

Before : V. Ramaswami, CJ and G. R. Majithia, J.

KEWAL KRISHAN MAHINDROO AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No 8975 of 1987

March 10, 1989.

*Punjab Service of Engineers (Class II) P.W.D. (B & R) Rules, 1965—Rl. 9 read with paragraph 2 of Appendix G of Rules—Appointment—Ad hoc promotion, provisional and purely temporary—Appointment under rules to be approved by a Committee—Committee required under rule to meet at interval—Such rule whether mandatory—Committee not meeting for a number of years—Effect of—Seniority to be counted from the date of appointment under rules.*

*Held*, that it is not mandatory that the Committee shall meet every year. If an inordinate delay is caused, this Court may in an appropriate case issue directions to the State to constitute the Committee to screen the cases of eligible officials for promotion to the service, but the officials have no right to the posts till they have been regularly appointed to the posts in conformity with the Rules.

(Para 5)

*Held*, that the date of appointment of the petitioners shall be taken to be the date on which they are appointed in accordance with Rule 9(12) read with paragraph 2 of Appendix 'G' of the Punjab Service of Engineers (Class II) P.W.D. (B&R) Rules, 1965 and not from the date of their first promotion, which was *ad hoc*, provisional and purely temporary. We do not find that the claim of the petitioners is sustainable in law.

(Para 6)

*Petition under Article 226/227 of the Constitution of India praying that a writ of certiorari, Mandamus or any other suitable writ, direction or order to be issued directing the respondents :*

- (i) to produce the complete record of the case;
- (ii) the Roster at Annexure 'P—8' be quashed;
- (iii) a Writ of Mandamus be issued directing the respondents to promote the petitioners to the post of Sub Divisional Engineers in P.S.E. Class II on regular basis against quota

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*posts in part modification of orders dated November 7, 1979 and March 28, 1980, i.e. with effect from February 11, 1972;*

- (iv) it be declared that the petitioners are entitled to be appointed against the Class-II posts in P.S.E. with effect from February 11, 1972;*
- (v) a Writ of Mandamus be issued directing the respondents to delete the names at serial No. 47, 78 and 85 and to replace by the next approved promotees belonging to source 2; and the names at points No. 94, 101 and 175 be deleted or brought as ad hoc appointees and the names at points 108, 116, 131, 86 and 102 be brought down and placed at appropriate places on the Roster;*
- (vi) the respondents be directed to re-cast the roster as aforesaid and then promotions, if any, be made in accordance with the new roster so recast;*
- (vii) the petitioners be exempted from filing the originals of Annexures (P—1) to (P—14);*
- (viii) the petitioners be exempted from filing the copies of the writ petition for service on the respondents at this stage;*
- (vix) the petitioners be exempted from serving the five days notice as required under the High Court Rules and Orders Volume-V;*
- (x) this Hon'ble Court may also pass any other order, which it may deem just and fit in the peculiar circumstances of the case and grant all such other benefits to which the petitioners may be found entitled to;*
- (xi) the costs of this writ petition may also be awarded to the petitioners.*

J. S. Khehar, Advocate, for the petitioner.

D. N. Rampal, Advocate, for the State respondent.

R. C. Dogra & Shri S. C. Chopra, Advocate, for respondents No 4 & 10.

J. S. Mann, Advocate, for respondent No. 5 & 6

H. C. Garg, Advocate, for respondent No. 11.

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JUDGMENT

G. R. Majithia, J.

(1) This judgment will dispose of C.W.Ps Nos. 8975 of 1987 and 5521 of 1987 as common questions of law and facts arise for determination in these cases.

(2) The matter initially came up for hearing on August 17, 1988, before a learned Single Judge of this Court, who referred the matter for adjudication by a large Bench with the following observations :—

“After hearing the learned counsel for some time, I am of the view that the judgment of the Division Bench in *O. P. Jindal v. The State of Punjab and others*, 1976 Service Law Weekly Reports 598, laying down that the requirement that the Selection Committee under the relevant rule shall meet every year is not a mandatory requirement, stands in the way of the petitioners who seek relief on equitable grounds.

I, therefore, find it appropriate that this petition be heard by a larger Bench. The papers may be placed before Hon'ble the Chief Justice for necessary orders.”

It is in these circumstances that the matter has been listed for hearing before us.

(3) We have alluded to the facts as given in C.W.P. No. 8975 of 1987. The writ-petitioners joined service in the Punjab Public Works Department (B & R Branch) as Sectional Officers. They were appointed as Sub-Divisional Engineers on *ad hoc* basis for a period of six months on February 11, 1972. The *ad hoc* appointment was extended from time to time except for six months period from September 19, 1972 to February 18, 1973, when no pay as Sub-Divisional Engineer was given, but they continued to discharge the functions as Sub-Divisional Engineers. Petitioner No. 2 was appointed to P.S.E. Class II on regular basis on November 7, 1979 and petitioners Nos. 1, 3 and 4 were appointed on March 28, 1980. The *ad hoc* appointment of the petitioners continued for a period of six years not for want of quota but the State failed to get their cases approved by the Screening Committee/Punjab Public Service

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Commission for regular appointment to P.S.E. Class II under Rule 9 of the Punjab Service of Engineers, Class II P.W.D. (Buildings and Roads Branch) Rules, 1965 (for short "the Rules"). For the years 1971 and 1972, no meeting of the Screening Committee was held. The Screening Committee met in June 1973, but for reasons best known to the State, the petitioners' cases were not referred to the Screening Committee. In the years 1974 and 1975 again, no Screening Committee was constituted. The Committee met in the year 1976 and interviewed all eligible candidates including the petitioners. The Committee found the petitioners suitable for appointment to Class II Service but the select list was never finalised. In the years 1977 and 1978, the Screening Committee did not meet. If the Screening Committee had met, the petitioners' cases would have been approved. The Screening Committee met in August 1979 and the petitioners were found suitable for promotion as Sub-Divisional Engineers and they were so approved by the Public Service Commission. The petitioners want a direction from this Court that their appointments as Sub-Divisional Engineers be regularised from the dates of their *ad hoc* appointments.

(4) The State in its return pleaded that appointment to P.S.E., Class II, is to be made after following the procedure laid down in Rule 9 of the Rules. The petitioners along with others were appointed in order of seniority after they were found fit for promotion by the Punjab Public Service Commission after following the procedure laid down in the Rules. It was further submitted that in view of the decision rendered by this Court in *O. P. Jindal v. The State of Punjab and others* (1), the petitioners have got no justifiable ground to maintain this writ petition.

(5) Rule 9 of the Rules provides for appointments by promotion. It has been provided in sub-rule I of this rule that a Committee consisting of the Chairman of the Punjab Public Service Commission or where the Chairman is unable to attend, any other member of the Commission representing it, Secretary P.W.D. Buildings and Roads Branch, and Chief Engineers of P.W.D. Buildings and Roads shall be constituted. Sub-rule (3) of this rule provides that the Committee shall meet at intervals, ordinarily not exceeding one year and consider the cases of all eligible officials

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(1) 1976 SLWR 598.

for promotion to the Service as on the first date of January of that year. Sub-Rules 4 and 5 of this rule are in the following terms:—

“9(4) The Committee shall prepare a list of officials suitable for promotion to the Service. The Selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority.

(5) The names of the officers included in the list shall be arranged in order of seniority in Punjab PWD (B & R) Sectional Officers (Engg.) Service and members of Draftsmen and Tracers Service, provided that any Junior Officer who, in the opinion of the Committee is of exceptional merit and suitability may be assigned a place in the list higher than that of officers senior to him in his own class.”

The contention of the learned counsel for the petitioners that sub-rule (3) of Rule 9 is mandatory and the Government having failed to constitute the Committee for a number of years as postulated under Sub-rule (1) of Rule 9 and their names being not approved for no fault of the petitioners, their appointment should relate back to the date of initial appointment, is wholly devoid of merit. Sub-rule (3) provides that the Committee shall meet at intervals, ordinarily not exceeding one year to consider the cases of all eligible officials for promotion to the service as on the first date of January of that year. It is not mandatory that the Committee shall meet every year. If an inordinate delay is caused, this Court may in an appropriate case issue directions to the State to constitute the Committee to screen the cases of eligible officials for promotion to the service, but the officials have no right to the posts till they have been regularly appointed to the posts in conformity with the Rules. This matter is not *res integra*. It was held in *O. P. Jindal's* case (supra) as under:—

“Rule 9 provides for appointment by promotion. Sub-Rule (1) provides for the constitution of a Committee consisting of Chairman of the Commission or any other member representing him; Secretary P.W.D., Buildings and Roads Branch and Chief Engineers of P.W.D., Buildings and Roads Branch. The said Committee shall meet at intervals, ordinarily not exceeding one year and consider the cases of all eligible officials for promotion to the Service as on the first date of January of that year. Sub-rules (4), (5), (6) and (7) provide the procedure for the preparation of the Select List which list is then to be forwarded to the

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Commission along with the records mentioned in sub-rule (8). The Commission is then to consider the list prepared by the Committee along with the other documents and may approve the list as it is or with changes. It is then that under sub-rule (11) the appointment to the Service shall have to be made by the Government from within the list in the order in which the names have been placed by the Commission. Admittedly, the petitioners were appointed for the first time after having been screened and after their names having been brought on the list with the approval of the Commission in the year 1970. It is, therefore, idle to contend that the date of appointment of the petitioners under the Rules should be taken to be the date of their first promotion which was provisional and purely temporary."

The learned counsel for the petitioners did not dispute the correctness of this decision and he fairly conceded that even before the learned Single Judge he had not assailed the correctness of this judgment. We do not find that the reasoning given by the Division Bench while interpreting Rule 9 of the Rules is wrong and calls for reconsideration by a larger Bench, particularly when the correctness of this judgment has not been assailed by the learned counsel for the petitioners and we approve of the reasonings and conclusions arrived at by the Bench.

(6) Accordingly, we hold that the date of appointment of the petitioners shall be taken to be the date on which they were appointed in accordance with Rule 9(12) read with paragraphs 2 of Appendix 'G' of the Rules and not from the date of their first promotion, which was *ad hoc*, provisional and purely temporary. We do not find that the claim of the petitioners is sustainable in law.

(7) The learned counsel for the petitioners has referred to the following authorities : *Dr. Satyabrata Dutta Choudhury v. State of Assam and others* (2), *S. B. Patwardhan and others v. State of Maharashtra and others* (3), *Baleshwar Dass and others v. State of U.P. & others* (4), *G. S. Lamba and others v. Union of India and others* (5)

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(2) 1976 SLWR I.

(3) 1977(2) SLR 235.

(4) 1980(3) SLR 422.

(5) 1985(2) SCC 604.

*Narender Chadha and others v. Union of India and others* (6), *G. P. Doval and others v. Chief Secretary, Government of U.P. and others* (7), *P. S Mahal and others v. Union of India and others* (8), to highlight his submission that refusal to consider the period spent on *ad hoc* appointment for regularisation of service is violative of Articles 14 and 16 of the Constitution of India. These judgments have absolutely no bearing to the facts of the present case. Regularisation of the service of the petitioners herein governed by the statutory rules as stated supra, and they will be deemed to be the members of the service from the date of their appointment under the Rules.

(8) There is, thus, no merit in these writ petitions. The same are, therefore, dismissed. We, however, leave the parties to bear their own costs.

S.C.K.

Before : V Ramaswami, CJ and G. R. Majithia, J.

M. S. DUTTA AND OTHERS,—Petitioners.

*versus*

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 515 of 1986.

March 10, 1989

*Constitution of India, 1950—Art. 226—Allotment made out of quired land—Condition of allotment providing for enhancement of ice—Enhanced price demanded—Opportunity of hearing to allottee fore such demand—Requirement of.*

*Held*, that there is no requirement in law that the allottee has to be associated in determining the additional price recoverable from him. Of course, if the allottee disputes the calculation made by the Revenue Officer, he or she can move the authorities for inspection of the record to ascertain how the additional price was worked out and

6) 1986 (1) SLR 437.

7) A.I.R. 1984 S.C. 1527.

3) 1984 (4) S.C.C. 545.