

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
PURSHOTTAM & ORS.

DATE OF JUDGMENT: 07/05/1996

BENCH:
G.B. PATTANAIK (J)
BENCH:
G.B. PATTANAIK (J)
RAY, G.N. (J)

CITATION:
JT 1996 (5) 30 1996 SCALE (4)385

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK. J.

Leave granted.

This appeal by special leave is directed against the Order dated 25.10.1994 of the Maharashtra Administrative Tribunal, Nagpur Bench in Transfer Application No. 743 of 1992.

The respondents 1 to 4 herein were appointed as Junior Engineers on work charged establishment on different dates by concerned Superintending Engineers of the Circle. Later on they were appointed as Junior Engineers in the regular establishment on different dates. There is no dispute that those respondents had the minimum educational qualification for being appointed as Junior Engineers in the regular establishment. They filed a writ petition in the Bombay High Court claiming that their duties and responsibilities on the work charged establishment being the same as Junior Engineers on regular establishment, the period of service rendered by them as Junior Engineers on work charged establishment should be counted for their seniority after they have been absorbed in the regular establishment. After their absorption, when the seniority list of Junior Engineers was published in respect of Junior Engineers on regular establishment upto 31.3.1980 as well as in respect of Junior Engineers on regular establishment for the period 1.4.1980 till 31.3.1982, the names of the respondents did not find place, obviously because of the fact that they have been absorbed in regular establishment, after 31.3.1982, they approached the High Court. While the writ petition was pending, the Administrative Tribunal Act having been enforced and State Administrative Tribunal having been constituted, the petitions stood transferred to the Tribunal. Before the Tribunal the respondents contended that the Government having passed Resolution that the Junior Engineer having work charged service to his credit, should be assigned "deemed date" which should be one day prior to

the date on which his immediate Junior on work charged establishment or from open market was taken or appointed on regular temporary establishment in the same circle, the services rendered on work charged establishment is therefore to be counted for the purpose of seniority on regular establishment and the authorities therefore committed error in not granting them the said relief. It was also contended that the relevant instructions of the Resolutions of the State Government dated 15.2.1977 and 19.3.1977 whereunder the services rendered on work charged establishment though is counted for the seniority of the employee at the Circle level but the same is not counted for the purpose of seniority of the employee in the State level and there is no reasonable nexus for making such differentiation and as such the Resolutions are discriminatory and should be struck down.

The stand of the State Government before the Tribunal on the other hand was that the posts of Junior Engineers are posts in Class III cadre and such appointees within a Circle constitute the cadre. The appointment of such Junior Engineers within Circle is made by the Superintending Engineer both in work charged establishment as well as in regular establishment. Though the work charged establishment is a completely different cadre from the regular establishment and the services rendered in the work charged establishment could not have been taken into account for determination of seniority in the regular establishment but to ameliorate the hardships caused in such cases the Government had passed the Resolutions in question. But when the question of promotion to the post of Sub Divisional Engineer arises, the same is considered from the state wise list of Junior Engineers maintained, as the post of Sub Divisional Engineer is a state cadre. This being the position, question of considering the services rendered in the work charged establishment by an employee before he is absorbed in the regular establishment for the purpose of his seniority does not arise and the two Government Resolutions cannot be held to be arbitrary in any manner. The Tribunal, however, on consideration of the rival stand of the parties and having come to the conclusion that the Resolutions dated 15th of February, 1977 and 19th of March, 1977 of the Government of Maharashtra in the Public Works and Housing Department are violative of Article 16(1) of the Constitution, directed that the said Resolutions should also apply for drawing the seniority list at the state level. The Tribunal, therefore, called upon the State Government to re-draw the seniority list of Junior Engineers.

The learned counsel for the appellant contends that the work charged establishment being completely different from the regular establishment and employees working under the work charged establishment forming a cadre of themselves completely different from the employees serving under the regular establishment, the services rendered by such employees under the work charged establishment by no stretch of imagination could be considered for his seniority in the regular establishment and in this view of the matter the impugned order of the Tribunal is wholly erroneous. The learned counsel further urged that the so called Government Resolution merely confers the benefit of counting the services rendered in a work charged establishment for the purpose of seniority within the Circle but the said seniority thus determined is not to be reflected in the seniority drawn up at the State level and the impugned order of the Tribunal is vitiated. The learned counsel for the respondents on the other hand contended that even though the

Junior Engineers within a Circle constitute a cadre but when promotion to the post of Sub-Divisional Engineer is made from amongst those Junior Engineers and for that purpose a State wise seniority list of Junior Engineers is maintained, it would be wholly unreasonable to maintain the said list on the basis of their absorption in the regular establishment even though by virtue of the Resolution of the Government they have already acquired a deemed date of absorption in the regular establishment by taking into account their services rendered as work charged establishment. Consequently, it was contended that the Tribunal rightly directed to take the Resolution into account for drawing up the seniority list of the Junior Engineers in the State Gradation List and there is no infirmity with the same. It was also contended that an employee after having been absorbed in the cadre of Junior Engineers in regular establishment cannot have two different seniority one for the purpose of the circle and the other for the purpose of the State Cadre and such determination would be violative of Article 16 of the Constitution.

At the outset, it may be stated that a work charged establishment means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work charged establishment are generally shown as a separate sub-head of the estimated cost of the work. The work charged establishment employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. The character and nature of their tenure has been fully discussed by this Court in the case of Jaswant Singh and others etc. etc., vs. Union of India and others, (1979) 4 SCC 440. In the service jurisprudence the expression 'cadre' means the unit of strength of a service or a part of it as determined by the employer. And it is too well settled that services rendered by an employee in one cadre cannot be taken into account for determining the seniority in another cadre unless by any rules of seniority this privilege is conferred. This being the position, ordinarily the services rendered by an employee in a work charged establishment is not to be taken into account for his seniority in the regular establishment particularly when the tenure in the work charged establishment is of a precarious nature and it automatically ceases after the project is over. The normal rule of seniority is the date of entry into the cadre or the position obtained in the examination when appointment is made by and competitive examination. Therefore, in the present case ordinarily seniority would have been determined on the basis of the date of absorption of the employee in the regular establishment, but the State Government itself has passed the Resolution deciding a deemed date of absorption of the employees who were initially recruited in the charged establishment and later on absorbed in the regular establishment. Therefore, the Government itself having passed the Resolution determining the deemed date of absorption the said date has to be taken into account for reckoning seniority. The Government of Maharashtra in the Public Works and Housing Department by its Resolutions dated 15th of February, 1977 and 19th of February, 1977 decided that a Junior Engineer having work charged service to his credit should be assigned a "deemed date" which should be one day prior to the date on which his immediate junior on

work charged establishment or from open market was appointed on regular temporary establishment in the same Circle. This deemed date obviously is the deemed date of absorption in the regular establishment and on the basis of that deemed date the seniority of the Junior Engineers in the Circle is maintained. It is undisputed that the promotion to the post of Sub-Divisional Engineer, which is Class II post and is in the State Cadre is made from amongst the Junior Engineers. The questions therefore, arises for consideration is whether it is open for the employer to maintain a seniority list of Junior Engineers of different Circles on the basis of their actual date of absorption in regular establishment and not on the basis of their deemed date of absorption and consider promotion on that basis? The answer must be in the negative. the promotion to the post of Sub-Divisional Engineer is made according to a set of Rules called the Maharashtra Service of Engineers, Class I and Class II Cadre Rules. Under Rule 13(c) of the said Rules, appointments to the cadre of Sub-Divisional Engineers is made by promotion from amongst Junior Engineer graduates from the Subordinate Service of Engineers. Under Rule 15, a person to be eligible for promotion to the post of Sub-Divisional Engineer must have rendered 3 years of minimum service as a Junior Engineer. Under Rule 16(a), the promotion to the post of Sub-Divisional Engineer is made by a selection from the State wise seniority list of Junior Engineers maintained by the Irrigation and Power Department and Building and Communications Department, separately. But the Rules is totally silent as to how the State wise seniority list of Junior Engineers will be drawn up. In other words, it does not stipulate that the State wise seniority list of Junior Engineer will be drawn up on the basis of their respective dates of absorption/employment as a Junior Engineer in regular establishment or on the basis of the deemed date which is to be determined in accordance with the two Government Resolutions referred to earlier. In the absence of any specific provision it would be only reasonable to construe that the State wise seniority list has to be prepared on the basis of seniority list already prepared in the Circle indicating the respective deemed dates of each such Junior Engineer. The counsel for the appellant no doubt is fully justified in raising the contention that the two Government Resolutions having been specifically meant for drawing up of the seniority list in the Circle, the Tribunal erred in law in directing to draw up the seniority list by giving the benefits of those Regulations in question. But as has been stated earlier, in the absence of any provision in the Recruitment Rules the seniority list of the Junior Engineers when is prepared under Rule 16(a) for the purpose of giving promotion to the post of Sub-Divisional Engineer the same should be made taking into account the deemed date of each of the Junior Engineer in the Circle and prepare the State wise seniority list.

In the aforesaid circumstances, we would modify the direction given by the Tribunal to the effect that the appropriate authority should prepare the State wise seniority list of Junior Engineers under Rule 16(a) of the Maharashtra Service of Engineers, Class I and Class II Cadre Rules by taking into account the deemed date of each such Junior Engineer in the respective Circles and not by ignoring the said deemed date which is found by applying the two Government Resolutions referred to earlier. Subject to the aforesaid observation the appeal is dismissed, but in the circumstances there will be no order as to costs.

JUDIS