

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10723 OF 2018
(Arising out of SLP(C)No.27435/2017)

DEBABRATA MOHANTY

... APPELLANT(S)

VS.

RABINDRA KUMAR MISHRA & ORS.

... RESPONDENT(S)

O R D E R

Leave granted.

2. The undisputed facts in the present case are that the appellant herein was initially appointed on 16.5.1994 as a Stipendiary Engineer in the services of the State Government. He was thereafter appointed as an ad-hoc Assistant Engineer on 26.6.2001. Respondent No.1– Rabindra Kumar Mishra was initially appointed as a regular Junior Engineer on 18.11.1982 and was thereafter promoted as an Assistant Engineer (against the promotional quota) with effect from 16.6.2005. The respondent was, by

Notification dated 30.7.2008, given notional promotion as an Assistant Engineer with effect from 18.7.2003, which benefit was also given to other similarly situated persons.

3. Under the provisions of the Orissa Service of Engineers (Validation of Appointment) Act, 2002, (hereinafter referred to as the "Validation Act of 2002"), which was passed by the Orissa Legislative Assembly on 24.12.2002 and was published in the official Gazette on 15.2.2003, the appointment of Stipendiary Engineers got regularized with effect from the date of their promotion to the post of Assistant Engineers, including ad-hoc Assistant Engineers. The appellant, though appointed as a Stipendiary Engineer in the year 1994 was given appointment as ad-hoc Assistant Engineer on 26.6.2001, and as such, by virtue of Section 3 of the Validation Act of 2002, the appellant was given the benefit of seniority with effect from 26.6.2001, i.e. the date of his appointment as ad-hoc Assistant Engineer, and not from the date of regularization under the Validation Act of 2002, i.e., with effect from 15.2.2003.

4. The respondent - Rabindra Kumar Mishra, had challenged the seniority given to the appellant herein with

effect from 26.6.2001, which according to him should have been from 15.2.2003. The Orissa State Administrative Tribunal allowed the Original Application filed by the respondent, which order was challenged, both by the State Government and the appellant herein before the Orissa High Court by way of writ petitions, which were initially allowed, but subsequently in Review Petition No.130/2017, the relief granted in the writ petition was modified by order dated 9.8.2013 to the extent that the appellant herein was to be treated as junior to the appellant, after holding that his seniority was to be considered with effect from 15.2.2003 (the date of coming into force of Validation Act of 2002) and not from 26.6.2001 (the date on which the appellant was initially appointed as ad-hoc Assistant Engineer). Challenging the same, this appeal has been preferred by the appellant.

5. We have heard Shri P.S. Patwalia, learned senior counsel appearing along with Shri Manish Goswami for the appellant; Shri Debasis Misra, learned counsel appearing on behalf of Respondent No.1 and Shri Shibashish Misra, learned counsel appearing for the State of Orissa.

6. The relevant Section 3 of the Orissa Service of Engineers (Validation of Appointment) Act, 2002 reads as under :

“3. Validation :

(1) Notwithstanding anything contained in the Recruitment Rules, seven hundred ninety-nine Assistant engineers belonging to the discipline of Civil, fifty-seven Assistant Engineers belonging to the discipline of Mechanical and twenty-five Assistant engineers belong to the discipline of electrical as specified in the Schedule with their names, dates of birth, dates of appointment and the name of the Departments under which they are working on ad hoc basis since the date of such appointment shall be deemed to be validly and regularly appointed under their respective department of the government against the direct recruitment quota of the service with effect from the date of commencement of this Act and, accordingly, no such appointment shall be challenged in any court of law merely on the ground that such appointments were made otherwise than in accordance with the procedure laid down in the Recruitment Rules.

(2) The inter se seniority of the Assistant engineers whose appointments are so validated shall be determined according to their dates of appointment on ad hoc basis as mentioned in the schedule and they shall be enblock junior to the Assistant Engineers of that year appointed to the service in their respective discipline in their cadre in accordance with the provisions of the Recruitment Rules.

(3) The services rendered by the Assistant

Engineers whose appointments are so validated, prior to the commencement of this Act shall, subject to the provisions in sub-section (2), count for the purposes of their pension, leave and increment and for no other purpose.”

(emphasis supplied)

7. The vires of the Sub-Sections (2) and (3) of Section 3 of the Validation Act of 2002 extracted above, has been upheld by this Court in the case of ***Amarendra Kumar Mohapatra Vs. State of Orissa***, (2014)4 SCC 583. The relevant paragraphs 70, 71, 77, 78 and 82 of the said judgment are reproduced hereunder :

“70. In Direct Recruit’s case (supra) this Court reviewed and summed up the law on the subject by formulating as many as 11 propositions out of which propositions A and B stated in Para 47 of the decision in the following words are relevant for our purposes:

“47. 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.

The corollary of the above rule is that where the initial appointment is only ad 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.

(B) If the initial appointment is not made by

following the procedure laid down by the rules but the appointee continues in the post uninterrupted till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

71. There was some debate at the bar whether the case at hand is covered by corollary to proposition A or by proposition B (supra). But having given our consideration to the submissions at the Bar we are inclined to agree with Mr. Rao’s submission that the case at hand is more appropriately covered by proposition B extracted above. We say so because the initial appointment of ad hoc Assistant Engineers in the instant case was not made by following the procedure laid down by the Rules. Even so, the appointees had continued in the posts uninterrupted till the Validation Act regularised their service. There is, in the light of those two significant aspects, no room for holding that grant of seniority and other benefits referred to in Section 3(3) of the impugned Act were legally impermissible or violated any vested right of the in service Assistant Engineers appointed from any other source.

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77. In the light of what we have said above, we do not see any illegality or constitutional infirmity in the provisions of Section 3(2) or 3(3) of the impugned legislation.

78. Having said so, there is no reason why a similar direction regarding the writ-petitioners degree holder Junior Engineers who have been held by us to be entitled to regularisation on

account of their length of service should also not be given a similar benefit. We must mention to the credit of Dr. Dhawan, appearing for the Stipendiary Engineers who have been regularised under the provisions of the Legislation that such Stipendiary- ad hoc Assistant Engineers cannot, according to the learned counsel, have any objection to the degree holder Junior Engineers currently working as Assistant Engineers on ad hoc basis being regularised in service or being given seniority from the date they were first appointed. It was also conceded that Stipendiary Engineers all of whom were appointed after the appointment of the Junior Engineers would enbloc rank junior to such ad hoc Assistant Engineers from out of degree holder Junior Engineers. But all such regularised Assistant Engineers from Stipendiary Stream and from Junior Engineers category would together rank below the promotee Assistant Engineers.

82. In the result, we pass the following order:

82.1. Civil Appeals No.8324-8331 of 2009 filed by the State of Orissa and Civil Appeals No.8322-8323 of 2009 and 1940 of 2010 filed by the Stipendiary Engineers are allowed and the impugned judgment and order dated 15th October, 2008 passed by the High Court of Orissa set aside.

82.2 Writ Petitions No.9514/2003, 12494/2005, 12495/2005, 12627/2005, 12706/2006 and 8630/2006 filed by the degree holders Junior Engineers working as Assistant Engineers on ad hoc basis are also allowed but only to the limited extent that the services of the writ-petitioners and all those who are similarly situated and promoted as ad hoc Assistant Engineers against the proposed 5% quota reserved for in- service Junior Engineers degree holder

shall stand regularized w.e.f. the date Orissa Service of Engineers (Validation of Appointment) Act, 2002 came into force. We further direct that such in-service degree holder Junior Engineers promoted as Assistant Engineers on ad hoc basis shall be placed below the promotees and above the Stipendiary Engineers regularized in terms of the impugned legislation. The inter se seniority of the Stipendiary Engineers regularized as Assistant Engineers under the impugned Legislation and Junior Engineer degree holders regularized in terms of this order shall be determined on the basis of their date of first appointment as Assistant Engineers on ad hoc basis.”

8. This Court has already upheld the proposition (B) of the direct recruitment and has found that the seniority to the Stipendiary Engineers be given with effect from the date they were appointed as ad-hoc Assistant Engineers and would be placed below the promotee Assistant Engineers of that year. Hence in the case of the appellant herein (who would also be covered by Proposition B), the seniority to him has been given of the year 2001, as he was appointed as ad-hoc Assistant Engineer on 26.6.2001 and has been placed below the promoted Assistant Engineers of 2001.

9. Respondent No.1 was admittedly appointed as an Assistant Engineer in the year 2005, but was given seniority with effect from 18.7.2003. As such, at best he could be

treated to be promoted as Assistant Engineer in the year 2003. The appellant having been appointed prior to the year 2003, i.e., in the year 2001, would be entitled to the benefit of sub-Sections (2) & (3) of Section 3 of the Validation Act of 2002 and would thus be senior to the Respondent No.1. The view taken by the High Court while deciding the review petition would thus not be the correct view, as the said order had been passed on wrong interpretation of the judgment of this Court in the case of **Amarendra Kumar Mohapatra** (supra).

10. Shri Debasis Misra, learned counsel appearing on behalf of Respondent No.1 has submitted that the provision of Rule 22 of the Orissa Service of Engineers' Rules, 1941 (hereinafter referred to as "the Rules of 1941") provides that when officers are recruited by promotion and by direct recruitment during the same year, the promoted officers shall be considered senior to the officers directly recruited irrespective of their dates of joining. There is no dispute about the said provision under Rule. However, the appellant would be entitled to the benefit of his ad-hoc promotion given in the year 2001 as per provision made in the Validation Act of 2002, whereas the

notional promotion as an Assistant Engineer given to Respondent No.1 was in the year 2003. Since Sub-section (1) of Section 3 of the Validation Act of 2002 clearly provides “Notwithstanding anything contained in the Recruitment Rules,.....”, as such the provisions of the Validation Act of 2002 would override the provisions of the Rules 1941. Thus, we are of the considered opinion that such submission as advanced by Shri Debasis Mishra, learned counsel appearing for Respondent No.1 does not hold force.

11. Accordingly, for the reasons given hereinabove, we allow the appeal and set aside the impugned order dated 9.8.2017 passed by the High Court. The appellant herein would be entitled to the benefit of seniority in terms of Rule 22 of the Rules of 1941 and Validation Act of 2002. No costs.

.....J.
[ARUN MISHRA]

.....J.
[VINEET SARAN]

New Delhi;
25th October, 2018.

ITEM NO.18

COURT NO.7

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for special leave to appeal (C)No.27435/2017

(Arising out of impugned final judgment and order dated
in .. passed by the High Court of)

DEBABRATA MOHANTY

Appellant(s)

VERSUS

RABINDRA KUMAR MISHRA & ORS.

Respondent(s)

Date : 25-10-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE VINEET SARAN

For Appellant(s) Mr. P.S. Patwalia, Sr. Adv.
 Mr. Manish Goswami, Adv.
 Mr. Gauravjit Singh Patwalia, Adv.
 Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s) Mr. Debasis Misra, AOR
 Mr. Binay Kumar Jha, Adv.
 Mr. Vishal Jogdand, Adv.
 Mr. R.S. Jha, Adv.
 Mr. Rajnish Kumar, Adv.
 Mr. D.K. Thakur, Adv.

Mr. Shibashish Misra, AOR
Mr. Ashish Kumar Sinha, Adv.
Mr. Chandan Kumar Mandal, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.
Pending application, if any, stands disposed of.

(Jagdish Chander)
Branch Officer

(Sarita Purohit)
AR-cum-PS

(Signed order is placed on the file)