

Ashok Ram Parhad vs The State Of Maharashtra on 15 March, 2023

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Bench: Abhay S. Oka, Sanjay Kishan Kaul

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.822 OF 2023

ASHOK RAM PARHAD & ORS.

...APPELLANTS

Versus

THE STATE OF MAHARASHTRA & ORS. ...RESPONDENTS

JUDGMENT

SANJAY KISHAN KAUL, J.

1. This is one more unending dispute arising between direct recruits and promotees qua their inter se seniority. The post for which the recruitment took place was the Assistant Conservator of Forest (hereinafter referred to as “ACF”). The method of recruitment for the said post was twofold – nomination (direct appointment) and promotion. Recruits to ACF by promotion assume charge from the day they are Reason:

promoted to the said post and are not required to undergo two years of ACF training and one year of field training. This is distinct from the persons selected and appointed by nomination where such training is compulsory.

2. The ACF post, in turn, is the feeder cadre to the post of Divisional Forest Officer (hereinafter referred to as “DFO”). As per Rule 5 of the Assistant Conservator of Forests in the Maharashtra Forest Service, Group A (Junior Scale) (Recruitment) Rules, 1998 (hereinafter referred to as the

“1998 Rules”), appointment to the post of ACF shall be in the ratio of 50:50 from these two sources.

3. The appellants before us were appointed to the post of ACF through nomination in 2016. They had been recruited in 2014 and went through a training. Respondent nos.4 to 9 were directly promoted to the post of ACF in 2014.

Litigation History:

4. The Maharashtra Public Service Commission, respondent no.3, issued an advertisement on 14.12.2012 to fill up a total of 33 posts of ACF through Maharashtra Forest Service Examination, 2012. The appellants applied for the post, for which the selection list was published on 13.06.2013. However, instead of issuing appointment orders appointing the appellants on probation, respondent no.1 issued a letter dated 19.06.2013 informing the appellants that they will be sent to pre-appointment training. The appellants claimed that their representation to remedy the same remained unanswered.

5. The appellants thus filed an application before the Maharashtra Administrative Tribunal at Mumbai (hereinafter referred to as the “Tribunal”) for declaration that their appointment as ACF be considered from the date of commencement of the training and, that the training period undergone by them be considered as period of service. They also sought a direction for payment of salary as per the pay scale prescribed for the post of ACF by considering the period of training as on probation/duty.

6. The Tribunal, in terms of its order dated 03.02.2016, partly allowed the application of the appellants. It was observed that the recruitment rules for the post of ACF in the Maharashtra Forests Service Class II (hereinafter referred to as “the 1965 Rules”), which were accompanied to the Government Resolution dated 17.02.1965, inter alia provided that a candidate was eligible for the post of ACF after completing the prescribed course of training. However, these Rules were not framed under Article 309 of the Constitution, and were never finalised. Moreover, the draft rules had been superseded by the 1998 Rules, as was also provided in the Preamble of 1998 Rules. The respondents’ plea that the candidate would be eligible to be given regular pay scale after successful completion of probation of three years, was turned down while opining that no reason was given for non-applicability of Rule 10 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (hereinafter referred to as the “1981 Rules”), whereby the person shall draw minimum of time scale attached to the post to which he is appointed. It was held that the appellants will be entitled to regular pay after successful completion of probation, retrospectively from the date of appointment, after deducting the amounts of ‘stipend’ already paid to them. More significantly, it was declared that the appellants will be entitled for appointment as ACF from the commencement of their training on 01.02.2014.

7. The review application filed by respondent no.1 before the Tribunal was dismissed on 16.09.2016 observing that whether the 1965 Rules were ‘draft’ or not had no bearing upon the outcome of the application, as the same were superseded by the 1998 Rules and all issues raised in the review application had already been decided in the original application.

8. The Government apparently accepted the aforesaid judgment and thus passed a Resolution dated 14.08.2018, resolving that successful completion of training period would be considered as regular service from the date of inception of training for all service purposes. The Resolution also provided that the ACF appointed by nomination shall be considered from the initial date of their training and the seniority will be considered accordingly. Respondent nos. 4 to 9 herein were not party before the Tribunal but filed the writ petition before the High Court, both against the appellants as well as against the Government of Maharashtra (who had accepted the Tribunal's judgment). These private respondents claimed that they were appointed as Range Forest Officers in 1987 to 1990 and were promoted to the post of ACF in 2014-2015. Their grievance was that though they were promoted as ACF before the appellants herein, they were shown junior to the appellants in the seniority list of ACF.

9. The case of respondent nos. 4 to 9 was based on the 1998 Rules; more specifically Rule 6 read with Rule 3(b) of the said Rules and Proviso to Rule 2(B) of the Divisional Forest Officer (in Maharashtra Forest Service, Class I) (Recruitment) Rules, 1984 (hereinafter referred to as the "1984 Rules"). The said Rules are reproduced hereinbelow:

Rule 6 of the 1998 Rules "A person appointed to the post by nomination shall be on probation for a period of three years including two years of Assistant Conservator of Forests training course and 1 year field training as decided by Principal Chief Conservator of Forests, Maharashtra state, Nagpur" (sic.)

Rule 3 (b) of the 1998 Rules "3. Appointment to the post of Assistant Conservator of Forests in the Maharashtra Forest Service, Group A (Junior Scale) shall be made either – xxxx xxxx xxxx xxxx xxxx

(b) by nomination from amongst candidates who are selected for the Assistant Conservator of Forests training course, on the basis of result of the competitive examination held by the commission in accordance with the rules made in this behalf from time to time and have successfully completed the training course."
....

Proviso to Rule 2 of 1984 Rules "Provided that, in the case of persons directly appointed as Assistant Conservator of Forests, the period spent on training at the Government Forest Colleges and the period of probation, including the extended period of probation, if any, shall not be counted towards the requisite period of service."

10. The significant aspect is the Proviso to Rule 2 of the 1984 Rules, which specifically stipulated that the period spent on training at the Government Forest College by directly appointed ACF shall not be counted towards the requisite period of service for purposes of appointment to the cadre of DFO. It is this which is the bedrock of the plea of the private respondents. The respondents also relied on a judgment of this Court on R.S. Ajara & Ors. v. State of Gujarat 1 for the proposition that an administrative resolution cannot take away a right crystallized under the service rules.

11. On the other hand, the appellants' case before the High Court was that the Proviso to Rule 2 of 1984 Rules stood negated in view of the Government Resolution dated 17.02.1997, wherein the condition of probation period not being considered as period of experience had been removed. It was submitted that Rule 6 of 1998 Rules specified that persons appointed to the post by nomination shall be on probation for three years including two years of ACF training and one year of field training. There was a marked distinction between 1965 Rules and 1998 Rules, as the former separately referred to recruitment and appointment on probation, whereas the latter referred to appointment on probation for three years, including the period of training. Relying on the same judgment in the case of R.S. Ajara & Ors.2, it was contended that the training period prior to the appointment can also be considered for the purposes of seniority.

(1997) 3 SCC 641.

(supra).

Proceedings before the High Court

12. The High Court passed an interim order dated 18.04.2019 restraining the respondent authorities from issuing any promotion order based on the judgment of the Tribunal dated 03.02.2016. The above order was modified on 23.08.2019 by directing that any promotion made would be subject to the outcome of the writ petition.

13. The matter was finally adjudicated by the High Court vide the impugned judgment dated 23.04.2021. It was opined that respondent nos. 4 to 9 would not be affected by the Tribunal's order to the extent of directing payment of salary and the pay scale to the appellants from the date of initiation of the training period, as the respondents' right would only be affected while considering the seniority vis-à-vis promotion to the post of DFO. Since Rule 3(b) read with Rule 6 of the 1998 Rules shows that the period of training is considered as probation, the direction of the Tribunal to pay salary to them as per the pay scale was found to be reasonable.

14. However, on the aspect of fixation of seniority, it was opined that the case of R.S. Ajara & Ors.3 was on a factual scenario where, in the absence of rules regarding fixation of seniority of persons appointed to (Supra).

ACF, a Government Resolution was issued suggesting determination of seniority of directly recruited ACF in Gujarat State Forest Services Class II by taking into account the period of training. A reference was also made to Prafulla Kumar Swain v. Prakash Chandra Misra & Ors.,⁴ where Regulation 12(c) of the Orissa Forest Services Class II Recruitment Rules, 1959 provided that appointment to service is to commence only after successful completion of training, and hence the seniority would be reckoned from the date of appointment and not date of recruitment. No such similar Government Resolution or Regulation providing for fixation of seniority existed in the present matter.

15. The reasoning of the High Court was based on the 1984 Rules which were framed under the Proviso to Article 309 of the Constitution and have statutory force. On the other hand, the Government Resolution dated 17.02.1997 was issued under Article 162 of the Constitution by General Administration Department of Government of Maharashtra and hence does not have an overriding effect upon the 1984 Rules. While the said Resolution provides that probation period shall be considered for purposes of experience, the 1984 Rules require the period spent on probation and/or training to be excluded and only the period after 1993 Supp (3) SCC 181.

appointment order on successful completion of training and/or probation to be computed for purposes of promotion to the post of DFO.

16. Even on examination of 1998 Rules, the High Court came to the same conclusion. Even though the said Rules prescribed fixation of seniority amongst persons appointed by nomination, their seniority is not fixed unless and until they pass the final examination of the ACF training course. Thus, Rule 6 of 1998 Rules was found to be in consonance with Rule 3(b) of the 1998 Rules where the Commission selects candidates for the ACF training course and only after successful completion of training and passing the competitive final examination, would the candidates be issued the appointment order of ACF. It was observed that Rule 7 of 1998 Rules only prescribed the methodology of fixation of inter se seniority of the ACF appointed by nomination and does not provide for fixation of seniority between those appointed by promotion and nomination. The High Court thus held that the seniority of persons selected for the post of ACF by nomination shall be counted from the date of issuance of appointment order after successful completion of training qua the person appointed to ACF by promotion.

Proceedings and Arguments before this Court:

17. On 30.06.2021 while issuing notice in the SLP, this Court directed the position, as was prevalent prior to the impugned judgment, to continue to operate for the time being. On 07.02.2022, it was submitted that both sets of parties had not been promoted. Leave was granted on 02.02.2023.

18. On behalf of the appellants, an endeavour was made to trace out the history of the creation of the post of the ACF which was formerly a Class II post initially governed by the 1965 Rules. Appointment by nomination was on probation for two years (extendable) from among candidates who successfully completed the course of training after selection. Thus, training and probation were different terminologies and training was not considered as appointment to the post. However, this was stated to change with the adoption of the 1998 Rules coming into existence. In terms of Rules 3 and 6 of the 1998 Rules, the period of training is now considered as period of probation and Rule 6 opens with the expression “a person appointed to the post by nomination”, which is described under Rule 3(b). The appointment by nomination precedes the training and the expression “and have” under Rule 3(b) must not be read as “after” to interpret Rule 3(b) as laying down an eligibility qualification for appointment, or else the opening part of Rule 6 would be rendered otiose. It was thus submitted that the High Court fell into an error in coming to the conclusion that the appointment has to be made only after completion of training course, as this expression was not found in Rule 3(b). Reliance was placed on the judgment of this Court in Commandant, 11th

Battalion, A.P. Special Police (IR) v. B. Shankar Naik⁵ to contend that training which was given cannot be rendered purposeless.

19. It was next contended that the Government Resolution dated 17.02.1997 was issued by the General Administrative Department, Maharashtra “by order and in the name of the Governor of Maharashtra”, which is a deemed rule under Article 309 of the Constitution. The said Resolution provides that service during probation should be considered as experience for promotion. It is submitted that an incongruous situation has arisen in view of the impugned judgment, where for the purposes of salary, the appellants will be considered to be appointed as from date of commencement of their training on 01.12.2014, but for selection, the date of appointment is to be considered after appointment order issued on successful completion of training.

(2003) 5 SCC 580.

20. The judgment in Prafulla Kumar Swain⁶ case was sought to be distinguished on facts as Regulation 12(c) of the Orissa Forest Services Class II Recruitment Rules, 1959 in the said judgment contemplated that such service will count only from the date of appointment to the service after successful completion of the course of training.

21. Reliance was also sought to be placed on 1981 Rules, more specifically Rule 9(14) defining “duty” to include service as probationer and a course of instructions or training authorized by or under the orders of the Government. It was further submitted that the 2004 Rules did not determine the date of appointment by nomination to the post of ACF, and the 1998 Rules also did not offer any guidance to determine the inter se seniority between the promotees and direct recruits. It was stated that for determination of seniority, Rule 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 would be applicable.

22. On the other hand, the respondents defended the impugned judgment to contend that there could be no ambiguity that the period of training at the Government Forest Colleges and the period of probation including the extended period of probation, if any, had to be necessarily (supra) excluded for computing the period of service. The appointment orders had been issued qua the appellants long after the respondents were appointed as ACF. Further, Rule 2(a) read with Rules 3 and 7 of the 1998 Rules had clarified that the nominated ACF would be entitled for an appointment only after completion of training. Training could not be a mere formality and in Prafulla Kumar Swain⁷ case, this Court while applying similar rules held that recruitment is just an initial process and may lead to eventual appointment in service.

23. The respondents further submitted that the endeavour of the appellants to rely on Government Resolutions dated 25.01.1990, 29.07.1993 and 17.02.1997 and claim that Rule 2 of the 1984 Rules had no relevance is fallacious as, Government Resolutions cannot override the Rules. Further, the Resolutions neither speak about the promotion to the post of DFO nor about how the seniority had to be reckoned for ACF appointed by promotion or by nomination.

Conclusion:

24. We have considered the aforesaid rival submissions and perused the impugned judgment.

(supra).

25. In service jurisprudence, the service rules are liable to prevail. There can be Government resolutions being in consonance with or expounding the rules, but not in conflict with the same. On having set forth this general proposition, we now examine the scenario of the Rules as prevalent. If we turn to the statutory Rules framed under Article 309 of the Constitution, i.e., the 1984 Rules, Rule 2 refers to the appointment to the post of the DFO and the same to be made by promotion from amongst officers of the Maharashtra Forest Service and also by appointment directly. The Proviso to Rule 2 of the 1984 Rules is unambiguous and quite clear, i.e., the period spent on training at Government Forest Colleges and other period of probation including extended period of probation, if any, “shall not be counted towards the requisite period of service.” Thus, what is envisaged is that the appointment is different from the recruitment process, which starts with the commencement of training. There can be possibilities of a candidate not completing the training satisfactorily, thereby resulting in the candidate’s removal on probation. Such probation period can also be extended to see whether a candidate improves in performance. (Hence, even if the Government Resolution dated 25.01.1990 upgraded the post of ACF from Class II to Class I, the Proviso to Rule 2 of the 1984 Rules will continue to hold valid in determining the period of service.)

26. In the aforesaid context if we turn to the 1998 Rules, more specifically Rule 3(b), the stipulation is that in case of a nomination, the same is based on the result of the competitive examination held by the Commission in accordance with the Rules and the candidate is required to have “successfully completed the training course.” Rule 6 provides for probation for a period of three years including two years of ACF training course and one year field training, as decided by the Principal Chief Conservator of Forests. Thus, even reading of these extant Rules makes the process for such direct recruitments quite clear. The Entrance and Training Rules (Revised) for the State Forest Service Officers, 2004 (hereinafter referred to as the “2004 Rules”) are comprehensive in character and set forth how the recruitment process will take place.

27. We do believe that on behalf of the appellants there is over- emphasis on the expression “person appointed to the post by nomination” under Rule 6 of the 1998 Rules, without appreciating the context in which such expression has been used. In contending that the interpretation given by the High Court would amount to making the opening part of Rule 6 otiose, what is lost sight of is that were the appellants’ plea to be accepted, it would amount to making the Proviso to Rule 2 of the 1984 Rules otiose. The Government resolutions issued by the Administrative Department cannot have the status of a statutory rule although such resolutions may have their own effect.

28. It appears to us that the High Court’s view is the correct view. The resolutions have been passed in the context that the person who successfully completes the training effectively gets the monetary compensation for his training period and is not deprived of the same. This cannot amount to giving seniority from the date of initial recruitment process to determine inter se seniority, when the Proviso to Rule 2 of the 1984 Rules makes the date of appointment for direct recruits clear. This is

also in the background that while the direct appointees have no experience in the field having been freshly recruited, the promotees have been doing the task.

29. We fail to appreciate how the judgment in Prafulla Kumar Swain⁸ case can be distinguished in this behalf merely by reason of the regulation therein containing the expression “only”. It is not necessary to (supra).

refer to factual scenarios of different judgments and different rules or general definition of what would amount to be on “duty”, when the rule in question is quite clear. We say so even in the context of the judgment in R.S. Ajara & Ors.⁹ case as in any service, whether on the issue of appointment or promotion, it is what the rule says, which will matter. One cannot derive general principles to decide such issues. We do appreciate that there can be scenarios where the rule specifically states to the contra. But, in the present case, the very factum of Proviso to Rule 2 of the 1984 Rules being inserted in the rule has to be assigned a meaning, as otherwise, it would imply that the Proviso has become otiose. It cannot be said that the Proviso is not to be read in the context of the aspect of promotion.

30. We also find that Rules 3B and 6 of the 1988 Rules also leave no ambiguity in this behalf and in fact read in consonance and the period of probation has to be necessarily excluded from period of service. As already stated, the grant of monetary benefit is a different aspect.

31. On having come to the conclusion that the Government resolutions cannot override statutory rules, and the resolutions neither speaking about (supra).

promotion to the post of DFO nor about seniority conclusively, the Proviso would operate with full force.

32. We are thus of the clear view that the applicable Rules leave no ambiguity in the matter and must prevail.

33. The result of the aforesaid is that the appeal is dismissed leaving the parties to bear their own costs.

.....J. [Sanjay Kishan Kaul]J. [Abhay S. Oka] New Delhi.

March 15, 2023.