards the appointment through PSC with special reference to the appellants/writ petitioners before this Court is necessarily to be stated.

A In the year 1979, the State Government framed the U.P. Regularisation of *Ad hoc* Appointments (for posts within the purview of the PSC) Rules, 1979 which came into effect from 14.05.1979 and in the year 1980, the State Government framed U.P. Inspectors of Drugs (Services) Rules, 1980 which provided for the direct recruitment for the post of inspector of drugs through the PSC. In the year 1976, a requisition for selection of 27 candidates on the post of Inspectors of Drug was sent by the U.P. Government to the UPPSC. On 14.05.1977 an advertisement was issued by the UPPSC for the said 27 posts in which qualifications for the candidates who wanted to apply was also given. In pursuance of the said advertisement, on 21.05.1977, the Department of Health instructed all the departmental candidates to apply for their appointment against the post advertised by the PSC. Interviews were held in the month of December, 1980 and the result thereof was communicated to the State of U.P. on 14.10.1981. On the said date, the PSC sent its recommendation to the State Government giving the list of 25 candidates for appointment in order of merit which included 11 candidates who were already working as Drug Inspectors on *ad hoc* basis in the department.

On receipt of this list, in the Department in October, 1981 some of the candidates including the appellants/writ petitioners herein who were already working in the Department found their names in the merit list below the candidates over directly recruited and as such they persuaded the State Government to initiate the regularisation under the Regularisation Rules which had already come into force in 1979. The Director, Medical Health and Family Welfare, vide its order dated 16.09.1982 by means of a letter ordered that subject to the seniority *vis-à-vis* other persons appointed to the post from time to time, the Department at a later date appointed the candidates who were direct recruits. Subsequently, on 17.09.1982 itself such candidates were also posted at different places. The candidates who are already working on *ad hoc* basis and had influenced the Department to initiate regularisation proceedings when came to know of such orders tried to manipulate at the lower level in the Department and managed to get despatch number as well as the dates scored out. Similarly, despatch number was scored out in many instances. Photocopies of the letters dated 16.09.1982 and 17.09.1982 have been marked as Annexures A & B. A perusal of Annexures A and B would show that the Director, Medical Health had issued the letter dated 16.09.1982 and Food and Drug

Controller issued the letter dated 17.09.1982 under their own signatures with the date under the signatures, these dates under the signatures could not be changed by the officials who tried to manipulate in this regard. According to the respondents, the manipulations were done by the officials because they could manage to get their appointment letter issued on 22.09.1982 with the despatch No. 8165 i.e. prior to the despatch No. mentioned in the letter dated 16.09.1982 after scoring out the same. This letter dated 22.09.1982 has been marked as Annexure-C. On 12.01.1991, the Department issued seniority list in which regularised drug inspectors appointed on 22.09.1982 were allowed to steal march over the direct recruits who became the members of service on 16/17.09.1982. As already noticed, being aggrieved by the seniority list, the respondents herein challenged the same before the High Court of Allahabad by filing writ petition.

It was argued on behalf of the regularised Drug Inspectors that their seniority should reckon from the date they were appointed as Drug Inspectors and that their regularisation preceded with the appointment of directly recruited persons and, therefore, they should be placed above in the seniority list. It was also stated in the reply that the persons who have been selected by the PSC did not possess the requisite qualification. At the time of hearing, it was brought to our notice that most of the appellants/writ petitioners have no locus standi to plead as their regularisation was not in accordance with the Regularisation Rules. It was argued that according to Regularisation Rules, only those persons who were directly recruited on *ad hoc* basis before 01.01.1977 and were continuing in service as such on the date of commencement of these Rules were entitled for regularisation and that appellant/writ petitioner Nos. 5, 6 and 7 did not even qualify under this clause as they were earlier appointed on temporary basis and after break in service they were re-appointed in 1978 and as such they were not continuing in service on *ad hoc* basis before 01.01.1977. It was also brought to our notice that as per Regularisation Rules, the candidates who possess requisite qualifications prescribed for regular appointment at the time of such *ad hoc* appointment would be eligible for regularisation and in the case of appellant/writ petitioner Nos. 1-4 they did not possess the requisite qualifications at the time of their appointment as such they were not entitled to be regularised.

A A perusal of the judgment of the High Court would clearly go to show that the High Court has exhaustively dealt with all the issues and recorded a finding after dealing with the principles laid down by this Court in regard to such points/contentions. The High Court also on the issue of cutting and over-writing has given a definite finding on the point whether the State
B Government was justified in adopting the policy of pick and choose from the merit list prepared by the PSC. The High Court, after taking into consideration the principles laid down by this Court in a number of judgments, recorded a finding as follows:-

C "It is evident that although in the instant case, recommendation of the Public Service Commission was advisory in nature, it was open for the Government either to accept the recommendation or decline to accept the same but if it has chosen not to accept the recommendation of the Commission the matter must have to be placed before the Legislative Assembly, but in the instant case it
D was not done. As stated above, some of the promotees as well as direct recruits, both were selected by Public Service Commission in order of merit. Instead of accepting the recommendation in toto, the State Government regularised the services of certain promotees and tried to allow the promotees to steal march over the direct recruits when *inter se* seniority ought to have been determined in
E accordance with *seriatum* of the merit list of the Public Service Commission. The contention of the State Government that as the process of regularisation was at advance stage, hence no direct or otherwise appointment could be made, unless the services of the persons who were already working on *ad-hoc* basis were regularised and were given appointment orders, when Rule-7 of the U.P.
F Regularisation of *Ad hoc* appointment (on posts within the purview of Public Services Commission) Rules, 1979 clearly indicates that 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
G 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. There was no impediment in the way of the State Government
H to have regularised services of the promotees/*ad-hoc* Inspectors

of Drugs. But the State Government adopted a policy of pick and choose, out of the list and wrongly allowed them to steal a march over the direct recruits in the matter of seniority which cannot be permitted. As according to the regularisation rules, itself, promotees/*ad hoc* whose services were regularised, only deserved to be placed below the persons appointed in accordance with the relevant service rules. The action of the State Government by approving the list, prepared by Commission in part and rejection in part was totally vitiated." A B

On the point whether the appellants/writ petitioners were entitled to the seniority from the date of their original initial appointment, the High Court observed as follows:- C

"In the present case rule of the seniority clearly provides that seniority in any category or cadre post shall be determined from the date of the order of substantive appointment. The posts of Drug Inspectors was within the purview of Public Service Commission. But, *ad-hoc* appointments were made. The said *ad-hoc* appointments cannot be deemed to be the substantive appointments. It were in the nature of stop gap or fortuitous appointments, hence the period during which *ad-hoc* appointees worked, cannot be counted for the purposes of seniority." D E

Our attention was drawn to the appointment letters enclosed as Annexure-9 at pages 152-156 of the special leave petition which would show that the initial appointment of the appellants were on purely temporary as stop gap arrangements. F

As regards the qualification of the respondents herein, the High Court has recorded a finding which is quoted below:

"In most of the writ petition, dispute of *inter se* seniority has been raised. While raising dispute of seniority, the selection made by the Public Services Commission was also challenged. In one or two of the writ petitions, recommendations of the Public Service Commission were accepted by the State Government. Thus the appointment became final and a vested rights have been created in favour of those who were selected. In a proceedings for H

A determining the validity of the seniority list, it is not open for any person either selected by Public Services Commission or whose services have been regularised to challenge the selection made by the Public Service Commission and the appointment made by the State Government by the Public Service Commission was made in the year 1981 and it would be unfair and unjust for this Court to declare the selection void. Hence, the third and last plea raised on behalf of the *ad-hoc*/promotees fails."

C After recording the finding, the High Court concluded that the *inter se* seniority of all the Inspectors of Drugs whether promotees or direct selectees by the PSC deserved to be determined in accordance with the merit prepared by the PSC. In this regard, the High Court has issued further directions with reference to Rule 7 of the Regularisation Rules.

D It was contended by learned counsel for the appellants that in view of Rule 4, appellants are required to be regularised first and thereafter, newly appointed direct recruits are required to be appointed/confirmed. This contention has no force. This contention has to be negatived in view of the specific finding by the High Court that direct recruits were appointed either on 16/17.09.1982 and the services of the appellants were regularised only on 22.09.1982.

E The common judgment passed by the High Court, in our view, does not call for any interference and all the appeals fail and are dismissed. However, there will be no order as to costs.

F V.S.S.

Appeals dismissed.