

CASE NO.:
Writ Petition (civil) 626 of 1986

PETITIONER:
MAKAR DHWAJ PAL AND ORS. ETC.

RESPONDENT:
NEERA YADAV AND ANR. ETC.

DATE OF JUDGMENT: 04/01/1994

BENCH:
A.M. AHMADI & M.M. PUNCHHI & K. RAMASWAMY

JUDGMENT:
JUDGMENT

IN

Contempt Petition Nos. 65, 100 & 126 of 1992,
1994 (1) S.C.R. 9

The Judgment of the Court was delivered by
1, K. RAMASWAMY, J,

The Contempt Petitions Nos. 65, 100 and 126/92 arise out of the judgment of this Court in Keshav Chandar Joshi and Ors. v. Union of India & Ors., AIR 1991 SC 284 in which this Court had directed to determine inter se seniority of the direct recruits and promotee Asstt. Conservators, Forest, U.P. rendered on November 6, 1990. It would appear that at present there are 215 direct recruits and 100 promotee Asstt. Conservators, Forest working in the forest department. In K.C. Joshi's case, it was concluded that the promotees were appointed on ad hoc basis as a stop-gap arrangement in substantive posts. Their appointments were de hors the rules. Until they are appointed by the Governor according to the rules, they do not become the members of the service in a substantive capacity. Their continuous length of ad hoc service from the date of their initial appointment cannot be counted towards seniority. The direct recruits were appointed in accordance with Rule 5(a) read with appendix A of U.P. Forest Service Rules, 1952 for short 'the Rules'. Their seniority shall be counted from the date of their discharging duties of the post of Asstt Conservators, Forest and the seniority of direct recruits shall accordingly be fixed. The Governor was directed to make appointment by promotion to substantive vacancies to the post of Asstt. Conservators, Forest, if not already made, in accordance with Rule 5(b) read with appendix B and Rule 6. We are informed that till date no appointments in terms thereof have been made. The seniority of the promotee Asstt. Conservators, Forest shall be counted from the respective dates of appointment to the substantive posts in their quota under Rule 6 of the rules. The inter se seniority of the direct recruits and promotees shall be determined in accordance with Rules 5, 6 and 24 as per the judgment in K.C. Joshi's case. All the employees are entitled to all consequential benefits. Later when Raj Narayan Singh & Ors. filed W.P.(C) No. 641/91, this Court on June 6, 1991 directed to convert the writ petition as a contempt case for non-implementation of the direction issued in K.C. Joshi's case which was numbered as Contempt Petition No.164/71. When it came up for hearing on August 23, 1991, this Court observed thus :

"we are told by the counsel for the State of U.P, that for the purpose of working out the seniority draft list has been prepared and was in circulation inviting objections."

2. The petitioners therein had not filed any objection, despite giving time, but it was directed that the State would consider their cases even if they make any representation. In the light of that stand while dismissing the contempt petition, this Court directed the State Govt. to dispose of the matter on the basis of the representation that may be received from the petitioners therein against the draft seniority list within six months from that date. In these contempt petitions the promotees as well as some of the subsequent direct recruits complain against fixation of their inter se seniority by the State Govt.

3, Sri R.K. Garg for the promotees contended that as on August 31, 1982 selection of the promotees on regular basis to fill up the posts of Asstt. Conservator, Forest for the years 1973-74 to 1979-80 had taken place by a regularly constituted selection committee which selected 140 candidates for appointment. Therefore, they are entitled to the seniority from the respective years. It is also contended that the promotees are entitled, in terms of the judgment in K.C. Joshi's case, for appointment by promotion to substantive vacancies within their quota in the respective years and that therefore, their seniority should be counted from the years in which they started discharging their duties as Asstt. Conservators, Forest, as they were initially appointed to the substantive vacancies. Shri Verma appearing for some of the later direct recruits, contended that the direct recruits were appointed to the substantive vacancies as held in K.C. Joshi's case and their seniority was fixed in the judgment from the date on which they started discharging the duties of the post as Asstt. Conservators, Forest. Treating them to be temporary as shown in the seniority list prepared by the State is in utter contempt of the directions in Joshi's case.

4, In the rejoinder the promotees have stated that as on December 31, 1974 a total number of 140 posts of Asstt. Conservators, Forest were available and their quota as per the existing rates was 25 per cent. As on December 1, 1980, 186 posts, namely, 140 and 46 posts created during the period were available. As per the ratio, the promotees are entitled to 33-1/3 per cent quota. As on March 11, 1985, 32 more posts were created and the total posts available were 218. On December 1, 1986, 40 more posts were created. Therefore, as on March 11, 1985, the total posts available were 258. On March 1, 1985, the quota was increased by 50 per cent. The promotees, therefore, are entitled to 50 per cent of the post. As in the year 1990, 72 more posts were created and the total posts are now 330. Therefore, they are entitled to 50 per cent of the quota in the tentative list. But that was not done. Thereby, the action of the State is in defiance of the direction issued by this Court. In the counter affidavit filed by the State it is stated that as on December 1, 1980 both permanent and temporary posts were 131. As on February 12, 1986, 203 posts were existing. The permanent posts are 102 and temporary posts are 173 and the total would come to 275. As per Rules 5 and 24 only permanent posts should be counted as substantive posts and temporary posts cannot be counted for fixation of the seniority. It is also further contended that though decision was taken to give 50 per cent quota to the promotees, the statutory rules have not been made. Therefore, they are entitled to only 33-1/3 per cent quota. Since the seniority, as per the direction of this Court, was made only to substantive posts, some of the direct recruits became temporary direct recruits and the seniority was determined accordingly.

5. In the light of the respective contentions, the question arises whether the determination of the seniority is in accordance with the directions issued by this Court, In the light of the background scenario, we cannot strictly take it to be a case of contempt but in working out the directions issued by this court, the State Govt. committed mistake in law. We have to consider, therefore, whether the procedure adopted by the State to determine the inter se seniority is in accordance with the rules and the law laid down in K.C. Joshi's case. The directions issued in K.C. Joshi's case have already been extracted and their need to reiterate is obviated. From the averments it would appear that 100 promotee Asstt Conservators, Forest are awaiting appointment to substantive vacancies. The total number

of direct recruits appears to be 215. Prior to December 31, 1974, the quota was 75 per cent to the direct recruits and 25 per cent to the promotees. Similarly as on January 1, 1975, the ratio was increased to 33-1/3 per cent, namely, 66-2/3 percent to the direct recruits and 33-1/3 per cent to the promotees. Indisputably a decision was taken on March 1, 1975 to increase the quota to 50 per cent but no amendment to the statutory rules to give effect to it was made. Therefore, the operative rule as on that date appears to be 33-1/3 per cent in respect of promotees. Therefore, the procedure to be adopted by the State in fixing the inter se seniority of the direct recruits and the promotees in their respective quota is the sole question. There is no rota prescribed in the rules. Therefore, the State is enjoined to implement the judgment of this Court in the light of the statutory rules. It is clear from the counter affidavit filed by the State that the posts are both permanent and temporary. If the temporary posts are likely to continue for long, normally, as per the law laid down by this court, they be treated, for the purpose of counting seniority, as permanent posts unless they are likely to be abolished. It is a policy matter. Therefore, the State has to determine whether the posts are likely to be made permanent or abolished. In the event of converting them as permanent under Rule 24, the quota prescribed in Rule 6 would be applied to substantive posts. The seniority shall be determined in accordance with the quota rule to the posts available in the respective years in which the vacancies had arisen otherwise existing substantive posts should be filled up applying Rule 6. It is, therefore, incumbent upon the State Govt. to find out how many vacancies were existing in the year 1974-75 and thereafter every year and to determine as to how the respective posts stood reserved for the direct recruits and promotees in accordance with the quota. On so determining, the direct recruits would go on block as seniors to the promotees and the promotee officers in the order of their inter se seniority be appointed by the Governor under Rule 5(b) read with Rule 6 and would be placed below the direct recruits. Similar exercise for each year in which the substantive vacancies had arisen should be done. The officers, be they direct recruits or promotees would rank below the junior most officer in the list of the previous year. After this exercise is exhausted; appointments should be made; posts are to be filled up to substantive vacancies. It would be open to the State Govt, to fix tentatively the inter se seniority in the temporary posts according to the ratio between the direct recruits and the promotees in the same manner of filling the substantive posts as indicated above. As and when the temporary posts are converted either into permanent posts or the vacancies arise due to superannuation of the senior officers, they should be fixed in the respective vacancies and fitment made. After ex-hausting the exercise the remaining candidates awaiting appointment would continue to be temporary until they get due placement or fixation of their seniority. These directions would meet the exigencies. The State Govt. is directed to undertake fresh exercise in the light of the above directions and complete the same within a period of four months from the date of the receipt of the order. The contempt petitions are accordingly disposed of.