A RAM GANESH TRIPATHI AND ORS.

v.

STATE OF U.P. AND ORS.

DECEMBER 17. 1996

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

Service Law—U.P. Palika (Centralised) Service Rules, 1966—Rules 9, 21-A—Promotion to post of UP Nagar Adhikaris—Selection Grade—
C *Eligibility.*

In U.P. Palika (Centralised) Service, the posts of Sahayak Nagar Adhikari had to be filled up in equal numbers by promotion and direct recruitment. The Government went on making ad hoc appointments to those posts for ten years. In the year 1976, only 14 persons were selected
D **by the Public Service Commission, the Government appointed only four persons, including appellants 1 to 3 in 1979. The other selected candidates who were not given appointments filed Writ Petition for a writ of mandamus directing the Government to appoint them. Appellants 4 and 13 and other regularly selected candidates were given appointments. On 23.5.84, the Government issued an order prescribing that only those who had**
E **permanently and substantively served in the capacity of Sahayak Nagar Adhikaris for six years will be eligible for promotion to the posts of UP Nagar Adhikaris and that only those who had permanently served in the posts of UP Nagar Adhikaris would be eligible for selection grade for those posts provided they have completed 15 years of service as UP Nagar**
F **Adhikari/Sahayak Nagar Adhikari and five years service as UP Nagar Adhikari. Thereafter, on 30.8.84, the Government inserted Rule 21A in the U.P. Palika (Centralised) Service Rules, for regularising the services of *ad hoc* employees. On 20.11.84, the Government amended its earlier order dated 23.5.84 and provided that only those officers who have permanently**
G **or substantively served as UP Nagar Adhikaris will be eligible for the selection grade provided they have completed 15 years service as UP Nagar Adhikari/Sahayak Nagar Adhikari and five years' service as UP Nagar Adhikari. On 23.3.1985, the Government amended the seniority list of Sahayak Nagar Adhikaris including only those who were directly recruited and those who were regularly promoted to those posts, not including *ad***
H ***hoc* appointees in the list. However, on 17.5.85, the Government, exercising**

its power under Rule 21-A, regularised the services of respondents and other *ad hoc* appointees. Regular appointees on the posts of Sahayak Nagar Adhikaris, entitled to substantive promotion to the posts of UP Nagar Adhikari, were given promotions on *ad hoc* basis. The Government granted *ad hoc* promotions to the respondents and other *ad hoc* appointees even though they were not eligible and the Government on 29.7.86 passed an order that selection grade in any post will be available only on 20 percent posts and the minimum eligibility will be the 12 years of regular service. On 13.10.93, the Government granted the selection grade to the respondents and other *ad hoc* employees who were regularised only on 17.5.85 but denied benefit to the appellants and other regular employees even though they were seniors. The appellants challenged the order by filing Writ Petition. During the pendency of the Petition the Government published seniority list showing the appellants as seniors to the respondents. However, the appellants alleged that in spite of showing them as seniors in the seniority lists they were not given selection grade. The High Court disposed of the petition holding that for getting that relief the appellants should move the authorities concerned. The appellants filed this appeal against the order of the High Court.

Disposing of the appeal, this Court

HELD : The appellants had challenged the action of giving selection grade to the respondents and other *ad hoc* appointees who were regularised only on 17.5.85 and thus were their juniors. They had also sought a mandamus directing the Government to grant them selection grade from the date they had become entitled to it in accordance with the Government order dated July 29, 1986. It was their grievance that the Government was wrongly treating those *ad hoc* appointees as regular appointees from a date earlier than 17.5.85. in view of these facts and circumstances it was not proper for the High Court to dismiss the petition on the ground that the list did not survive and leave the appellants again to the mercy of the Government which was out to defeat their legitimate claims. [253-A-C]

1.2. Rule 21A provides for regularisation of service of *ad hoc* employees by treating them as persons appointed in the service on the date of their regularisation. Rule 9 provides that a person appointed under that rule shall be entitled to seniority only from the date of appointment after

A **selection in accordance with the said rules and shall in, all cases, be placed below the employees appointed in accordance with the procedure for direct recruitment prior to the appointment of such persons under those rules. In view of these statutory Rules, the Government could not have treated the respondents and other *ad hoc* employees whose services were regularised on 17.5.85 as persons regularly appointed from an earlier date.** B **Nor could the Government had counted seniority from an earlier date either for promotion to the higher or for the purpose of giving selection grade. The Government by order dated 23.3.1993 had tried to give seniority to the respondents and those other *ad hoc* employees by treating them as permanently appointed promotees since 2 years after the date of their** C **joining the posts as Sahayak Nagar Adhikaris. Thus the respondents and other *ad hoc* employees who had been appointed temporarily and whose services were not regular and were regularised only on 17.5.85, will have to be treated as permanently appointed in 1974, as they were for the first time appointed on those posts in 1972. The said order was not challenged** D **in the writ petition as it had not come to the notice of the appellants. It had been filed in this Court along with the counter affidavit of respondents 3, 7, 8 and 9 and was relied upon by all the respondents. This order also deserved to be quashed as it was not consistent with the statutory Rules. It appeared to have been passed by the Government to oblige the respondents and similarly situated *ad hoc* appointees. [253-D-F; 254-B-D]**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 16750 of 1996.

From the Judgment and Order dated 16.10.95 of the Allahabad High Court in W.P. No. 39776 of 1993.

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Sunil Gupta and P.D. Tyagi for the Appellants.

D.V. Sehgal, M.C. Dhingra, Ms. Monica Gosain, V.J. Francies and P.I. Jose for the Respondents.

G The Judgment of the Court was delivered by

NANAVATI, J. : Leave granted.

In spite of serious criticism by the High Court, in the earlier proceedings between the parties, that the Government had abused its powers and H indulged into favouritsm and nepotism, the Government had again tried to

frustrate the legitimate rights of the direct recruits in order to favour and protect those *ad hoc* promotees who are alleged to be relations and favourites of Ministers, Members of Legislative Assemblies and Secretaries to the Government. The wrong committed is not only required to be set at naught, but the Government also deserves to be criticised for acting in that manner.

Even though U.P. Palika (Centralised) Service Rules (for short the Rules) were framed in 1966 for recruitment to the various posts mentioned therein and even though under Rule 20 the posts of Sahayak Nagar Adhikaris had to be filled up in equal numbers by promotion and direct recruitment, the Government went on making *ad hoc* appointments to those posts for ten years. Even when the process of recruitment for the said posts had started in 1976 and in all 14 persons were selected by the Public Service Commission (hereinafter referred to as the PSC) the Government appointed only four persons, including Appellant Nos. 1 to 3 in 1979. The other selected candidates who were not given appointments therefore, filed Writ Petition No. 279 of 1980 in the Allahabad High Court for a writ of mandamus directing the Government to appoint them. Pursuant to the interim order passed in that petition, Appellant Nos. 4 and 13 and other regularly selected candidates were given appointments. In order to accommodate those direct recruits, the Government was really required to terminate the services of as many *ad hoc* appointees, including the respondents. Instead of doing so, with a view to favour them, the Government promoted them to the higher posts of UP Nagar Adhikaris on *ad hoc* basis. The appellants, therefore, challenged promotions of those respondents and other promotees by filling Writ Petition No. 2808 of 1980 in the Allahabad High Court on 4.3.82. The High Court allowed the writ petition, quashed the promotion of the respondents and directed the Government to prepare a seniority list and make promotion to higher posts of UP Nagar Adhikaris in accordance with Rules 20 and 21 of the Rules. That order was challenged by the State Government and *ad hoc* appointees in this Court but their special leave petitions were dismissed.

On 23.5.84, the Government issued on order prescribing that only those who had permanently and substantively served in the capacity of Sahayak Nagar Adhikaris for six years will be eligible for promotion to the posts of UP Nagar Adhikaris and that only those officers who had permanently served on the posts of UP Nagar Adhikaris would be eligible for

A selection grade for those posts provided they have completed 15 years of service as UP Nagar Adhikari/Sahayak Nagar Adhikari and five years' service as UP Nagar Adhikari. Thereafter, on 30.8.84, the Government inserted Rule 21A in the Rules for regularising the services of *ad hoc* employees. Again, on 20.11.84, the Government amended its earlier order dated 23.5.84 and provided that only those officers who have permanently or substantively served as UP Nagar Adhikaris will be eligible for the selection grade provided they have completed 15 years' service as Up Nagar Adhikari/Sahayak Nagar Adhikari and five years' service as UP Nagar Adhikari. On 23.3.1985, the Government amended the seniority list of Sahayak Nagar Adhikaris. It rightly included only those who were directly recruited and those who were regularly promoted to those posts. Those who were *ad hoc* appointees were not included in the said list. But soon thereafter on 17.5.85, the Government, exercising its power under the newly introduced Rule 21A, regularised the service of respondents and other *ad hoc* appointees. Even though regular appointees on the posts of Sahayak Nagar Adhikaris were entitled to substantive promotion to the posts of UP Nagar Adhikaris, they were given promotions on *ad hoc* basis. Again, the Government granted *ad hoc* promotions to the respondents and other *ad hoc* appointees even though they were not eligible and in order to favour them, the Government on 29.7.86 passed an order that selection grade in any post will be available only on 20 per cent posts and that the minimum eligibility will be the same i.e. 12 years of regular service. On 13.10.93, the Government granted selection grade to the respondents and other *ad hoc* employees who were regularised only on 17.5.85, but denied benefit to the appellants and other regular employees even though they were seniors.

The appellants, therefore, challenged the said order dated 13.10.93 by filing Writ Petition No. 39776 of 1993 in the Allahabad High Court. During the pendency of the petition the Government published a seniority list showing the appellants as seniors to the respondents. The High Court, therefore, held that in view of that seniority list the list between the parties did not survive. As regards their specific grievance that in spite of showing them as seniors in the seniority lists they are not given selection grade, the High Court observed that for getting that relief the appellants should move the authorities concerned. So without considering the propriety and legality of the order dated 13.10.93 which was challenged in the petition, the High Court disposed of the petition with that observation. The appellants have,

therefore, filed this appeal. A

It is difficult to appreciate how the High Court could hold that in view of the seniority list dated 31.12.94 the grievance of the appellants did not survive. The appellants had challenged the action of giving selection grade to the respondents and other *ad hoc* appointees who were regularised only on 17.5.85 and thus were their juniors. They had also sought a mandamus B directing the Government to grant them selection grade from the date they have become entitled to it in accordance with the Government order dated July 29, 1986. It was their grievance that the Government was wrongly treating those *ad hoc* appointees as regular appointees from a date earlier than 17.5.85. In view of these facts and circumstanctes it was not proper for the C High Court to dismiss the petition on the ground that the list did not survive and leave the appellants again to the mercy of the Government which was out to defeat their legitimate claims.

Rule 21A provides for regularisation of service of *ad hoc* employees by treating them as person appointed in the service on the date of their D regularisation. Rule 9 provides that a person appointed under that Rule shall be entitled to seniority only from the date of appointment after selection in accordance with the said rules and shall, in all cases, be placed below the employees appointed in accordance with the procedure for direct recruitment prior to the appointment to such persons under those E Rules. In view of these statutory Rules, the Government could not have treated the respondents and other *ad hoc* employees whose services were regularised on 17.5.85 as persons regularly appointed from an earlier date. Nor could the Government have counted seniority from an earlier date either for promotion to the higher post or for the purpose of giving selection grade. F

In spite of this clear position , the Government by its letter dated March 23, 1993 informed the Director of Local Bodies, U.P., Lucknow that the Government, in exercise of powers under Rule 40(2) of the Rules, has passed an order to the effect that the date of confirmation of the employees G working in the U.P. Palika (Central) Service since before the year 1977 and who have not been selected through PSC and who have not been regularised on the posts but are continuously working, shall be determined as under :

"(i) The employees appointed on *ad hoc* basis and working con- H

A tinuously shall be made permanent on that post just 2 years after the date of joining on which post the employee joined his duty after being appointed."

The Government by order dt. 23.3.1993 has tried to give seniority to the respondents and those other *ad hoc* employees by treating them as B permanently appointed promotees since 2 years after the date of their joining the posts as Sahayak Nagar Adhikaris. Thus the respondents and other *ad hoc* employees who had been appointed temporarily and whose services were not regular and were regularised only on 17.5.85, will have to be treated as permanently appointed in 1974, as they were for the first C time appointed on those posts in 1972. The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter affidavit of Respondent Nos. 3, 7, 8 and 9 and is relied upon by all the respondents. This order also deserves to be quashed as it is not consistent with the statutory Rules. It appears to have been passed by the Government to oblige the respondents D and similarly situated *ad hoc* appointees.

We, therefore, allow this appeal and direct the Government not to treat any *ad hoc* Sahayak Nagar Adhikari who was originally appointed on *ad hoc* basis and whose service was regularised only on 17.5.85 as senior E to the direct recruits who were appointed before that date. We also quash and set aside the order passed by the Government under Rule 40(2) of the Rules whereby the employees appointed on *ad hoc* basis and working continuously have been made permanent on those posts with effect from 2 years after the date of jointing on those posts. The Government is directed to consider the seniority of the appellants and respondents as stated above F and further consider the case of the appellants for selection grade accordingly and also in accordance with the Government order dated July 29, 1986. The Government shall grant them the said benefit immediately if they are found to be eligible for the same. The Government shall complete the whole exercise within a period of two months from today. In the facts and G circumstances of the case, there shall be no order as to costs.

R.A. Appeal disposed of.