

STATE OF UTTARANCHAL AND ANR.

v.

MADAN MOHAN JOSHI AND ORS.

(Civil Appeal No.3540 Of 2008)

MAY 13, 2008

**[S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ.]**

*Service Law - Inter-se seniority:*

*Writ Petition filed by Respondent – Challenging seniority list of University Lecturers – Allowed by High Court – On appeal, held: ‘S and others, who lose their seniority, in the event the writ petition was to be allowed, should have been impleaded as parties – But that was not done – Inter se seniority may not be a fundamental right, but is a civil right – Respective rights of seniority of the parties, thus, required determination in their presence – Matter remitted to High Court for decision afresh – Respondent permitted to file application for impleading ‘S’ and others as parties – High Court directed to allow such application for impleadment and determine the matter expeditiously – Constitution of India, 1950 - Act. 226.*

**Inter-se seniority amongst the Lecturers of Kumaon University is in question in the present appeal.**

**First Respondent was appointed on ad hoc basis as a Lecturer in a Government P.G. College, by the State of Uttar Pradesh through Vice-Chancellor, Kumaon University. All Lecturers including the First Respondent were continued and treated on deputation with the University. The State of Uttar Pradesh framed U.P. Regularization Rules, 1979. Pursuant to and in furtherance of the said Rules, services of 355 ad hoc Lecturers were regularized. However, the cases of nine Lecturers including the First Respondent, who had been working on deputation, were left out. Representations were made by the Respondents**

A and others. It was contended that one 'S' was regularized  
even though she was junior to First Respondent. The  
services of nine Lecturers including the First Respondent  
were regularized. However in the seniority list, the First  
Respondent was placed at serial number 137 whereas the  
B said 'S' was placed at serial No.102. Objections were filed  
to the said seniority list. A writ petition was filed by the  
First Respondent before the High Court which was al-  
lowed.

C In appeal to this Court, it was submitted on behalf of  
the State, that the High Court committed a serious error  
insofar as it failed to take into consideration that the State  
of Uttaranchal, having framed the Uttaranchal Higher Edu-  
cation (Group A) Service Rules, 2003 was bound by the  
provisions thereof and in that view of the matter, the High  
D Court committed a serious error insofar as it failed to take  
into consideration the effect of the statutory rules gov-  
erning the field in their proper perspective.

E Respondent, on the other hand, contended that as  
the instant case was governed by the Rules which were  
applicable prior to coming into force of 2003 Rules, the  
High Court has not committed any illegality and the im-  
pugned judgment is unassailable. It was contended that  
in the writ petition it was not necessary for the First Re-  
spondent even to implead the said 'S' and others as party  
F respondents, as no relief had been claimed against them.

Disposing of the appeal, the Court

G HELD: 1. Services of the First Respondent as also  
several others including 'S' were regularized in terms of  
the provisions of the U.P. Regularisation Rules. However,  
the question as to which Rule would govern the inter-se  
seniority amongst the parties has not been determined.  
The question as to whether the said 2003 Rules will have  
retrospective effect or in any event will govern the cases  
H of the parties was thus required to be determined by the

High Court. [Paras 13, 14,16] [598.A; G; 600-D]

2.1. The High Court, in its impugned judgment, proceeded on the basis as to what would constitute a substantive appointment. Significantly in the writ petition, even 'S' and others who lose their seniority in the event writ petition was to be allowed, were not impleaded as parties. They should have been impleaded as parties in the writ application. 'S' and others, if the writ petition is allowed, would suffer civil consequences. Inter se seniority may not be a fundamental right, but is a civil right. The respective rights of seniority of the parties, thus, required determination in their presence. [Para 17] [600-E-G]

2.2. The interest of justice would be subserved if the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the matter afresh. In the writ petition, the First Respondent may file an appropriate application for impleading 'S' and others as party and/or some teachers in their representative capacity. The High Court is requested to allow the said application for impleadment and determine the matter in accordance with law as expeditiously as possible. [Para 20] [602-A-B]

*State of UP & Anr. v. Dinkar Sinha (2007) 7 SCALE 8 and Prabodh Verma & Ors. v. State of Uttar Pradesh & Ors. AIR (1985) SC 167 –relied on.*

*A. Janardhana v. Union of India & Ors. (1983) 3 SCC 601 –distinguished.*

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3540 of 2008

From the final Judgment and Order dated 21.3.2006 of the High Court of Uttaranchal at Nainital in Writ Petition No. 71 (S.B.) of 2004

Gopal Subramaniam, ASG, Rachana Srivastava and Ashish Jain for the Appellants.

A Vinay Garg, Deepam Garg, Abhinav ramkrishna, Avatar Singh Rawat and Raj Singh Rana for the Respondents.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** 1. Leave granted.

B 2. Inter se seniority amongst the teachers of Kumaon University is in question in this appeal which arises out of a judgment and order dated 21.3.2006 passed by a Division Bench of the High Court of Uttaranchal at Nainital in Writ Petition No.71 of 2004).

C Before advertng to the aforementioned question, we may notice the factual matrix involved in the matter.

D 3. First Respondent was appointed on an ad hoc basis as a Lecturer in Government P.G. College, Almora by the State of Utter Pradesh through Vice-Chancellor, Kumaon University on or about 22.9.1975. The said College was declared as the Campus College of the University. All Lecturers including the first respondent were continued and treated on deputation with the University; the cut off date wherefor was fixed 16.8.1977.  
E The State of Utter Pradesh framed U.P. Regularization Rules, 1979, the relevant provisions whereof reads as under :

4.(i) Any person who

(i) was directly appointed on ad hoc basis before 1.1.1977 and is continuing in service.

(ii) Possessed requisite qualification 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 regular appointment is made in such vacancy in accordance with the relevant service rules or orders."

4. Pursuant to and in furtherance of the said Rules, services of 355 ad hoc Lecturers were regularized. However, the cases of nine Lecturers including the first respondent, who had been working on deputation, were left out. It is contended that one Savita (Mohan) Dhondiyal who had also been appointed as an ad hoc Lecturer on 17.4.1975 and, thus, being junior to the first respondent was regularized. A B

5. Representations were made by the respondents and others. The Directorate of Higher Education, Uttar Pradesh asked the Vice-Chancellor of the University to forward the list of the said Lecturers pursuant where to, services of nine Lecturers including the respondent were regularized by an order dated 11.7.1980, stating : C

"The appointing authority in exercise of powers conferred by Rule 5 of the Regularisation of Ad hoc Employees on the posts within the jurisdiction of the U.P. Public Service Commission Rules, 1979 issued by the Department of Personnel vide its Notification No.19/8/75[1] dated 14<sup>th</sup> May, 1979, and in view of the recommendations made by the Selection Committee constituted for regularization of the ad hoc lecturers working in various Government Colleges under the Directorate of Education prior to 1<sup>st</sup> January, 1977 in the pay scale of 700-1600, hereby regularizes appointments of the lecturers with effect from the date of issuance of this order and they are being given temporarily regular appointments on the posts of Lecturers w.e.f. 11<sup>th</sup> July, 1980. D

However, the seniority of these lecturers shall be according to their Serial number given in the enclosed Annexure and they will be junior to those lecturers who have been regularized and appointed prior to the date of regular appointment of these lecturers."

6. Aggrieved by the said order, they made a representation.

A. 7. By an order dated 9.6.1988, the services of the respondent were appointed with effect from 1.7.1983, it was stated :

B. "Following officers of the Government Colleges working as Lecturers in Botany Science in the pay scale of 2200-4000 are hereby appointed on probation period of two years on the same dates with effect from the dates mentioned against their names and their earlier services would be counted towards this probation period and they are hereby regularized on the said post and in the same pay scale. However, their seniority would be determined later on.

Sr. No.	Name and designation of Officer who has Been regularized.	Date of regularised	Details of vacancies
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E 21.

Shri Madan Mohan Joshi, Lecturer in Botany Science

1.7.1983

Regularised on the post w.e.f. 1.7.1983 Vide G.O. No. 2058/15 84-11 - 12-46/81 Dt. 1.8.1984"

F 8. The State of Uttarakhand then known as State of Uttaranchal has been carved out from the State of Uttar Pradesh. In the seniority list, the first respondent was placed at serial number 137 whereas Mrs. Savita (Mohan) Dhondyal was placed at serial No.102. Objections were filed to the said seniority list wherefor recommendations were made by the Directorate of Higher Education in the following terms :

H "Dr. Joshi was appointed on ad hoc basis and pursuant to his appointment he joined Almora College on 22<sup>nd</sup> September, 1975. Later on his services were approved by the Director of

Education (Higher Education), Uttar Pradesh, Allahabad on 27<sup>th</sup> A  
March, 1976 with effect from the date of his joining the post.  
His name in the seniority list would have been mentioned at Sr.  
No.102 after the name of Smt. Deveshwari Bisht on the basis  
of his order of first appointment. But it would have been pos- B  
sible if his name would have been considered in the order of  
regularization dated 22<sup>nd</sup> May, 1980. It appears that his name  
was not included in the said order dated 22<sup>nd</sup> May, 1980 al-  
though Shri Joshi was fully eligible for being considered in the  
said order dated 22<sup>nd</sup> May, 1980 according to the Regularisation  
Rules of 1979. Therefore, if the Government so wishes, his C  
order of regularization dated 11<sup>th</sup> July, 1980 should be amended  
to the above effect."

9. A writ petition was filed by the first respondent before  
the High Court of Uttaranchal at Nainital which by reason of the  
impugned judgment has been allowed. D

10. Mr. Gopal Subramaniam, learned Additional Solicitor  
General appearing on behalf of the State, would submit that the  
High Court committed a serious error insofar as it failed to take  
into consideration that the State Uttaranchal, having framed the  
Uttaranchal Higher Education (Group A) Service Rules, was E  
bound by the provisions thereof and in that view of the matter,  
the High Court committed a serious error insofar as it failed to  
take into consideration the effect of the statutory rules govern-  
ing the field in their proper perspectives. F

11. Mr. Garg, learned counsel appearing on behalf of the  
respondent, on the other hand, would contend that as the in-  
stant case is governed by the Rules which were applicable prior  
to coming into force of 2003 Rules, the High Court has not com-  
mitted any illegality or the impugned judgment is unassailable. G

12. It was contended that in the writ petition it was not nec-  
essary for the first respondent even to implead the said Savita  
(Mohan) Dhondyal and others as party respondents, as no re-  
lief had been claimed against them. Reliance has been placed  
on *A. Janardhana v. Union of India & Ors.* [(1983) 3 SCC 601]. H

A 13. Services of the first respondent as also several others including Savita (Mohan) Dhondyal, as noticed herein before were regularized in terms of the provisions of the U.P. Regularisation Rules.

B Indisputably, services of those whose names appear above the first respondent, services of those were regularized w.e.f. 22.5.1980 whereas that of the first respondent was regularized from 11.7.1980. The order dated 11.7.1980 categorically stated:

C "Under Rule 4(3) of Uttar Pradesh Regularisation of Ad hoc Appointment within the purview of Public Service Commission Rules 1979 framed vide notification No.19/8/75 (1) dated 14-5-1979 by the Personnel Department, on the recommendation of the Selection Committee constituted for regularization of Lecturers appointed on ad hoc basis in the pay scale of Rs.700-1600 prior to 1-1-1977 in the U.P. Government Inter Colleges under the Directorate of Higher Education and in exercise of powers under Rule 5 of the aforesaid Rules the competent authority is pleased to regularize ad hoc appointment of Lecturers mentioned in the Schedule-1 w.e.f. the date of issuance of this order and they are given regular temporary appointment on the post of Lecturer w.e.f. 11.7.1980.

D The seniority of these Lecturers will be as per the serial given in the schedule and they will be junior to the regularly selected Lecturers who have been appointed prior to the regular appointment of these Lecturers."

E The said direction has not been set aside by the High Court. Validity thereof may be in question in the writ petition.

F 14. The question as to which Rule would govern the inter se seniority amongst the parties has not been determined. Rule was framed by the State of Uttaranchal in 2003 in terms of the proviso appended to Article 309 of the Constitution of India.

G Rule 3(k) defines 'substantive appointment' to mean an appointment, not being an ad hoc appointment, on a post in the

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cadre of the Service made after selection in accordance with the rules and if there are no rules in accordance with the procedure prescribed for the time being by executive instruction issued by the Government. A

15. Rule 20 of the said Rules lays down the mode of determining seniority in the following terms : B

**"20. Seniority :**

(1) Except as hereinafter provided, the seniority of persons in any category of posts shall be determined from the date of the order of substantive appointment and if two or more persons are appointed together by the order in that case it will mean the date of issue of order : C

Provided that –

- (a) if the appointment order specified a particular back date with effect from which a person is appointed, substantively, that date will be deemed to be the date of order of substantive appointment and in other cases it will mean the date of issue of the order; D
- (b) if more than one order of appointment are issued in respect of any one selection, the seniority shall be as mentioned in the combined order of appointment issued under sub-rule (2) of rule 17. E

(2) The seniority inter se of persons appointed directly on the result of any one selection shall be the same as determined by the Commission : F

Provided that a candidate recruited directly may lose his seniority if he fails to join without valid reasons when the post is offered to him. The decision of the Appointing Authority as to the validity of reasons shall be final. G

(3) The seniority inter-se of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted." H

A The said Rule also contains a power of relaxation being Rule 25 which is to the following effect :

**"25. Relaxation of the Conditions of service :**

B Where the State Government is satisfied that the operation of any rule regulating the conditions of Service of a person appointed to the Service causes undue hardship in any particular case, it may notwithstanding any thing contained in the rules applicable to the case, by order dispense with or relax the requirements of that rule to such extent and subject to such conditions, as it may consider necessary, for dealing with the case in a just and equitable manner :

C Provided that where a rule has been framed in consultation with the Commission that body shall be consulted before the requirements of the rule are dispensed with or relaxed."

D 16. The question as to whether the said Rules will have retrospective effect or in any event will govern the cases of the parties, thus, was required to be determined by the High Court.

E 17. The High Court, in its impugned judgment, proceeded on the basis as to what would constitute a substantive appointment. The decisions of this Court, whereupon strong reliance has been placed by the High Court in arriving at its conclusion may not be of much significance but what is significant is that in the writ petition even Savita (Mohan) Dhondyal and others who lose their seniority in the event writ petition was to be allowed, were not impleaded as parties. They, in our opinion, should have been impleaded as parties in the writ application. Savita (Mohan) Dhondyal and others, if the writ petition is allowed, would suffer civil consequences. Inter se seniority may not be a fundamental right, but is a civil right. [See *State of UP & Anr. v. Dinkar Sinha* [2007 (7) SCALE 8]. The respective rights of seniority of the parties, thus, required determination in their presence.

H 18. A Three Judge Bench of Court in *Prabodh Verma & Ors. v. State of Uttar Pradesh & Ors.* [AIR 1985 SC 167], stated

the law as under :

"A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

19. Reliance placed on *A. Janardhana* (supra) by Mr. Garg, in our opinion, is misplaced. Therein, no relief was claimed against any individual. The only relief which was claimed therein was against the Union of India. The question which was raised therein was a question of interpretation. It was in the aforementioned situation, this Court held that all the employees were not required to be impleaded as a party. In that case, the case of direct recruits has not gone unrepresented. It was stated:

"In this case, appellant does not claim seniority over any particular individual in the background of any particular fact controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus, the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondent."

20. For the reasons aforementioned, we are of the opin-

- A ion that the interest of justice would be subserved if the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the matter afresh. The writ petitioner of the first respondent may file an appropriate application for impleading Savita (Mohan) Dhondyal and others as party and/
- B or some teachers in their representative capacity. The High Court is requested to allow the said application for impleadment and determine the matter in accordance with law as expeditiously as possible, preferably within the period of 8 weeks of the negation of this Order.

21. The appeal is disposed of accordingly.

B.B.B.

Appeal disposed of.