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FOOD CORPORATION OF INDIA
v.
THANESWAR KALITA AND ORS. ETC.

MARCH 6, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Service Law

C *Seniority—Adhoc appointment—Appointment de hors the Rules—Continuance on service for a long time—Regularisation—Adhoc period cannot be counted towards seniority.*

D **The respondents were appointed on *ad hoc* basis *de hors* the rules. They continued for a long time due to non-availability of the direct recruit candidates. In petitions filed by the respondents, the High Court directed the appellants to treat the entire period of *ad hoc* service of the respondents on regular basis entitling them to seniority and other benefits. Against the decision of the High Court appeals were preferred in this Court.**

Allowing the appeals, this Court

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F **HELD: 1. If the appointments are not made in accordance with rules, though the appointees might have continued for a long time, the entire period of service would be fortuitous and so would not be counted towards seniority. The respondents were not promoted according to rules. Though they have continued for a long time, the entire length of service should be considered as fortuitous and should not be counted towards their seniority. The High Court, therefore, was clearly in error in directing to treat their entire service as on regular basis. [517-E-F-518-A]**

G *The Direct Recruit Class II Engg. Officers' Association and Ors. v. State of Maharashtra, AIR (1990) SC 1607, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4029-30 of 1995.

H From the Judgment and Order dated 13.5.1991 and 3.7.92 of the Assam High Court in C.R. No. 793/89 & 4466 of 1991.

V.C. Mahajan and K.R. Nagaraja for the Appellant. A

S.K. Nandy for the Respondents.

The following Order of the Court was delivered :

Leave granted. B

We have heard the counsel on both the sides. These appeals arise from the orders of the High Court of Guwahati dated 15.5.1991 and 3.7.1992 in Civil Rule Nos. 793/89 & 4466/91. The Division Bench of the High Court directed the appellants to treat the entire period of *ad hoc* service of the respondents on regular basis and further declared that they must be deemed to have been in continued service as Assistant Managers w.e.f. 30th August, 1973 and are entitled to seniority and also to other benefits. Calling in question these orders, these appeals have been filed. C

It is not in controversy that the respondents were appointed on *ad hoc* basis *de hors* the rules. In view of the judgment of the Constitution Bench of this Court in *The Direct Recruit Class II Engg. Officers' Assn. and Ors. v. State of Maharashtra*, AIR (1990) SC 1607 and several decisions following that, it is settled law that if the appointments are made according to rules, though initially on *ad hoc* basis, and are continued for long time, on regularising the service, the entire period of temporary service would be counted for seniority. If such appointments are in excess of quota, the officiating period would not be treated for seniority, as the appointments then become fortuitous; and the persons appointed in excess of the quota are not entitled to count the entire period of service for seniority. The condition precedent being that the appointments are made within quota and are made in accordance with rules. In other words, if the appointments were not made in accordance with rules, though the appointees might have continued for a long time, the entire period of service would be fortuitous and so would not be counted towards seniority. D E F

In this case, admittedly, the promotion of the respondents was not in accordance with rules; but they were delayed on *ad hoc* basis due to the exigencies of non-availability of the direct candidates. Thereby, it is clear that the respondents were not promoted according to rules. In other words, they were promoted *de hors* the rules. Though they have continued for a long time, the entire length of service should be considered as fortuitous G H

A and should not be counted towards their seniority. The High Court, therefore, was clearly in error in directing to treat their entire service as on regular basis.

B The appeals are allowed accordingly. It is needless to mention that from the date of the regularisation to service as per rules, the respondents are entitled to all the benefits. It is made clear that by the circulars issued by the Corporation, the pay drawn by the respondents during this period, stands protected. No costs.

T.N.A.

Appeals allowed.