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FEROZ AHMAD

v.

DELHI DEVELOPMENT AUTHORITY AND ORS.

SEPTEMBER 29, 2006

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[S.B. SINHA AND DALVEER BHANDARI, JJ.]

Service Law:

Delhi Development Act, 1957—Seniority—Claim for—Denied in view C of statutory Rules—Also denied by Courts below—In appeal, held: The question raised in the matter would depend upon validity of the Rules—In absence of proof whether the Rules are framed in terms of the statute and since the constitutionality of the Rules not challenged, matter remitted to Division Bench of High Court for fresh determination of validity of the Rules.

D Appellant was appointed as Junior Engineer with respondent No. 1. His representation for upgradation of his pay-scale with seniority was rejected, while the same was granted to respondent Nos. 2 and 3 who were junior to the appellant, they being diploma holders.

E Appellant filed Writ Petition and the same was dismissed by Single Judge of High Court in view of the norms laid down for fixation of seniority. Letters Patent Appeal thereagainst was also dismissed by Division Bench of High Court. Hence the present appeal.

F Disposing of the appeal and remitting the matter to Division Bench of High Court, the Court

G **HELD:** 1. The terms and conditions of service of the employees of the Delhi Development Authority are governed by the statutory rules. Rules and regulations are required to be framed in terms of the provisions of the statute. The Court has not been able to make out as to whether the said regulations have been made in terms of the provisions of the Delhi Development Act, 1957 or whether while framing them, conditions precedent therefor had been followed. [823-B, D]

2. Appellant did not raise any question as regards the constitutionality

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of the said purported regulations. The question raised by appellant would, A however, depend upon the validity and/or applicability of the rules. Having regard to the facts and circumstances of this case, it is a fit case where an opportunity should be given to appellant to raise the contention as regards the validity and/or constitutionality of the rules. If no rules have validly been framed indisputably the rules prevailing prior thereto shall operate. A statutory rule, it is trite, cannot be supplemented by an executive order. Appellant would be entitled to file an application for amendment of writ petition questioning the validity of the said purported rules. [823-D, E, G]

Roop Chand Adlakha and Ors. v. Delhi Development Authority and Ors., [1989] Supp. 1 SCC 116 and *DDA Graduate Engineers' Association and Ors. v. The Lieutenant Governor of Delhi and Ors.*, JT (1992) 5 SC 396, distinguished. C

Roshan Lal Tandon v. Union of India and Anr., AIR (1967) SC 1889; *Mervya Continho and Ors. v. Collector of Customs, Bombay and Ors.*, AIR (1967) SC 52; *S.M. Pandit and Ors. etc. v. State of Gujarat and Ors. etc.*, AIR (1972) SC 252 and *Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors.*, [1991] Supp. 1 SCC 600, referred to. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4331 of 2006.

From the Judgment/final Order dated 15.12.2005 of the High Court of E Delhi at New Delhi in L.P.A. No. 363 of 2004.

Dr. Nafis A. Siddiqui for the Appellants.

Ashwani Kumar and Nitin Thalwal for the Respondents.

The Judgment of the Court was delivered by F

S.B. SINHA. J. Leave granted.

Respondent herein is a statutory authority constituted under the Delhi Development Act, 1957. Appellant was appointed as a Junior Engineer on 12.8.1976. It is contended by Appellant that he is a Graduate Degree Holder. He is said to be senior to Respondent Nos. 2 & 3 who are diploma holders. Appellant was promoted to the post of Assistant Engineer on 29.3.2001. He made a representation for upgradation of his pay-scale to Rs. 10,000-325-15,200, with seniority, which was not granted, although similar benefits had been granted to Respondent Nos. 2 & 3. He filed a writ petition before the H

A Delhi High Court. A learned Single Judge of the High Court by an order dated 13.8.2002, directed Respondent to consider his representation within a period of six months. The said representation was rejected by Respondent by an order dated 23.9.2002 stating that he was not entitled thereto. In support of the said order, attention of Appellant was drawn to the norms laid down for fixation of seniority as well as for step up of pay.

B Thereafter, a writ petition was filed by Appellant herein before the Delhi High Court. The said writ petition was dismissed by a learned Single Judge of the High Court by an order dated 13.1.2004 opining that as DDA had framed recruitment rules and promotions to the post of Assistant Engineer

C were being effected in terms thereof providing for 50% of promotions from amongst the Junior Engineers having a degree with 3 years of service in the post, and, thus, the order impugned in the writ petition could not be interfered with. An intra-Court appeal filed by Appellant being Letters Patent Appeal No.363/2004 was dismissed by a Division Bench of the said High Court, *inter alia*, relying on a decision of this Court in *Roop Chand Adlakha and Ors.*

D *v. Delhi Development Authority and Ors.*, [1989] Supp. I SCC 116. Appellant is thus before us.

E Mr. Nafis A. Siddiqui, learned counsel for Appellant would urge that respondent No.1 having adopted a resolution; in absence of any rules, the rules framed by the Central Government were to be followed and, thus, it was bound to apply the rules applicable to the employees of the CPWD. In this connection our attention has been drawn to a notification dated 17.1.1977 wherein it was provided:

“24. Recruitment by promotion shall be made: i) 50% by selection on the basis of merit from among permanent Junior Engineers employed on the Electrical Engineering side of the Central Public Works Department; and

(ii) 50% by selection from among Junior Engineers, employed on the Electrical Engineering side of the Central Public Works Department, after consultation with the Union Public Service Commission on the basis of a limited Departmental Competitive Examination which shall be held in accordance with the rules to be made by the Central Government, after consultation with the Union Public Service Commission.”

It has further been contended that a resolution was adopted by the

DDA to make a comparison of the proposed recruitment rules with those available in sister organisation like Central Public Works department, NDMC, MCD, etc. According to the learned counsel, the Central Government has also amended the Central Electrical Engineering Service, Class II, Recruitment Rules, in terms whereof recruitment was to be made on the basis of a competitive examination or by promotion in accordance with Part IV thereof. The purported rules framed by the DDA, it was urged, were not made in terms of the regulation making power as contained in Section 57 of the Act, as prior thereto neither any approval of the Central Government was taken nor the rules were laid before the Parliament. It was submitted that in any event, the degree holders and the diploma holders having been appointed on a cadre, no discrimination in regard to the scale of pay or avenue of promotion is permissible in law. In support of the said contention, strong reliance has been made on the Constitution Bench decision of this Court in *Roshan Lal Tandon v. Union of India & Anr.*, AIR (1967) SC 1889. Reliance has also been placed on *Mervin Continho & Ors. v. Collector of Customs, Bombay & Ors.*, AIR (1967) SC 52 and *S.M. Pandit & Ors. etc. v. State of Gujarat & Ors. etc.*, AIR (1972) SC 252.

Mr. Siddiqui would furthermore contend that the High Court committed a manifest error in relying upon the judgment of this Court in *Roop Chand Adlakha* (supra) as the same has impliedly been overruled by this Court in *DDA Graduate Engineers' Association & Ors. v. The Lieutenant Governor of Delhi & Ors.*, JT (1992) 5 SC 396. The rules framed by a State, it was argued, must conform to the constitutional requirements as contained in Articles 14 and 21 of the Constitution of India. Reliance in this behalf has been placed on *Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors.*, [1991] Supp. 1 SCC 600.

Mr. Ashwani Kumar, learned counsel appearing for Respondent on the other hand, would submit that Respondent No. 1 being a statutory authority, the matters relating to recruitment and promotion of the employees are governed by the rules and regulations framed by it. Such rules and regulations having been framed by Respondent No.1 and having been upheld by this Court in *Roop Chand Adlakha* (supra), it is not open to Appellant to question the validity thereof. It was pointed out that Appellant had been put in the pay-scale of Rs. 10,000-325-15,200 under the Assured Career Promotion Scheme with effect from 12.8.2000 (under the second upgradation) and in that view of the matter, CPWD Rules relied upon by him are not applicable. According to the learned counsel, for the purpose of promotion, the recruitment rules

A which are applicable in the instant case provide for quota of 50% from Junior Engineers having a degree with 3 years of service and 50% from Junior Engineers having 8 years of service on regular scale. Seniority list, it was urged, was made in terms of the said rules.

B Delhi Development Act, 1957 was enacted to provide for the development of Delhi according to plan and the matters ancillary thereto. For the purpose of giving effect to the said Act engineering operations which include the formation or laying out of means of access to a road or the laying out of means of water supply, are required to be carried into effect. Section 2(h) defines a "regulation" to mean a regulation made under this Act by the Delhi Development Authority constituted under Section 3. Section 2(i) defines "rule" to mean a rule made under this Act by the Central Government. Section 3 provides that the Central Government shall by notification in the Official Gazette, constitute an authority to be called the Delhi Development Authority. Section 4 deals with the Staff of the Authority.

D The object of the Authority is defined in Section 6 as under:

E "The objects of the Authority shall be to promote and secure the development of Delhi according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

F Provided that save as provided in this Act, nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force."

The power to make regulations is envisaged in Section 57 which reads as under:

G "(1) The Authority, with the previous approval of the Central Government, may, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for-

H (a) ...

(b) ...

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(c) the salaries, allowances and conditions of service of the secretary, chief accounts officer and other officers and employees;..."

The terms and conditions of service of the employees of the Delhi Development Authority, thus, are governed by the statutory rules. Rules and regulations are required to be framed in terms of the provisions of the statute. Respondents proceeded on the basis that in terms of the rules framed by the Delhi Development Authority, the CPWD rules ceased to have any force. In terms of the said purported rules, Respondents contend quota of 50%, promotion to the post of Junior Engineer is required to be made in terms thereof.

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A purported copy of the rules which has been placed before us is a Xeroxed copy. It had some cuttings. We had asked learned counsel appearing on behalf of Respondents to produce a copy of the regulations. The same has not been produced. We, therefore, are not sure as to whether the said regulations have been made in terms of the provisions of the Delhi Development Act or whether while framing them, conditions precedent therefor had been followed. Appellant, however, before the High Court did not raise any question as regards the constitutionality of the said purported regulations.

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The question raised by Appellant would, however, depend upon the validity and/ or applicability of the rules. If no rules have been framed in accordance with law, the earlier rules validly framed shall prevail. A statutory rule, it is trite, cannot be supplemented by an executive order.

The High Court has strongly relied upon a decision of this Court in *Roop Chand Adlakha* (supra). The questions raised before us had not been raised therein. This Court in that case proceeded on the basis that the rules and regulations have been validly made and published. The question furthermore even was not considered in the subsequent decision of this Court in *DDA Graduate Engineers' Association* (supra).

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Having regard to the facts and circumstances of this case, we are of the opinion that it is a fit case where an opportunity should be given to Appellant to raise the contention as regards the validity and/ or constitutionality of the rules. If no rules have validly been framed indisputably the rules prevailing prior thereto shall operate.

We are, therefore, of the opinion that the matter requires a fresh

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A consideration at the hands of the High Court. The Writ Petitioner - Appellant would be entitled to file an application for amendment of writ petition questioning the validity of the said purported rules. Respondents shall file a counter affidavit within two weeks from the date of filing the said application. Keeping in view the importance of the question involved, we are of the opinion that the matter should be considered by the Division Bench itself.

B We, however, set aside the impugned judgment of the Division Bench and remit the matter for fresh consideration in accordance with the directions and observations made hereinbefore. For the views we have taken, it is not necessary to deal with the other contentions raised by the parties herein at this stage. In view of the fact that the matter is pending for a long time, we

C would request the High Court to consider the desirability of disposing of the matter expeditiously and preferably within eight weeks from the date of receipt of copy of this order.

The appeal is disposed of accordingly.

D K.K.T.

Appeal disposed of.