

Masood Akhtar Khan And Ors. vs State Of Madhya Pradesh And Ors. on 16 July, 1990

Equivalent citations: [1991(61)FLR343], JT1990(3)SC295, (1990)IILLJ449SC, 1990(2)SCALE142, (1990)4SCC24, 1990(2)UJ403(SC), AIRONLINE 1990 SC 45, 1990 (4) SCC 24, (1990) JAB LJ 557, 1990 SCC (L&S) 580, (1990) 2 ALL WC 1291, (1990) 2 LAB LN 1007, (1990) 2 CUR LR 548, (1990) 5 SERV LR 639, (1990) 61 FAC LR 343, (1990) 2 KER LT 28, (1990) 2 LAB LJ 449, (1990) 3 JT 295, (1990) 14 ATC 833, (1991) 1 APLJ 9, (1990) 3 JT 295 (SC), 1990 UJ(SC) 2 403, 1990 UJ(SC) 403, 2007 (10) SCC 564, (2007) 2 ALL RENTCAS 659, (2007) 2 ALL WC 1556, (2007) 2 CLR 113 (SC), (2007) 2 CURCC 179, (2007) 2 JLJR 135, (2007) 2 PAT LJR 151, (2007) 2 SUPREME 999, (2007) 3 SCALE 176, (2007) 4 CIVLJ 221, (2008) 1 WLC(SC)CVL 174

Bench: P.B. Sawant, N.M. Kasliwal

ORDER

1. The only question involved in the present petitions is whether the petitioners' initial appointments were according to the rules. The petitioners are direct recruits. They were appointed as temporary Assistant Engineers in Public Health Department "temporarily till further orders for six months or for a fortnight till after the selection of candidates by the Public Service Commission", (hereinafter referred to as the 'Commission'), "in Public Health Engineering Department Services (Class-II)" initially by an appointment letter dated October 25, 1972. These appointments were made pursuant to the advertisement which was issued on June 4, 1972 which had also made it clear that the appointments to the said posts "will be made for a period of six months only, in the first instance. In the meantime, the posts will be advertised by the Public Service Commission, Madhya Pradesh and the candidates will be required to appear before Commission as fresh entrants at their own costs and, if selected, will be allowed to continue in service. The services of others will stand automatically terminated." It appears that within about four months to be precise, on February 19, 1973, the Government changed its policy for recruitment to the said posts, and by its Resolution of the even date decided that appointments to all the said posts would be made by promotion. The result was that no requisition was made to the Commission for direct recruitment of the said posts and the petitioners continued in their posts till the policy was relaxed some time before June 1975. As a consequence, the Government wrote to the Commission on June 3, 1975 with a requisition for advertisement of 120 posts of Assistant Engineers (Assistant Engineers, Civil - 113 plus Assistant Engineers, Mechanical - 71). This letter requested the Commission to advertise the said posts and communicate its recommendations to the Government at an early date. Pursuant to this, the Commission advertised the posts on September 16, 1975. It may be mentioned here that since in the meanwhile statutory rule laying down the qualification or experience of a minimum two years as Assistant Engineers came into force, the advertisement also mentioned the said qualification. The

petitioners applied for the said posts and they were selected by the Commission. As a result, they were appointed to the posts from April 14, 1977.

2. The contention of the petitioners is that they should be given seniority from the date of their initial appointment on October 25, 1972 and not from April 14, 1977 because even their initial appointments were according to rules which were in existence at that time. We are not persuaded to accept this contention for the following reasons:

In the first instance, both the advertisement of June 4, 1972 as well as the appointment letter of October 25, 1972 made it clear that the appointments of the petitioners were temporary and only for a period of six months or till the expiry of two weeks after the Commission had made the regular selection. According to Rule 7 of Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 (hereinafter referred to as the 'Rules') whether the appointment was by direct recruitment or by promotion or by transfer, the Commission had to be consulted and any appointment made to the said posts without such consultation would not have been regular. Hence, in the advertisement and in the appointment letter, the Government had rightly stated that the said appointments were pending the regular selection by the Commission. It is, therefore, clear, as held by the High Court, that the appointments to the petitioners and others who were appointed along with them on October 25, 1972 were a stop-gap emergency arrangement pending the regular selection by the Commission. Although the words 'ad hoc' are not mentioned either in the advertisement or in the appointment letter, the word 'temporary' is mentioned there and read with the rest of the contents they leave no doubt that the appointments were as and by way of stop-gap arrangement pending the regular selection by the Commission. Mr. Ramamurthi's contention that the said Rule 7 has to be read with the Madhya Pradesh Public Service Commission (Limitation on Functions) Regulations, 1957 and if so read, it would show that the present posts were beyond the consultative jurisdiction of the Commission has no merit in it. Regulation 5 of the said Regulations, on which he places reliance for the said submission does not warrant the conclusion which he wants us to draw. The said Regulation reads as follows:

5. (1) It shall not be necessary for the Commission to be consulted on the suitability of a person for appointment, promotion or transfer to a post, the period of which does not exceed six months. (2) In other cases where appointment, promotion or transfer to a service or post would otherwise require consultation with the Commission. It shall not be necessary to consult the Commission, if owing to an emergency the Commission cannot be consulted without detriment to public service:

Provided that -

(i) intimation of such appointment, promotion or transfer shall be sent to the Commission at the same time, and

(ii) action to fill up the post in the normal way or to obtain the concurrence of the Commission, as the case may be, shall be initiated as early as possible.

It is not and Cannot be contended that the tenure of the present posts is only six months. The post is intended to be a permanent one and, therefore, if appointment is to be made to the said post, consultation with the Commission is obligatory. In fact, consultation with the Commission for appointment to such posts is waived only if on account of emergency, the Commission cannot be consulted without detriment to public service. Even then, the Government is obliged to intimate such emergency appointment to the Commission. Merely because, initially the appointment was made for a period of six months, it does not mean that the tenure of the post itself was only six months. Mr. Ramamurthi's second contention was that there were no special rules for appointment to the said posts and, therefore, it is the general Rules of 1981 (supra) which applied and according to Rule 12 of the said Rules, the seniority is to be counted from the date of initial appointment. We do not read any such provision in Rule 12. On the contrary, Rule 12(a)(i) makes it clear that where the appointment has to be made in consultation with the Commission, the seniority is firstly from the date of the selection by the Commission and secondly according to the order of merits given by the Commission. Hence none of the authorities relied upon by Mr. Ramamurthi, viz., *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Ors.*, *D.N. Agrawal and Anr. v. State of Madhya Pradesh and Ors.* and *Union of India and Ors. etc. v. Ansusekhar Guin and Ors.* etc. him. These authorities unequivocally make it clear that if the initial appointment is not made according to the Rules, subsequent regularisation of his service does not entitle an employee to the benefit of intervening service for seniority.

3. This is apart from the fact that as has been pointed out by Mr. Rao, appearing for the respondent-promotees, earlier similarly situated direct recruits like the, petitioners had raised the very same issue of seniority in a writ petition filed by them in the High Court of Madhya Pradesh and the High Court had answered the issue against them. The special leave petition preferred by the said employees against the said order was dismissed by this Court. Hence the issue, on principle, stands closed. We, therefore, dismiss the petitions.