

UNION OF INDIA & ORS.

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v.

SHRI G.R.RAMA KRISHNA & ANR.
(Civil Appeal No. 7032 of 2013)

AUGUST 23, 2013

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[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

Service Law - Recruitment - Promotion - Andaman Lakshdeep Harbour Works (ALHW) - Post of Executive Engineer - Three alternate modes of recruitment to the Post, namely, (1) by promotion, failing which (2) by transfer on deputation (including short term contract) and failing both (3) by direct recruitment - Held: If some departmental candidate is available and eligible to be considered, promotion method is to be resorted to in the first instance - However, on facts, no departmental candidate was available - Respondent had not completed 8 years regular service as Assistant Engineer, as required for promotion to the post of Executive Engineer - In such circumstances only out of sympathy, the High Court could not have given the impugned direction for appointment of respondent as Executive Engineer - This judicial sympathy resulting into a right in favour of respondent to appoint him contrary to the recruitment rules framed under proviso to Article 309 of the Constitution which are statutory in nature was clearly misplaced and needs to be denounced - Such a direction is clearly unsustainable and is accordingly set aside - Constitution of India, 1950 - Article 309.

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The respondent was working as Assistant Engineer (Mechanical) in Andaman Lakshdeep Harbour Works (ALHW). The U.P.S.C. advertised the post of Executive Engineer (Mechanical) for filling up on direct recruitment basis. This move for filling up of the post of Executive Engineer (Mechanical) adopting the mode of direct

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A recruitment was taken on the premise that no departmental candidate was available inasmuch as 8 years regular service as Assistant Engineer was needed for promotion to the post of Executive Engineer, and no departmental employee fulfilled this condition.

B The respondent filed O.A. before the Central Administrative Tribunal challenging the proposal of the UPSC to fill the post on direct recruitment basis contending that he was eligible to be considered for such a promotion as after counting the ad-hoc period he had completed the requisite number of years as Assistant Engineer. The O.A. was dismissed. The respondent then filed Writ Petition. The High Court allowed the Writ Petition and modified the order of the Tribunal by directing that the respondent be appointed as Executive Engineer after observing all other formalities, and therefore the present appeal.

Allowing the appeal, the Court

E HELD: 1. The approach of the High Court cannot be appreciated. As per the extant rules for promotion to the post of Executive Engineer (Mechanical) 8 years regular service as Assistant Engineer is imperative. The Rules do not provide for any relaxation in this behalf. This is clear from the reading of the said rules which provide for appointment to the post of Executive Engineer (Mechanical). As per the Recruitment Rules, post of Executive Engineer (Mechanical) is a selection post. The mode of recruitment stated in the Rules is as under:

F "By promotion failing which by transfer on deputation (including short-term contract) and failing both by direct recruitment." The Recruitment Rules also stipulate eligibility condition in all the three circumstances, namely, promotion, transfer on deputation as well as direct recruitment. [Para 8] [266-F-H; 267-A]

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2. It is apparent that there are three alternate modes of recruitment to the Post, namely, (1) by promotion, failing which (2) by transfer on deputation (including short term contract) and failing both (3) by direct recruitment. No doubt, if some departmental candidate is available and eligible to be considered, the promotion method is to be resorted to in the first instance. However, no departmental candidate was available. Concededly, the respondent had not completed 8 years regular service as Assistant Engineer. In such circumstances only out of sympathy the High Court could not have given the impugned direction. This judicial sympathy resulting into a right in favour of respondent to appoint him contrary to the recruitment rules framed under proviso to Article 309 of the Constitution of India which are statutory in nature is clearly misplaced and needs to be denounced. Such a direction is clearly unsustainable and is accordingly set aside. As a result, the order of the Tribunal is restored. [Para 9] [267-C-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7032 of 2013.

From the Judgment & Order dated 11.01.2010 of the High Court of Calcutta in WPCT No. 281 of 2009.

J.S. Attri, S. Nagrajan, D.S. Mahra, Priyanka Bharihoke, Sarfraz A. Siddiqui, S.K. Mishra, Satya Siddiqui for the Appellants.

The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. Leave granted.

2. The respondent No.1 herein (hereinafter referred to as the respondent) was appointed as Engineering Assistant (Mechanical) in Andaman Lakshdeep Harbour Works (ALHW) on ad-hoc basis with effect from 17.4.1979. Though this ad-hoc

A period was of one year, the respondent continued to work in the capacity even thereafter without obtaining the approval of the Department of Personnel and Training. The services were continued as ALHW was facing lots of problems due to shortage of staff at various levels. He was later on promoted as Inspector of Works on ad-hoc with effect from 11.11.1984. This post was later on merged with that of Junior Engineer and thus the respondent was accorded the status of Junior Engineer.

3. Next promotion from Junior Engineer is to the post of Assistant Engineer. Again on ad-hoc basis, the respondent was promoted as Assistant Engineer with effect from 23.9.1999. He was given regular promotion as Assistant Engineer (Mechanical) on 2.6.2005 and was put on probation for a period of two years from that date. The respondent submitted his representation dated 13.10.2008 for treating the ad-hoc period of Assistant Engineer from the 23.9.1999 to 24.8.2005 as regular service for promotion to the next higher post i.e. Executive Engineer (Mechanical). This representation was turned down by the authorities with the result that the respondent was treated as regularly appointed Assistant Engineer only from 24.8.2005.

4. On 10/16.1.2009, the U.P.S.C. advertised the post of Executive Engineer (Mechanical) for filling up on direct recruitment basis and fixed the date of interview as 27.2.2009. This move for filling up of the post of Executive Engineer (Mechanical) adopting the mode of direct recruitment was taken on the premise that no departmental candidate was available inasmuch as 8 years regular service as Assistant Engineer was needed for promotion to the post of Executive Engineer, and no departmental employee fulfilled this condition.

5. The respondent filed O.A. before the Central Administrative Tribunal challenging the proposal of the UPSC to fill the post on direct recruitment basis contending that he was eligible to be considered for such a promotion as after

counting the ad-hoc period he had completed the requisite number of years as Assistant Engineer. A

6. This O.A. was dismissed by the Tribunal taking note of the recruitment rules as per which regular service of 8 years is mentioned as qualifying service to become eligible for the post of Executive Engineer. The relevant portion of the order of the Central Administrative Tribunal in this behalf reads as under: B

"The point to be considered here is whether the applicant has any legal right to be considered for the post of Executive Engineer (Mechanical). It is seen he was an ad-hoc appointee for various periods of time from 23.3.1999 till his regularization as Assistant Engineer on 29.4.2005. His orders on 29.4.2005 appointing him as an Assistant Engineer on regular basis also stipulated that he would be on probation for two years. The applicant at the time of such regularization on 29.4.2005 did not challenge the same nor did he make a representation at that time for treating his previous service on ad-hoc basis from 23.3.99 to 29.4.2005 as regular service. He accepted the order as per Annexure-A/1 together with the probation of two years period. Having done this he cannot now come and make a claim that his entire period from 23.3.99 onwards should be regularized so that he can avail of the recruitment rules for being promoted as Executive Engineer on the promotion quota. As per recruitment of Executive Engineer, the applicant is not eligible since 8 years of regular service is required." C D E F

The Tribunal thus opined that the respondent had not made any case for quashing the steps taken by the U.P.S.C. for filling up the post of the Executive Engineer (Mechanical) through direct recruitment as recruitment rules. G

7. Against the judgment of the Tribunal, the respondent filed the Writ Petition in the High Court of Calcutta (District : Andaman). The High Court has allowed the Writ Petition and H

A modified the order of the Tribunal by directing that the respondent be appointed as Executive Engineer after observing all other formalities. This direction is given by the High Court as a special case, without setting it as precedence, as is clear from the operative portion of this order:

B "In this case the petitioner by way of a stop gap
arrangement worked in an ad-hoc basis which in other
words amounted to a permanent arrangement since he
was allowed to perform for a long time since the post is
C still vacant. There is no reason as to why the petitioner who
had put in such a length of service should be denied an
opportunity of being promoted in the absence of any
adverse situation against him.

D Keeping in view peculiar facts and circumstances of the
present case, without setting it as a precedence and as a
very special case more so as the Petitioner has been
working since 1990 till date in the capacity of Assistant
Engineer which is a feeder post of the Executive Engineer
E (Mechanical), we would direct that he be appointed as
Executive Engineer (Mechanical) in the establishment of
the Respondent No.1 after observing all other formalities."

8. We are unable to appreciate the aforesaid approach
of the High Court. It is not disputed before us that as per the
F extant rules for promotion to the post of Executive Engineer
(Mechanical) 8 years regular service as Assistant Engineer is
imperative. The Rules do not provide for any relaxation in this
behalf. This is clear from the reading of the said rules which
provide for appointment to the post of Executive Engineer
(Mechanical). As per the Recruitment Rules, post of Executive
G Engineer (Mechanical) is a selection post. The mode of
recruitment stated in the Rules is as under:

H "By promotion failing which by transfer on deputation
(including short-term contract) and failing both by direct
recruitment."

The Recruitment Rules also stipulate eligibility condition in all the three circumstances, namely, promotion, transfer on deputation as well as direct recruitment. In so far as filling up of this post by way of promotion is concerned, following requirements are stipulated for a candidate to be eligible in that category:

"PROMOTION:

Assistant Engineer (Mechanical) with 8 years regular service in the grade."

9. From the aforesaid, it becomes apparent that there are three alternate modes of recruitment to the Post, namely, (1) by promotion, failing which (2) by transfer on deputation (including short term contract) and failing both (3) by direct recruitment. No doubt, if some departmental candidate is available and eligible to be considered, the promotion method is to be resorted to in the first instance. However, no departmental candidate was available. Concededly, the respondent had not completed 8 years regular service as Assistant Engineer. In such circumstances only out of sympathy the High Court could not have given the impugned direction. This judicial sympathy resulting into a right in favour of respondent to appoint him contrary to the recruitment rules framed under proviso to Article 309 of the Constitution of India which are statutory in nature is clearly misplaced and needs to be denounced. Such a direction is clearly unsustainable and is accordingly set aside. As a result, the appeal is allowed restoring the order of the Tribunal dismissing the O.A. filed by the respondent. No costs.

B.B.B.

Appeal allowed.