

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

[Court's order whether the case is approved for reporting or
not under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 1479 (SS) of 2006

Balbir Singh Bisht
and others.

....Petitioners.

Versus

State of Uttarakhand
and others.

.....Respondents

AND

Writ Petition No. 596 (SS) of 2007

Bhagwati Prasad Simalty

....Petitioner.

Versus

State of Uttarakhand and others.

.....Respondents

Approved for reporting

Not approved for reporting

Date of Decision : December 29 2007

Initial of Judge

**JUDGEMENT RESERVED
IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Writ Petition No. 1479 (SS) of 2006

1. Balbir Singh Bisht, Son of Sri Anand Singh Bisht, presently post as Village Development Officer, Development Block - Dugadda, District Pauri Garhwal.
2. Govind Prasad Semwal, Son of Sri Narayan Dutt Semwal, presently post as Village Development Officer, Development Block - Dugadda, District Pauri Garhwal.
3. Keshwanand Chamoli, Son of Sri Ramanand Chamoli, presently post as Village Development Officer, Development Block - Dwarikhaal, District - Pauri Garhwal.
4. Prem Lal Tailwal, Son of Sri Chandra Mani Tailwal, presently post as Village Development Officer, Development Block - Pauri, District Pauri Garhwal.
5. Manbar Singh Rauthan, Son of Sri Pan Singh Rauthan, presently post as Village Development Officer, Development Block - Dugadda, District Pauri Garhwal.
6. Anil Kumar Dhasmana, Son of Sri Khusal Mani Dhasmana presently post as Village Development Officer, Development Block - Dugadda, District Pauri Garhwal.
7. Dhaneshwar Prasad Mamgain, Son of Sri Khusal Mani Mamgain presently post as Village Development Officer, Development Block - Dwarikhaal, District - Pauri Garhwal.

.....Petitioners.

Versus

1. State of Uttarakhand through Secretary Rural Development, Government of Uttarakhand, Dehradun.
2. Commissioner Rural Development and Panchayati Raj, Secretariat, Dehradun.
3. Deputy Commissioner (Administration) Directorate of Rural Development, Pauri Garhwal.

.....Respondents

AND

Writ Petition No. 596 (SS) of 2007

Bhagwati Prasad Simalty,
S/o late Sri Bhola Dutt Simalty,
R/o Jal Nigam Colony, Chamba,
District - Tehri Garhwal.

.....Petitioner.

Versus

1. State of Uttarakhand through Secretary Rural Development, Government of Uttarakhand, Dehradun.
2. Commissioner Rural Development, Secretariat, Dehradun.
3. Deputy Commissioner (Administration) Directorate of Rural Development, Pauri Garhwal.

.....**Respondents**

Hon'ble M.M. Ghildiyal, J

Since common question of law is involved in both the writ petitions and the facts are similar, consequently, both the writ petitions have been clubbed and are being disposed of by common judgement.

Heard Sri S.K. Posti, learned counsel for the petitioners and Sri N.P. Shah, learned Standing Counsel for State of Uttarakhand on behalf of the respondents.

By means of this writ petition, petitioners have challenged the order dated 01.11.2006, passed by Commissioner, Rural Development, rejecting the objection of the petitioners relating to their seniority in the Department.

The facts emerges outs from the writ petition are that petitioners are at present working as Village Development Officer, Development Block in the District - Pauri Garhwal. Petitioner no. 1 was appointed, initially as Village Panchayat Adhikari on 30.04.1975. Similarly, petitioner nos. 2 to 7 were also appointed as Village Panchayat Adhikari on 27.12.1972, 29.07.1970, 12.07.1973, 11.04.1974, 27.12.1972 and 01.01.1973 respectively. Petitioner no. 1 was promoted by the Additional District Magistrate (Development), Pauri Garhwal vide order dated 07.01.1981 on adhoc basis on the post of Village Development Officer. Other petitioners were also promoted like petitioner no. 1 on different dates in between 1972 and 1981

on the same terms and conditions, as were mentioned in the promotion order of petitioner no. 1. Petitioner no. 1 joined as Village Development Officer in pursuance to the promotion order dated 07.01.1981. Government has issued order dated 03.06.1989 to provide Selection Grade to the employees, who have completed 10 years regular satisfactory service on a particular post since the petitioners were promoted though on adhoc basis by the Competent Authority on 07.01.1981 so he was granted First Time Scale on completing 10 years of regular satisfactory service on the post from the date of his promotion i.e. with effect from 07.01.1981. Another Government Order was issued on 05.02.1997 for grant of Promotional Pay Scale to those employees who have completed 4 years of continuous regular service after getting First Time Scale and consequently, District Development Officer, vide order dated 09.04.1997 granted promotional pay scale to the petitioner with effect from 07.01.1995. Again in pursuance to the Government Order dated 12.03.2001, District Development Officer, granted second Time Scale to the petitioners with effect from 07.03.2000, after completing 19 years continuous regular satisfactory service, as was required under the Government Order dated 12.03.2001. Again petitioners no. 1 was granted Second Promotional Pay Scale with effect from 07.03.2005 after completing 24 years of continuous satisfactory service vide order dated 16.03.2005 passed by District Development Officer in pursuance to the Government Order dated 12.03.2001. The other petitioners were also granted First Time Scale, First Promotional Pay Scale on completing required service as required under the Government Orders.

Prior to creation of State of Uttarakhand, a Tentative Seniority List was published by the State of U.P. on 20.05.1996

in which all the petitioners were placed at right place and petitioners had no grievance.

In the year 1998, State of U.P. published seniority list of those employees, who have opted for plain cadre and on 22.07.1999 a final seniority list was published of employees of Hill Sub Cadre in respect of Village Development Officer. Since petitioners name were not shown at right place and the date of appointment of petitioners on the post of Village Development Officer in the final seniority list was mentioned as 24.11.1992, petitioners filed objection to the final seniority list on the ground that they were promoted on the post vide order dated 02.01.1981 and not on 24.11.1992. In the Final Seniority List, the date of appointment of petitioners was shown as 24.11.1992 on the basis of that they were regularized under the Regularization Rules 1988 known as U.P. (Out of the purview of the Public Service Commission) Regularization of Adhoc Promotion Rules 1988. All the employees, who were regularized under these Rules, their substantive appointment on the post of Village Development Officer was treated with effect from 24.11.1992.

In the meantime, State of Uttarakhand issued Tentative Seniority List on 05.12.2005 and the petitioners were placed at serial no. 336, 335, 325, 345, 350, 344 and 339. However, in the column of date of substantive appointment, the date has been shown as 24.11.1992 in respect of petitioners.

Against the tentative seniority list petitioners filed objection. Since objection filed by the petitioners was not considered by the Department and consequently, petitioners were forced to file writ petition no. 1048 (SS) 2006. The said writ petition was disposed of by this court on 02.08.2006. While disposing of the writ petition, the Court directed that the petitioners may be considered for promotion on the post of

Assistant Block Development Officer on the basis of Final Seniority List and further prior to publishing the Final Seniority List, respondents were directed to decide the objection raised by the petitioners against the Tentative Seniority List.

In pursuance to the order passed by this Court on 02.08.2006 respondent no. 2 has decided the objection of the petitioners, rejecting the claim vide order dated 01.11.2006, which is under challenge in this writ petition.

Rejecting the objection of the petitioners, respondents have taken ground that since petitioners, who were promoted on adhoc basis earlier were regularized under U.P. (Out of the purview of the Public Service Commission) Regularization of Adhoc Promotion Rules 1988 and according to these Rules they were regularized with effect from 24.11.1992 and as such, their seniority on the post of Village Development Officer shall be treated with effect from 24.11.1992 and not from the date they were promoted.

An application was moved by the petitioners to amend / delete the part of prayer no. 1. The said application was allowed and the petitioners were permitted to delete the part of prayer no. 1. Now, the only grievance of the petitioner is to quash the order dated 01.11.2006 by which the objection of the petitioners was rejected by Commissioner, Rural Development and Panchayati Raj, Dehradun.

The submission of the petitioners is that they were not promoted on adhoc basis of the contrary there was 25% quota for promotion on the post of Village Development Officer and under this quota petitioners were promoted temporarily / officiating basis. Thus, the promotion was not adhoc but it was temporary promotion and as such, there substantive appointment on the post of Village Development Officer cannot

be treated as 24.11.1992 but it should be counted from the date when they were promoted temporarily / officiating basis, as they continued on the post till their regularization. Further, since the petitioners were granted First Time Scale, First Promotional Pay-scale, Second Time Scale and Second Promotional Pay-scale on completing required service as required under various Government Orders and consequently, it cannot be said that their seniority on the post shall not be counted from the post when they have actually joined the post.

I have gone through the promotion order by which petitioners have been promoted and the same is quoted as under:

Sd/- Illegible
Block Development Officer
Dugadda (Garhwal)"

From perusal of aforesaid promotion order dated 07.04.1980, it is clear that petitioner no. 1 was not promoted on adhoc basis on the contrary he was promoted on temporary / officiating basis. Similar is the situation in respect of other petitioners.

Learned counsel for the petitioner has further placed reliance on the judgement passed by Constitutional Bench of Hon'ble Supreme Court in the case of Direct Recruit Class - II Engineering Officers' Association and others Vs. State of Maharashtra and others, wherein the Hon'ble Apex Court in para 44 has held as under:

"To sum up, we hold that:

- (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.*
- (B) The corollary of the above rule is that where the initial appointment is only and hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.*
- (C) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.*
- (D) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.*
- (E) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the*

needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

- (F) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source induced in the service at a later date.*
- (G) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.*
- (H) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.*
- (I) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.*
- (J) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.*
- (K) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinized for finding out any possible error. It is not in the interest of Service to unsettle a settled position. With respect to Writ Petition No. 1327 of 1982, we further hold:*
- (L) That a dispute raised by an application under Article 32 of the Constitution must be held to be barred by principles of res judicata including the rule of constructive res judicata*

if the same has been earlier decided by a competent court by a judgment which became final."

Here in the present case, undisputedly the promotion of the petitioners was made temporarily and are still continuing on the post. The promotees continue on the post uninterruptedly till the regularization of his service in accordance with Rules, such, the period of officiating service will be counted.

The submission of learned counsel for the petitioners is that petitioners were promoted after following due procedure of law.

Respondents have filed counter affidavit. In one paragraph of counter affidavit, respondents have submitted that due procedure of law was not followed, however, in another paragraph, respondents have submitted that there was conflagration in the office of District Development Officer, Pauri Garhwal and the entire document were set ablaze and are not available in the office. When the records are not available, respondents cannot say definitely that the promotion of the petitioners was not made in accordance with law.

Petitioners were promoted in different dates in between 1972 and 1981. They were granted first time scale, first promotional pay scale, second time scale and second promotional pay scale, after completing required service under the Government Orders. They are still continuing on that post. In these circumstances, their case is fully covered by the judgement passed by the Constitutional Bench of Hon'ble Apex Court in the case of Direct Recruit Class - II Engineering Officers' Association and others Vs. State of Maharashtra and others.

Similar is situation of one Sri Bhagwati Prasad Simalty, who preferred claim petition before Public Service Tribunal, Uttarakhand. The Tribunal directed the respondents to decide the case of Bhagwati Prasad Simalty in view of observation and direction made in the judgement.

From perusal of impugned order it reveals that the impugned order has been passed by not following the observation made by the Tribunal.

For the reasons recorded above, writ petition are allowed. Order dated 01.11.2006 is quashed. Respondents are directed to provide seniority to the petitioners in view of the observations made above. All the pending applications are disposed of accordingly. No order as to costs.

(M.M. Ghildiyal, J)

December 29, 2007
SKS