

CASE NO. :

Appeal (civil) 2671 of 2001

Appeal (civil) 2672 of 2001

PETITIONER:

VINOD KUMAR SHARMA, J.K. SHARMA & ORS.

Vs.

RESPONDENT:

STATE OF UTTAR PRADESH AND ANOTHER

DATE OF JUDGMENT: 10/04/2001

BENCH :

M.B. Shah & S.N. Variava

JUDGMENT :

Shah, J.

Leave granted.

Leaves granted: L...I...T...T...T...T...T...T...T...T...J

Question involved in these matters is whether the appellants who were substantively appointed in different branches of the U.P. Services of Engineers by Combined Competitive Test conducted by the Public Service Commission, U.P. are entitled to the benefit of their services in the said branches though subsequently they appeared in another competitive examination conducted by Public Service Commission, UP and were appointed in the Irrigation Department against permanent post by way of transfer? And also whether they are entitled to tagging of the aforesaid service in view of the Government orders?

By a common judgment and order dated 24.4.2000, the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow@@

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dismissed the writ petition Nos.1219 (SB) and 1220 (SB) of@@
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1998 filed by the appellants herein by holding that (1) the ratio of decision in Vijaya Kumar Shrotriya v. State of UP & Ors. [(1998) 3 SCC 397] is not applicable to the facts of the present case for the reason that it is not the case of the appellants that they were selected by the Public Service Commission in a combined test. There is nothing on record to indicate that their examination or interviews were held for the combined services of U.P. for the post of Assistant Engineers either in LSGED, PWD or in the Irrigation Department by the U.P. Public Service Commission and they were initially appointed in the Irrigation Department; (2) the appellants never opted to be appointed in the Irrigation Department and they never insisted to be relieved from service in which they were initially appointed. There is nothing on record to show that inspite of their insistence or option, the department ever refused to relieve the appellants from the department in which they were initially appointed; (3) observations of this Court in Shrotriyas

case (Supra) were in respect of peculiar facts and circumstances of the case that the appellant was selected in the combined services of U.P. for the post of Assistant Engineer in the PWD and Irrigation Department by the U.P. Public Services Commission and he was allotted to P.W.D. His appointment was approved by the P.W.D. Chief Engineer, P.W.D. issued letter of his appointment, but he was not relieved by the Irrigation Department inspite of his consent to join the P.W.D.; and (4) in the present case, the services of the appellants were transferred to Irrigation Department after their selection by the Public Service Commission held in 1971. In pursuance of their selection, appointment order was issued in 1974. The order does not show any benefit for the purposes of seniority. But the only benefit given was for the purposes of fixation of the last pay drawn in the salary.

At the time of hearing of these matters, learned senior counsel Mr. Dwivedi, appearing on behalf of the appellants submitted that the impugned order passed by the High Court is contrary to the decision of this Court in Shrotriyas case (supra) and also to the facts which are brought on record. It has been pointed out that the appellant Vinod Kumar Sharma (in SLP No.10335/2000) was appointed in the department of Community Development (Minor Irrigation) in the year 1969 as he cleared Combined Competitive Examination held in that year. For this purpose, he has relied upon the letter dated 08.8.1969 (Annexure-P3) which reveals that on the basis of the results of the Combined Competitive Engineering Services Examination held by the Public Service Commission, U.P. in the year 1968, the persons named therein were appointed against the regular temporary posts of Assistant Engineers on temporary basis, which includes the name of appellant Vinod Kumar Sharma. Annexure-P2 is the list published by Lok Seva Ayog (Public Service Commission), U.P., which also includes the name of appellant Vinod Kumar Sharma at Serial No.64. It has been pointed out that the Combined Competitive Examination was held by the Public Service Commission for the four departments namely, Public Works Department, Irrigation Department, LSGED and Community Development (Minor Irrigation) Department. Appellant was posted as Assistant Engineer in Minor Irrigation Department. Thereafter again he appeared in the Combined examination held by the Public Service Commission, UP in the year 1971 and was selected as Assistant Engineer in the Irrigation Department on regular basis.

The Under Secretary, State of U.P. sent the list of candidates by letter dated 3.6.1971 who were working in other departments of U.P. Government and who were selected temporarily on the post of Assistant Engineer (Civil) in Irrigation Department to the Chief Engineer, Irrigation Department, Lucknow. Appellant Vijay Kumar Sharmas name in the said list is at Serial No.14 specifying that he was working in Minor Irrigation Department. He has also produced on record Office Memorandum dated 17th August 1974 (Annexure P-6) written by the Deputy Secretary to the Engineer in Chief, Irrigation Department, U.P. on the subject of transfer of services of Assistant Engineers working in Community Development Department being allotted to Irrigation Department on the basis of competitive examination shall be treated as transferred from that department which inter alia provides that their services on joining in Irrigation Department shall be treated as transferred from that department and shall also be counted

towards fixation in the same pay scale in Irrigation Department.

In other appeal filed by JK Sharma, DPS Chauhan and RS Chauhan- they were also selected and appointed in 1969 against the temporary post of Assistant Engineers on temporary basis in different departments of Irrigation Department. Annexure-P7 is the letter dated 21.3.1974 sent by Deputy Secretary, UP Government to the Engineer-in-Chief, Irrigation Department, UP, Lucknow mentioning the names of selected candidates for appointment in Irrigation Department on regular basis on the permanent/temporary posts of Assistant Engineers (Civil) on the basis of Combined Competitive Examination 1971 and their names are at Serial Nos.17, 13 and 23 respectively. The said letter (Para 4) specifically mentions as under: - I have also been directed to say that the service of those Assistant Engineers who are being appointed in Irrigation Department and are presently working in PWD and LSGED, will be deemed to have been transferred from that department to Irrigation department and on joining Irrigation department the services rendered by these officers in PWD and LSGED will be counted towards their services in Irrigation department and they will get the same pay which they were getting in their original departments.

Appellants JK Sharma, DPS Chauhan and RS Chauhan were promoted as Executive Engineers on ad hoc basis in 1988 and Vinod Kumar Sharma was promoted to the said post in the year 1991. In the seniority list which was prepared in 1991 by the Government, as their earlier services were ignored by the Department, appellants made representations to the Government. Final seniority list was published on 28.4.1997 and in that list also, they were not given benefit of their past services despite the fact that 10 out of 14 other officers were given benefit of their earlier services and the present 4 appellants were left out. They again submitted their representations and as no action was being taken, they preferred writ petitions before the High Court of Allahabad, Lucknow Bench as stated above. By an interim order, the High Court directed the State Government to consider their representations by a speaking order. On 5.9.1998, Government rejected their representations. Subsequently, their petitions were also dismissed. Hence, these appeals.

Mr. Rakesh Dwivedi, learned senior counsel for the appellants submitted that the question involved in these appeals is covered by the decision rendered by this Court in Shrotriyas case (Supra). In the said case, facts were similar except that the appellant of that case was appointed on 25.8.1962 on ad hoc basis as Assistant Engineer in Irrigation Department. In September 1962 interview was held in combined services of U.P. for the posts of Assistant Engineers in the Public Works Department and Irrigation Department by UP Public Service Commission. He continued to work in Irrigation Department and appeared in another competitive examination which was held in 1965 for substantive permanent vacancy in the PWD. He was selected and posted as Assistant Engineer in PWD on 01.1.1968. The question arose whether his services prior to his posting in PWD should be counted for the purpose of seniority. The

Court considered the Government Order (G.O. for short) dated 19th October 1968 which clarified that such persons, in case are placed from one department to other, will be deemed to have been transferred from one department to other and referred to the following concluding words of the G.O.:

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Since the services of these Assistant Engineers will be deemed to have been transferred, they would also be entitled to transfer TA, joining time for the journeys performed by them in connection with their transfer from one department to another.

In that case, the Court also referred to the Office Memorandum dated 12th July, 1982 which reiterated the Government policy of counting the services in the Irrigation Department towards the Public Works Department and observed that the said policy is based on the decision given earlier by the Allahabad High Court in *Abdul Khair v. Chief Justice, Allahabad* [1970 SLR 425] which provides that benefit in seniority can be given on transfer from one department to another department, if there is no prohibition in the rules and benefit of past services can be given. The Court thereafter held that the appellant would be treated to have been borne in service on the date when he was appointed through combined services examination in 1962 and not in subsequent examinations held in 1965. The Court also referred to the following observations in *K. Madhavan v. Union of India* [(1987) 4 SCC 566]:

There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. As against this, the learned senior counsel Mr. Subodh Markandeya, appearing for the respondents submitted that the candidates in higher merit in the Combined Examination were allotted Departments of their choice as per option requirement, but those lower in merit got departments depending upon the availability of vacancies. They again tried their luck for the department of their choice by appearing in the Combined Examination in subsequent years. Once they did that, they cannot claim to count the past service. For this purpose, he has placed reliance on the decision of this Court in *State of Gujarat v. C.G. Desai* [(1974) 1 SCC 188] where the Court observed thus:

if a person to avoid the long tortuous wait leaves his position in the never-ending queue of temporary/officiating Deputy Engineers etc., looking for promotion, and takes a short cut through the direct channel, to Class II Service, he gives up once for all, the advantages and disadvantages that go with the channel of promotion and accepts all the handicaps and benefits which attach to the group of direct recruits. He cannot, after

his direct recruitment claim the benefit of his pre-selection service and thus have the best of both the worlds.

In our view, the decision rendered by this Court in Shrotriyas case (Supra) would squarely cover the issue involved in the matter. Admittedly, appellants were appointed in the year 1968/1969 on the basis of combined competitive examination conducted by the Public Service Commission, U.P. on temporary basis on temporary posts. For their regular appointment, they appeared in combined competitive examination conducted by the Public Service Commission, U.P. for the post of Assistant Engineers, Irrigation Department. They were selected in 1971 and were posted in the Irrigation Department as stated above in 1974. The letter dated 21.3.1974 quoted above clearly mentions that on joining Irrigation Department, the services rendered by these officers in PWD and LSGED will be counted towards their services in Irrigation Department. This would be further clear from the G.O. referred to above which specifically provides that such officers are deemed to have been transferred from one department to another, after the allocation. In view of the letter, G.O. and the office memorandum dated 17.8.1974, the stand taken by the learned counsel for respondent No.1-State of U.P. is unjustifiable. Further, there is no substance in the contention raised by the learned senior counsel Mr. Markandeya on the basis of the decision in C.G. Desais case (supra). In the present case, appellants were selected and appointed on a temporary post on temporary basis in 1969. They continued to work on the said post. They were required to appear in the competitive examination in 1971 for being appointed on regular basis which they cleared. Hence, there is no question of their looking for promotion and taking a short cut through direct channels by appearing in examination for direct recruitment. Appellants were in the same cadre holding the posts of Assistant Engineers on temporary basis and were appointed on regular basis in the same cadre on permanent/temporary posts.

Further, the High Court materially erred in holding that the ratio of Shrotriyas case was not applicable to the facts of the present case for the reason that it was not a case of the appellants that they were selected by the Public Service Commission in the combined test. It appears that the High Court overlooked the documents produced on record which establishes that the Combined Competitive Examination was conducted by the Public Service Commission, U.P. in 1968 and 1971 for recruitment to Government Engineering Service for the post of Assistant Engineers in various departments. Similarly, the letter by which the appellants were posted in the Irrigation Department, specifically reveals that the past services will be counted towards their service in the Irrigation Department. The High Court also materially erred in not referring to the ratio laid down by this Court in Shrotriyas case wherein it is held that a person even appointed on substantive vacancy on a temporary post after due approval by the Public Service Commission if fulfils all other essential criteria as prescribed, he shall be deemed to be born in service from such date of his appointment. In other words his entire length of service from that date should be reckoned in computing seniority. Thereafter this Court held that the services rendered by the appellant in that case should be counted from the year 1962,

that is, on the date when he was appointed on a temporary basis. Further, the High Court ought to have considered the G.O. dated 19th October 1968 entirely, which specifically provides that such officers are deemed to have been transferred from one department to another after the reallocation in accordance with the aforesaid G.O. Thereafter it also provides for fixation of pay in identical scale of pay in that department. It appears that the High Court has overlooked the first part which provides that such officers are transferred from one department to another. If the High Court had referred to paragraph 13 of Shrotriyas case (Supra), it would have been clear that the stand and the policy of the State Government was also to the effect that appellants services were required to be counted for the purpose of seniority.

Hence, these appeals are required to be allowed. The respondent- Government is directed to fix the seniority of the appellants in the light of the above findings. While re-fixing seniority, if any person is affected, it shall fix the seniority after giving an opportunity to the person concerned. Consequent promotions and benefits flowing thereunder will also be granted to the appellants, if they are otherwise eligible.

In the result, the appeals are allowed accordingly and the impugned judgment and order passed by the High Court in the writ petitions filed by the appellants is quashed and set aside. However, there shall be no order as to costs.