

CASE NO.:
Appeal (civil) 1256 of 2008

PETITIONER:
Z. AJEESUDEEN

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT: 12/02/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

O R D E R
CIVIL APPEAL NO. 1256 OF 2008
[Arising out of SLP(C) No.22049/2005]

Leave granted.

Heard learned counsel for the parties.

By an order dated 30/9/1993, the appellant was appointed as Assistant Engineer purely on adhoc basis and as a stopgap arrangement w.e.f. 1/10/1993. Subsequently, his service was regularised w.e.f. 21/6/1997. His grievance is that his seniority as Assistant Engineer was not counted w.e.f. 1/10/1993. In other words, he prayed that his seniority as Assistant Engineer should be counted from 1/10/1993, the date from which he was appointed on adhoc basis. In this connection, learned counsel for the appellant referred to a decision of this Court rendered in T. Vijayan & Ors. Vs. Divisional Railway Manager & Ors., (2000) 4 SCC 20. While referring to an earlier judgment of this Court rendered in Direct Recruit Class II Engineering Officers Association Vs. State of Maharashtra & Ors., (1990) 2 SCC 715, it was held
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- 2 -

that once an incumbent is appointed to a post according to the relevant rule, his seniority has to be counted from the date of his appointment and not according to the date of his regularisation. This Court further pointed out that 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 stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

Learned counsel for the appellant strongly relied on the direction (B) which reads as under:-

(B) 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 regularisation of his service in accordance with the rules, the period of officiating service will be counted."

We regret, we cannot agree with the learned counsel. The decision in T. Vijayan's case (supra) was by a two-Judge Bench of this Court, but a somewhat different view has been taken in a three-Judge Bench decision of this Court in M.K. Shanmugam Vs. Union of India, (2004) 4 SCC 476 in para 8 of which it was observed -- "It is only in those cases where initially they had been recruited even though they have been appointed ad hoc the recruitment was subject to the same process as it had
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- 3 -

been done in the case of regular appointment and that the same was not a stopgap arrangement." Thus, all adhoc service prior to regular appointment cannot be counted for seniority, etc. It counts only where the initial adhoc appointment is made by the same process as is applicable to regular appointment.

In the case at hand, the initial appointment of the appellant is, as already noted, purely on adhoc basis and that too not in accordance with the rules for regular appointment. The consistent view taken by this Court is that even if an appointment is made on adhoc basis by following procedure according to the rules for regular selection, the period of such adhoc appointment could be counted. However, if the adhoc appointment, as in the case at hand, is made purely on adhoc basis without following the procedure prescribed under the rules for regular appointment such period spent as adhoc appointee cannot be counted. This is the law settled by M.K. Shanmugam's case (supra).

Learned counsel for the appellant submitted that there is a rule for adhoc appointment, and the appellant was appointed under that rule. Hence, he submitted that his adhoc service be counted. We regret we cannot agree. In our opinion, for adhoc service to be counted it is not enough that there is a rule permitting adhoc appointment. It is also
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- 4 -

necessary that the appointment was made after following the procedure prescribed for making a regular appointment. Only then will the adhoc service be counted, otherwise it will not.

In view thereof, there is no merit in this appeal. It is, accordingly, dismissed.