

A

STATE OF GUJARAT

v.

C.G. RAIYANI

NOVEMBER 21, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

SERVICE LAW :

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Seniority—Panchayat Services—Junior Engineer—Ad-hoc appointment—Subsequent regular appointment by Selection Board—Inter-se Seniority—Determination of - Held : Adhoc Service not to be counted—Only regular service to be counted for purpose of seniority.

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D

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The respondent was appointed as Junior Engineer on *Adhoc* basis in 1969. Thereafter Panchayat Services Selection Board was constituted and it recommended candidates for regular appointment, the respondent being one among them. As per the provisional Seniority List, respondent was promoted as Deputy Executive Engineer in 1978. Thereafter a common seniority list was prepared of the employees belonging to the State Service as well as Panchayat Departments. In that list respondent's name figured at Sl.No. 69. After issuing show cause notice and considering the objections, the Government determined the *inter-se* seniority in 1971. The respondent's seniority was shown at Sl.No. 109. He was reverted as Junior Engineer in 1982. Respondent challenged the demotion by filing a suit, which was decreed and confirmed on appeal. Since the second appeal was also dismissed by the High Court, the State Government preferred the present appeal.

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Allowing the appeal, this Court

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HELD:- 1.1. The Civil Courts as well as the High Court have committed grievous error of law in fixing the seniority of the respondent from the initial date of fortuitous appointment namely, the *adhoc* appointment made on May 20th, 1969. (618 E & F)

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1.2. The appointment of the respondent on May 20th, 1969 was made on *Adhoc* basis without following any acceptable process of selection. He had also applied for and was selected for regular appointment by the Panchayat Services Selection Board and the regularisation was sought to be made with effect from the date of the selection, namely,

July 15, 1972. Hence, the *ad hoc* service rendered by the respondent between May 20, 1969 to July 14, 1972 was not taken into account, in that his seniority had been counted only from the date of the selection, namely, July 15, 1972. Admittedly, that date has been given to the respondent as well as those who were temporarily appointed and were selected. Thereby, the respondent's seniority should be counted only from the date. (616 D-E)

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 89218 of 1994.

From the Judgment and Order dated 2.9.1993 of the Gujarat High Court in S.A.No. 81 of 1986.

P.S. Poti, R. Karanjawala, Ms. Karanjawala, Ms. Nandini Gore and Ms. Vidula for the Appellant.

R.N. Keshwani for the Respondent.

The following Order of the Court was delivered:

Delay Condoned.

Leave granted.

The admitted facts are that the respondent was appointed on *ad hoc* basis on May 20, 1969 as a Junior Engineer Junagadh, District Panchayat. There after the Panchayat Services Selection Board was constituted to recruit the candidates for regular appointment. The Board selected and recommended the candidates for regular appointment among whom the respondent was one of the selected candidates. As per the provisional seniority list, the respondent was considered for temporary promotion to the post of Deputy Executive Engineer and was appointed on March 6, 1978. Thereafter it would appear that the service of the person working in the Panchayats has been provisionalised and the common seniority list was prepared of the employees belonging to the State Service as well as the Panchayat Departments. Therein the respondent's name had figured at Serial No. 69. After issuing show cause notice to all the persons and enter considering their objections, the Government in their proceedings dt. November 10, 1981, Annexure-47, determined the *inter-se* seniority. Therein the respondent's seniority was shown at Serial No. 109. After finalization of the *inter-se* seniority, he was reverted as Junior Engineer on January 4, 1982. The respondent challenged the demotion by filing a suit.

- A The suit was decreed and on appeal, it was confirmed. S.A.No. 81/86 dt. September 2, 1983 was dismissed. Thus this appeal by special leave.

While regularizing the service by order dated November 11, 1981, clause V thereof provided the criteria for fixation of the *inter-se* seniority as under :-

- B "The length of continuous service in respect of both the services viz., State and Panchayat has been determined with reference to the continuous date of joining service on temporary establishment after regular appointment ignoring the earlier service rendered by them or work charged or temporary establishment prior to the selection/regular appointment."
- C

- D On the basis of this principle, the *inter-se* seniority has been determined. Admittedly, the appointment of the respondent on May 20, 1969 was made on *ad hoc* basis without following any acceptable process of selection. He had also applied for and was selected for regular appointment by the Panchayat Services Selection Board and the regularisation was sought to be made with effect from the date of the selection, namely, July 15, 1972. Hence, the *ad hoc* service rendered by the respondent between May 20, 1969 of July 14, 1972 was not taken into account, in that his seniority had been counted only from the date of the selection, namely, July 15, 1972. Admittedly, that date has been given to the respondent as well as those that were temporarily appointed and were selected. Thereby, the respondent's seniority should be counted only from that date. The Civil Courts as well as the High Court have committed grievous error of law in fixing the seniority of the respondent from the initial date of fortuitous appointment namely, the *ad hoc* appointment made on May 20, 1969. The
- E
- F The appeal is accordingly allowed. Judgments and decrees of Courts below are set aside. No costs.

G.N.

Appeal allowed.