

Gwalior Development Authority Gwalior Vs. Subhash Saxena & Ors.

Civil Appeal No. 1977 o 2022 arising out of S.L.P. (C) No. 19956 of 2014
2022-01-01 | K.M. Joseph, J.
Repository ID: F2J-C-1967

Full judgment text

Gwalior Development Authority Gwalior Vs. Subhash Saxena & Ors.

[Civil Appeal No. 1977 o 2022 arising out of S.L.P. (C) No. 19956 of 2014]

[Civil Appeal No. 1978 of 2022 arising out of S.L.P. (C) No. 31203 of 2014]

[Civil Appeal No. 1979 of 2022 arising out of S.L.P. (C) No. 31205 of 2014]

[Civil Appeal No. 1980 of 2022 arising out of S.L.P. (C) No. 22137 of 2015]

[Civil Appeal No. 1981 of 2022 arising out of S.L.P. (C) No. 25303 of 2016]

K.M. Joseph, J.

1. Delay condoned in SLP (C) No.25303 of 2016. Leave granted.

2. The five Appeals in question, raise some common issues and they are being disposed of by this common Judgment.

3. Respondent no.1 was appointed as Sub-Engineer in Special Area Development Authority "(SADA)", Malajkhand by Order dated 24.06.1982. He was promoted as assistant Engineer by order dated 03.11.1987 by SADA w.e.f. 07.09.1987. The State Government, by Order dated 20.12.1988, modified the earlier order dated 12.01.1988 and posted respondent no.1 in Gwalior Development Authority (hereinafter referred to as, 'the GDA'), Gwalior as Assistant Engineer. He joined in GDA on the basis of letter dated 29.12.1988.

4. It is the case of the State that during the probation period of the first respondent, the first respondent was transferred initially to SADA, Chirmiri, and later on, Order of Transfer was modified to make it a transfer to GDA, Gwalior. On 27.05.1995, State issued instructions to all Development Authorities and SADA that employees, who had been transferred and not yet been absorbed in the Institution, shall be treated as employees of the parent Institution. On 22.06.1995, the State Government notified the abolition of 19 SADAs including Malajkhand and all the assets and liabilities of the abolished SADAs were deemed to have vested with the Municipal Council. The first respondent had made an application on 26.09.1995, before the CEO, GDA for merging his services in the GDA. Advice was sought from the State. By letter dated 09.11.1995, the State clarified that:

"GOVERNMENT OF MADHYA PRADESH HOUSING AND ENVIRONMENT DEPARTMENT SECRETARIAT

The Chief Executive Officer,

Gwalior Development Authority,

Gwalior.

Subject: Regarding merger of the services of Shri S.K.Saxena, Assistant Engineer.

Reference: Your Letter No. GDA/45/4597 dated 5.10.1995

Kindly peruse the aforementioned letter.

Till such time when Shri S.K.Saxena does not give option for going back to the Local Self Government Department, no question arises of sending him back from this department, because of the fact that when notification of abolition of Special Development Authority was issued on 22.06.1995 at that time Shri Saxena was posted in Gwalior Development Authority. Hence his name shall be included in the joint gradation list of the Development Authorities and the remaining. SAD As and in such manner Shri Saxena shall be employee of the Housing and Environment Department.

Sd/- Illegible

5. It is the case of the appellants that in exercise of powers under Section 76B of the Madhya Pradesh Nagar Tatagram Nivesh Adhiniyam, 1973 (hereinafter referred to as 'the Act'), on 01.07.1975, was notified as the date for constitution of the M.P. Development Authority Services. According to the State, the post of Assistant Engineer fell in the State Cadre. By letter dated 31.07.1996, it was the further case of the State that letters were written to SADAs and Development Authorities indicating the principles for determination of seniority in regard to the State Cadre and Local Cadre posts. Inter alia, it was indicated as follows, as regards determination of seniority:

"DETERMINATION OF SENIORITY

1. In the new service the seniority of the employee in the case of the different posts in the case of direct recruitment or in the cases of regular appointment through promotion shall be determined on the basis of continuous service on the lower post whether it is permanent or temporary but if such appointment has been made for fixed term or for specific term then such period shall not be included while reckoning, seniority. In this regard final decision shall be taken by the screening committee constituted under Rule 66 of the Service Recruitment Rules, 1988.

2. In the year of appointment generally inter-se seniority shall be determined from the date of appointment and inter-se seniority of the specific authority shall not be disturbed.

3. Where service tenure of more than one: employees is the same their seniority shall be reckoned on the basis of age.

4. If upon preparation of the combined gradation list if it is found that the promotion of any employee has been made on the basis of the combined gradation list on such post for which he was not eligible then his pay scale shall be continued in the higher pay scale till such time when he does not reach such stage in the cadre of his promotional post.

5. While reckoning inter se seniority of the employees recruited by direct recruitment and promotion the principle shall be adopted that the promoted servants/officers shall be kept below the direct recruits. If action is taken in contravention of these directions then the concerned Chief Executive Officer shall be personally held responsible therefor."

6. State Government, on 06.02.1999, published a combined Gradation List of Assistant Engineers of SADA/Development Authorities as on 01.07.1995, in which, respondent no.1 was shown at Serial Number 38.

7. Thereafter, respondent no.1 filed Writ Petition No. 1377 of 2000, claiming promotion to the post of Executive Engineer in GDA. There were other petitions also.

8. On 29.10.2001, in compliance with the Interim Order dated 22.08.2000, passed in the Writ Petitions, the State Government constituted a DPC and directed GDA that if posts fallen vacant upto 30.06.1995, under the State Cadre were still lying vacant and the Authority felt it necessary to fill up the same, then, it may do so in accordance with the Rules of 1976.

9. The Writ Petition filed by the first respondent was disposed of. We may notice the following passages:

"3. Subsequently thereof it has come on record that the State Govt. by their letter dated 29th Oct. 81 as contained in Annexure P-23 in the records of WP No. 327 /99 have clarified that if the vacancies were available prior to 30th of June 1995 then the Gwalior Development Authority was directed to fill up the posts on the basis of selection to be conducted by the Department promotion Committee and for the said purpose a Departmental promotion committee itself was constituted by the State Govt.

4. In that view of the matter no further controversy exists for adjudication on the present petition. The Gwalior Development Authority is now required to take action in accordance with the directives of the State Govt. as contained in Annexure P-23 dated 29-10-01 and fill up the vacancies which existed prior to 30th June 1995 considering the eligible candidates and pass appropriate orders. thereof in accordance with the rules as they existed on the date. It is therefore directed that the Gwalior Development Authority to take action for filling up the post in pursuance to the directive issued by the State Govt in its order dated 29-10-01 Annexure P-23 and finalise the same within a period of two months from the date of filing of certified copy of this order.

5. Needless to emphasize that if some action of some assistance in this regard is warranted the State Government shall do the needful. within the period at posted hereinabove. In the meanwhile status quo existing today with regard to posting and service condition. of the petitioner shall be maintained till the final-decision is taken as directed hereinabove.

6. Even though directions have been issued Gwalior Development Authority to consider the case of the petitioner during the course of hearing. It is pointed out that Shri Saxena the petitioner was initially an employee of the Special Area Development Authority (SADA) Malajkhanda Distt. Balaghat now Municipal Council Malajkhanda and therefore of his lien with the Special Development Authority will also be required to be taken into consideration while considering the case for promotion.

The Gwalior Development Authority while examining the case of the petitioner Subhash Saxena shall consider the questions of his lien and in case it is found that he is entitled to be considered in accordance with the Rules his case shall also be considered along with other eligible candidates. If for any reason the respondents Gwalior Development Authority is of the view that petitioner Subhash Saxena is not entitled to be considered in accordance with the unamended rules the same shall be communicated to him along with the rules."

10. On 01.07.2003, a Gradation List of existing Assistant Engineers in GDA as on 30.06.1995, was published. Therein, respondent no.1 was shown at Serial No.2 in the Cadre of Assistant Engineers. In fact, a perusal of the same will indicate that it is stated by the CEO of the GDA that by publishing provisional Gradation List in the Cadre of existing Assistant Engineers in GDA as on 30.06.1995, objections were invited. After examining the objections, the enclosed final Gradation List of Assistant Engineers as on 30.06.1995 was also published. Respondent no.1 was shown at Serial No.2. Under the column 'employer of original employment' SADA, Malajkhanda was indicated. The appointment was shown as 'made by promotion'.

The date of the first appointment in government service was indicated as 20.12.1987. Under the column 'date of appointment in cadre', it is shown as 07.09.1987. The taking over of charge is indicated as 29.12.1988. In the 'remarks' column, it is indicated that 'joined from the earlier SADA on 20.12.1988' by order dated 20.12.1988 of the Housing and Environment Department Services of Assistant Engineers Absorbed. Two employees (not any of the petitioners before this Court) but one Mr. Bharat Bihari Mathur and Shri Dev Dutt Mishra, approached the Government against the Gradation List dated 01.07.2003.

It is by letter dated 30.07.2003 that the Government took the view that prior to July, 1995, State Cadre was not in existence as every Development Authority was empowered to take decision with regard to the employees, officers appointed by them. The Government further ordered that the names of first respondent and two others could not be shown under the establishment of the GDA in the Gradation List of Assistant Engineer as on 30.06.1995 or prior to it. The Government further ordered that the GDA was not competent to take decision on service matters in respect of the employees. It is this communication which led to the first respondent filing Writ Petition No. 8199 of 2003 claiming seniority from 07.09.1987.

Thereafter, on 31.01.2006, Seniority List, as on 01.07.1995 was published. Therein, it would appear that Shri Shirish More, one of the petitioners before this Court was shown at Serial No. 58 and respondent no.1 was at Serial No. 87. Respondent No.1 filed his objection. The Screening Committee rejected the objection on 13.10.2006. The State issued a combined Gradation List as on 01.07.1995, based on the decision of the Screening Committee on 29.11.2006. The respondent no.1 was placed at Serial No. 88. Shri Shirish More was shown at serial no. 82A. Shri G.N. Singh another petitioner, was shown at serial No. 58. Shri Nishad Azim, yet another petitioner before us, was shown at Serial No. 66. Shri B.B. Mathur was shown at Serial No. 54 and Shri Devdutt Mishra was shown at Serial No. 59. Thereupon, the respondent no.1 filed Writ Petition No. 189 of 2007.

In the said Writ Petition, the learned Single Judge proceeded to allow the Writ Petition filed by the first respondent by judgment dated 29.02.2008. In the said judgment, the complaint of the first respondent was apparently against his being placed at Serial No. 88, and further showing him as 'promoted on the post of Assistant Engineer on 20.12.1994'. The learned Single Judge found that there was failure to comply with the principles of natural justice. His placement at Serial No. 88 in regard to the position of Assistant Engineers as on 31.01.2006, was quashed, and he was directed to be placed in the Gradation List, treating him as Assistant Engineer, on the basis of Order dated 03.11.1987.

This Judgment, however, came to be recalled by the learned Judge, finding that first respondent had concealed the important fact that the earlier Writ Petition No. 8199 of 2003 was pending. It is thereafter that both the Writ Petitions came to be heard and the learned Single Judge (a Judge who was another learned Single Judge), proceeded to allow the two Writ Petitions, finding that the promotion of the first respondent was made in accordance with the Special Area Development Authority (Chairman and Officers Servants Recruitment and Conditions of Service) Rules, 1976 (hereinafter referred to as 'the 1976' Rules), which was a complete Code, which cannot be taken away in accordance with the PWD Recruitment Rules. It was found that an Executive Order of the Government directing that the PWD Rules would be applicable, was untenable.

The requirement under the rules, read with the Executive Order, was that, to be promoted as Assistant Engineer a person must have worked for 12 years. The first respondent had less than five years, when he was promoted in 1987. The learned Single Judge further proceeded to place reliance on the decision of the Division Bench in *S.C. Hiranandani & Ors. v. State of M.P. & Ors.* and found it applicable. The Single Judge found that in the said Judgment, vacancies existing prior to 31.03.1988, were required to be filled-up in terms of the 1976 Rules.

The transfer of the first respondent was found to be prior to the 1991 Amendment Act. It was further found that the transfer by the State Government was also a mode of recruitment. The contention that it was a case of deputation, was rejected. The respondents in the Writ Petitions could not produce any document to show that the lien of the first respondent was retained in the earlier SADA. Accordingly, the impugned Order dated 30.07.2003 was quashed and the official respondents in the Writ Petitions were directed to treat the first respondent as Assistant Engineer in GDA w.e.f. 07.09.1987 with all consequential benefits.

THREE WRIT APPEALS

11. This led to three appeals. Writ Appeal No. 327 of 2013 was filed by Shri Bharat Bihari Mathur and Shri Dev Dutt Mishra. Writ Appeal No. 48 of 2014 was filed by the State of Madhya Pradesh. Writ Appeal No. 481 of 2013 was filed by the GDA.

FINDINGS IN THE IMPUGNED JUDGMENT IN WRIT APPEAL NO. 327 OF 2013

12. Respondent No.1 was promoted as Assistant Engineer considering the need and vacancy in accordance with the Rules, initially on probation for one year. Having been permitted to work beyond the maximum period of 18 months of probation. He could not be treated as a probationer.

13. The letter written by the Housing and Environment Department is regarding applicability of the Recruitment Rules in the PWD for promotion as Assistant Engineer under which, a minimum service of 12 years was necessary, was described as a letter sent to the President of the Nagar Sudhar Nyas Neemach. It is found that objection has been raised, after a long period of twenty years. No such instruction was issued to SADA Malajkhanda. It was found that there was no provision in the Rules for mandating a minimum period. The respondent no.1 having been paid salary to the promoted post throughout, it could not be found that the promotion was not proper.

14. Initially, the Rules of 1976 were applicable. Thereafter, Rules were framed in 1988 in exercise of powers under Section 85 and Section 76-B (2) of the Act. These Rules came into force on 01.04.1988. In accordance, with the Rule (3)(ii) of the 1988 Rules and the 1976 Rules, the State Government was authorised to transfer an employee from one Authority to another Authority. It was, thus, found that the transfer of Respondent No.1 was in accordance with the Rules.

15. Subsequently, Respondent No.1 was absorbed in the service of the Gwalior Development Authority. The Order of the State to the effect that Respondent No.1 could not be treated as employee of the GDA, is not in accordance with law because, in the Gradation List earlier, vide letter dated 09.11.1995, services of the Respondent No.1 were merged in the GDA, for which, there was provision in the Rules. Respondent No.1 was assigned proper seniority to the post of Assistant Engineer as his seniority could not be disturbed.

16. After a period of eighteen years, it could not be held that Respondent No.1 was not an employee of GDA. Reliance is placed on *Parshotam Lal Dhingra v. Union of India*¹.

17. Reference is placed on the Order dated 29.04.2003, passed in Writ Petition No. 1377 of 2000, in regard to considering the case of Respondent No.1 for promotion to the post of Assistant Engineer.

18. The Appellants in Writ Appeal No. 327 of 2013, who were Respondent Nos. 3 and 4 in Writ Petition No. 8199 of 2003, viz., Shri Bharat Bihari Mathur and Shri Dev Dutt Mishra, were found to have been appointed as Assistant Engineers on ad-hoc basis in the year 1988 and made permanent in 1990 and they were placed below Respondent No.1. It is five to six years after the GDA initiated procedure for considering the case of promotion of Assistant Engineers to the higher post, that the Appellants had apprehension that their chance of promotion would be affected. Accordingly, it was found that Appeal was without merit and it was dismissed. Writ Appeal No. 481 of 2013, which was filed by the GDA, came to be dismissed on the basis of the Judgment in Writ Appeal No. 327 of 2013. Writ Appeal filed by the State, i.e., Writ Appeal No. 48 of 2014, came to be dismissed, based on the Judgment in Writ Appeal No. 327 of 2013.

EARLIER PROCEEDINGS AGAINST THE JUDGMENT

19. The Order, which was impugned in Writ Petition No. 8199 of 2003, was passed at the instance of Respondent Nos. 3 and 4, viz., Shri Bharat Bihari Mathur and Shri Dev Dutt Mishra, in the Writ Petition. They were the appellants in Writ Appeal No. 327 of 2013. They filed SLP (Civil) Nos. 12444-12445 of 2014. The same has been dismissed by this Court by Order dated 19.08.2014. The Review Petition against the said Order was dismissed on 22.09.2015. A Curative Petition also stood rejected on 27.10.2016.

THE PRESENT PROCEEDINGS; CONTENTIONS

20. The appellants are the State of Madhya Pradesh, GDA and three employees. The stand of the State of Madhya Pradesh appears to be that the first respondent was, in fact, transferred by way of deputation. This position is made further clear through the affidavit, pursuant to the Order dated 29.07.2021 passed by this Court. In the affidavit, the State has maintained the distinction between SADA and Development Authority. It is contended that their constitution, functions, budget, officers are entirely separate and distinct. SADA Malajkhanda was established under Section 64 of the Act. GDA was constituted under Section 38. Rule 3(2) of the 1976 Rules can be applied only for transfer of an employee from one SADA Malajkhanda to another SADA. It is pointed out that this contention was taken before learned Single Judge and noted.

The stand of the State is that the respondent No.1 was transferred by the State Government, in exercise of power under Section 72 of the Act, which is different from power under Section 73 of the Act. Section 73 deals with Power of State Government to give directions to all Authorities in the matter of policy whereas Section 72 empowered the State Government to exercise superintendence and control over the acts and proceedings of the officers appointed under Section 3 of the Act and Authorities under the Act. It is further pointed out that the first respondent is inconsistent. Initially, he took the stand he was absorbed in the GDA by the State Government order dated 09.11.1995.

He succeeded on this basis before the court. It is contended that in the Order dated 09.11.1995, it is stated that SADA Malajkhanda, was abolished and Respondent No.1 became employee of the State Government and that his name would be published in the gradation list of the Housing and Environment Department. Thereupon, first respondent has made a somersault by contending that his absorption was made by Order 20.12.1988, which the State Government would describe as a transfer on deputation.

Rule 4(C) of the 1976 Rules is inapplicable to order dated 20.12.1988 as Rule applied to recruitment to SADA and not when an employee is transferred on deputation, it is contended. It is further contended that recruitment is to be made under Rule 8 of the 1976 Rules with prior approval of the Government. Therefore, it is contended that under the Rules, recruitment by transfer or deputation requires approval of the State. The order dated 20.12.1988, it is contended is not issued by the Development Authority with previous approval of the State Government. It is merely described as an Order of the State Government transferring respondent no.1 on deputation to the GDA.

21. Another question, which is raised by the appellants, relates to the validity of the very promotion of the first respondent. The contention appears to be as follows:

The Government has issued an executive direction dated 25.4.1981 to the Presidents of the Development Authorities and SADA. In terms thereof the first respondent, who was appointed in the year 1982 as Sub Engineer, could have secured a promotion as Assistant Engineer only after the expiry of 12 years. On this basis, apparently, it is that though he was given promotion on the expiry of 4 years and a few months which was illegal, he is given seniority on the basis of expiry of period from 1982 and thus he is given seniority correctly from 1994, it is contended. It is common contention that at any rate even he can get seniority only from the said date. This is apart from contending that there was no absorption in law in the GDA and in fact

he was employee of the State in the Housing and Environment Department.

SECTION 72 OF THE ACT

22. Reliance is placed on Section 72 of the Act and to contend that first respondent was sent on deputation does not commend itself to us. Section 72 of the Act read as follows:

"72. State Government's power of supervision and control- The State Government shall have the power of superintendence and control over the acts and proceedings of the officers appointed under Section 3 and the authorities under this Act."

23. The power of supervision and control goes to acts and proceedings of the officers appointed under Section 3 and the authorities constituted under the Act. It means that the authority relates to the decisions or acts, which are taken by officers appointed under Section 3, or the authorities under the Act. It may not extend to power to control the service of the employees of the authority or SADA. In fact, the Division Bench of the High court in M.D. Awasthy v. State of M.P. and Another² dealing with the case where the petitioner therein, who was the employee of the Development Authority, was transferred to a Town Improvement Trust. This was passed with the approval of the Chairman of the Development Authority. By another order his service was terminated, which was also approved by the Chairman. These Orders were challenged. The Division Bench, inter alia, held as follows:

"... Reference to sections 72 and 73 on which reliance was placed only authorise the State government to have power of superintendence and control over the acts and proceedings of the officers appointed under section 3 and the authorities constituted under the Act. Certainly this will not include a power to call back the services of any officer, jr. servants of the Development Authority and to place those services under the disposal of altogether a different authority. Reference to section 73 is also misplaced as it only provides that the authorities constituted under the Act shall be bound by such directions in the matter of policy as may be given to them by the State Government..."

24. The counsel for the State Government has rightly not placed reliance on Section 73 which relates to power to issue directions in the matter of policy.

25. As far as the contention against the very promotion made in the year 1987 of the first respondent being flawed on the basis of the order, which was issued, providing that the PWD rules would apply and thus the first respondent who was appointed as Sub Engineer required 12 years to be promoted as an Assistant Engineer, what is clear is, the first respondent was promoted in the year 1987. Promotion was based on Seniority-cum-merit. There is no dispute that his employer, viz., SADA Malajkhanda, was competent to take a decision otherwise. Rule 17 of the 1976 Rules read as follows:

"17. Appointment by promotion- (1) Appointment by promotion shall be made on consideration of seniority-cum-merit.

(2) In selecting candidates for promotion regard shall be had to:-

(i) tact and energy

(ii) intelligence and ability

(iii) integrity; and

(iv) previous record of service

(3) The Appointing Authority shall consider the cases of all the eligible candidates and may in its discretion interview any of the candidates.

(4) xxx xxx xxx"

The High Court finds that the objection is raised after twenty years. It is found that no instruction was given to SADA, Malajkhanda. There was no provision in the rules. After 27 years, the promotion could not be revisited. In fact, after the promotion it was the Government, which transferred him as an Assistant Engineer and posted him at GDA. The view taken in the matter in the circumstances cannot be faulted. In the final seniority list dated 01.07.2003 wherein the first respondent was shown at Serial No.2, the final upgradation list of Assistant Engineer indicated that he was 'absorbed'. This is a list which is brought out by the GDA itself.

26. The contention of the State is that Rule 3(2) of the 1976 Rules envisages transfer from one SADA to another SADA only. Rule 3(2) reads as follows:

"3(2) Officers or officials borne on these posts of these cadre are liable for transfer from one Authority Service to other Authority Service. Such transfer may be made either by the mutual agreement between the two authorities, or by the State Government."

27. No doubt, the title of the Rules is as follows:

"Madhya Pradesh special Area Development Authority (Chairman and Officers and Servants Recruitment and Conditions of Service) Rules, 1976. It is purported to be made in exercise of power conferred under Section 67(2) and Section 85 of the Act.

Rule 2(e) defines "Authority Employees" means a person appointed to or borne on the cadre of the Authority staff.

Rule 2(f) defines "Authority service" as meaning the service or group of post in connection with the affairs of the Authority."

28. However, in the impugned judgment, it is found that Government framed the Madhya Pradesh Development Authority Service officers and servants Recruitment Rules, 1988. The High court has relied upon Rule 3 of the 1976 and 1988 Rules to find that Government was authorised to transfer an employee from one Authority to another Authority and that the transfer of respondent no.1 was in accordance with the rules. We cannot accept the argument of the State that it was a case of deputation in the facts. We have noticed that Section 72 does not also support the claim.

EFFECT OF EARLIER LITIGATION; AND THE STATE AND GDA NOT CHALLENGING THE JUDGMENT IN W.A. No. 327 of 2013. AN INSUPERABLE OBSTACLE?

29. Special Leave Petition (Civil) No. 31203 of 2014 is filed by the State of Madhya Pradesh challenging the Judgment in Writ Appeal No. 48 of 2014. Writ Appeal No. 48 of 2014 was filed by the State and it came to be dismissed on the basis of the Judgment in Writ Appeal No. 327 of 2013, which was filed by Respondent Nos. 3 and 4 in Writ Petition No. 8199 of 2003. It is to be noticed that the State was the first respondent in the Writ Petition. The Judgment in Writ Appeal No. 327 of 2013, having been dismissed, and the State being party to the same, it was incumbent upon the State to challenge the Judgment in Writ Appeal No. 327 of 2013.

The State in the Special Leave Petition has challenged only the Judgment in Writ Appeal No. 48 of 2014, which was rendered, no doubt, following the Judgment in Writ Appeal No. 327 of 2013. The Judgment in Writ Appeal No. 327 of 2013 would remain final as regards the State of Madhya Pradesh. Therefore, it may not be legal or proper to further consider the challenge at the instance of the State, when it is directed only against the Judgment in Writ Appeal No. 48 of 2014. Similarly, we notice that Special Leave Petition, filed by the GDA is directed against the Judgment in Writ Appeal No. 481 of 2013.

It is true that Writ Appeal No. 481 of 2013 was filed by the GDA against Order in Writ Petition No. 8199 of 2003, (as can be seen from Annexure-P16 at page-101 of the paper book). In Writ Appeal No. 327 of 2013, filed by the private parties in the very same Writ Petition, and wherein, the GDA was, admittedly, a party, viz., Writ Appeal No. 327 of 2013, the Division Bench has upheld the Judgment of the learned Single Judge. The GDA, being the party therein, challenged only the Judgment in Writ Appeal No. 481 of 2013, which was the Appeal filed by the GDA. It cannot be permitted to be proceeded with, as it would result in the Judgment in Writ Appeal No. 327 of 2013, which has become final, as far as GDA is concerned, becoming inconsistent with any Judgment, which we may render in favour of the GDA.

30. As far as the Special Leave Petitions, filed by the private parties are concerned, they are three in number. They have obtained the permission of this Court. We have noticed that initially Government had published a final Gradation List as on 01.07.1995. Therein the first respondent was shown at serial no. 2 in the Cadre of Assistant Engineer and he was shown as absorbed. Only Shri B.B. Mathur and Shri Devdutt Mishra, Assistant Engineers, working in the GDA, approached the Government. Government, no doubt, issued direction dated 30.07.2003, to delete the name of the first respondent. This, undoubtedly, led to the Writ Petition No. 8199 of 2003. Respondent Nos. 3 and 4 therein were Shri B.B. Mathur and Shri Devdutt Mishra.

They were the persons, who had challenged the seniority of the first respondent. We notice that Shri Shirish More, one amongst the petitioners before us, who had filed Special Leave Petition, after getting permission, came to be promoted on 10.10.1991 to the post of Assistant Engineer. In the combined Gradation List dated 29.11.2006, in fact, he is shown at serial no. 82A. Shri B.B. Mathur and Shri Devdutt Mishra were shown at serial nos. 54 and 59. The other two Special Leave Petitioners before us, viz., Shri G.N. Singh and Shri Nishat Azim were at serial nos. 58 and 56, respectively. What we would notice is, none of the petitioners before us, viz., the employees, have even challenged the final Seniority List dated 01.07.2003, as per which, respondent no.1, was shown at serial no.2, in the final Gradation List.

Further, we may notice that if they were relying on the fact that the parties-respondents in the writ petition filed by the first respondent and the appellants before the High Court, were following up on their behalf also, then, the fact that Shri Bharat Bihari Mathur and Shri Dev Dutt Mishra have filed the Special Leave Petition before this Court and the petition stands dismissed, would be an obstacle for entertaining their case. The further fact that even the Review Petition was dismissed and what is more, a Curative Petition was dismissed, would stand in their way, all the more.

Having regard to the passage of time, which has also witnessed dismissal of the Special Leave Petitions by the appellants (private respondents in the Writ Petition filed by the first respondent), Review and Curative Petition, at any rate, we do not think that we should disturb the impugned judgment.

31. The fact of the matter is that first respondent was transferred in the year 1988 as Assistant Engineer and he joined in GDA immediately thereafter and he continued to work there. In fact, as noticed in the first final seniority list dated 01.07.2003, he is shown as absorbed in the GDA. It may be true that in the letter dated 09.11.1995, it is not specifically stated that respondent was absorbed in the GDA, and it is indicated that his name will be included in the Joint Gradation List of the remaining SADA (i.e., the SADA not abolished under the notification dated 22.6.1995). It is further indicated that he is the employee of the Housing and Environment Department.

As regards, determining seniority w.e.f. 1994, when first respondent would complete 12 years as Sub Engineer, it is tied up with the issue of the illegality of his promotion in 1987 without completing 12 years. More importantly, even proceeding to discern any merit that seniority should, at least, be governed with reference to the requirement of 12 years, in the facts of this case, for reasons we have indicated already, we decline to interfere, bearing in mind also Article 136 of the Constitution of India, which has facilitated these appeals.

32. The appeals will stand dismissed. There will be no Order as to costs.

1 1958 SCR 828 / AIR 1958 SC 36

2 1988 SCC OnLine MP 86

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

Disclaimer: This material is for general information and legal research. It is not legal advice. Verify current law, the operative order and later history, and consult a qualified professional before acting.