

G. R. Luthra

Vs

Lt. Governor of Delhi and Others

Writ Petition No. 402 of 1977

(CJI A. N. Ray, K. K. Mathew JJ)

03.09.1974

JUDGMENT

FAZAL ALI, J. -

1. This writ petition has had a chequered career and involves a competition regarding seniority between the petitioner G. R. Luthra and respondent 3 D. R. Khanna who were simultaneously recruited as members of the Punjab Judicial Service. The case appears to have travelled through various stages both in the High Court and in this Court on different aspects. After hearing counsel for the parties in the view that we propose to take in this petition and also because respondent 3 has filed an affidavit that he would not press this Court for giving any decision regarding his seniority over the petitioner if the submission of respondent 3 regarding his appointment under the Delhi Higher Judicial Service is decided against him, it is not necessary for us to give any finding on the scope and ambit of Rule 6(3) of the Rules.

2. In view of these the controversy in this case has been very much narrowed down and the point for decision falls within a very narrow compass. In order however to understand the question involved, it may be necessary to give a short history and a brief resume of the manner in which the petitioner and respondent 3 were appointed and their vertical mobility in the hierarchy through which they had moved up.

3. To begin with, both the petitioner and respondent 3 competed for entrance to the State Judicial Service of the undivided Punjab. The petitioner Luthra was appointed as far back as August 7, 1950 having obtained fourth position in the competitive examination and was appointed as Sub-Judge against a permanent post. Respondent 3 had also taken the same competitive examination but obtained a lower position (thirteenth) and was appointed as Sub-Judge against a temporary post. Thus, from inception three important facts are established :

1. That the petitioner had obtained a higher position in the competitive examination held for entrance to the State Judicial Service whereas respondent 3 had obtained a lower position. This is important because under the Rules and the conventions the seniority of new recruits is normally governed by the place which they occupy in the competitive examination.

2. The petitioner Luthra was appointed on August 7, 1950 whereas respondent 3 D. R. Khanna was appointed on November 23, 1950, i.e. about 3 1/2 months later. Thus, even regarding the time of appointment, the petitioner entered the service prior to respondent 3 both having been appointed to the same service and having been

recruited through the same competitive examination.

3. That while the petitioner Luthra was appointed against a permanent vacancy respondent 3 was appointed in the State Judicial Service only against a temporary post. This was also an important factor which has to be taken into consideration in order to determine the inter se seniority of the petitioner and respondent 3.

4. Both the petitioner and respondent 3 were thus appointed as members of the Punjab Judicial Service in the undivided Punjab. So far as Delhi was concerned before the birth of the Haryana State it used to be a Judicial District of Punjab. Unfortunately, the services of respondent 3 remained terminated due to medical unfitness between March 13, 1952 to May 23, 1956. But this gap is of no consequence because subsequently his medical unfitness was set aside in appeal and respondent 3 was reinstated with effect from the date of his appointment, namely, November 23, 1950.

5. On March 9, 1963 the petitioner Luthra was posted at Delhi as Sub-Judge. On November 1, 1966 by virtue of reorganisation of Punjab, Punjab and Haryana became two separate States and some areas were transferred to Himachal Pradesh. As a result of the aforesaid reorganisation the services of the petitioner Luthra were allocated to the State of Haryana and that of respondent 3 Khanna to Punjab, but both the officers continued to be posted at Delhi and were Senior Sub-Judges. On the same date, namely, November 1, 1966, Delhi High Court was created and came into existence. Shortly thereafter, on November 5, 1966 in a meeting of the Chief Justices of the Punjab and Haryana and Delhi High Courts a list of Judicial Officers to be absorbed in the Judicial Service to be constituted at Delhi was finalised and in the list of the Lower Judicial Service which appears at page 393 of the Paper Book the petitioner Luthra was placed at S. No. 4 whereas respondent 3, D. R. Khanna was placed at S. No. 6. Thus, the two High Court clearly decided that in the new Service the petitioner was to rank senior to respondent 3. This decision was a logical corollary of the history of the services of the petitioner and respondent 3, discussed above. The proceedings of the meeting are contained at pages 392-395 of the Paper Book in which the Courts decided to allocate one District and Sessions Judge for Delhi and 8 Additional District and Sessions Judges in the Higher Judicial Service and 39 sub-Judges in the Lower Judicial Service. Both the petitioner and respondent 3 at that time fell in the third category. Thus, even though the petitioner and respondent 3 had for a short while been allocated to two different States, namely, one was allotted to Punjab and the other to Haryana, but with the coming into existence of the Delhi High Court both of them again joined the same service and their rank and seniority was throughout maintained.

6. On May 9, 1967, the petitioner Luthra was appointed as Assistant Sessions Judge, Delhi. Respondent 3 was appointed as Assistant Sessions Judge on February 21, 1968, but it appears that by a letter dated March 22, 1971 written by the Registrar of the Punjab and Haryana High Court addressed to the Accountant-General, Punjab, Simla, respondent 3 was given pro forma promotion with effect from June 24, 1967. The pro forma promotion is related to vacancies in his parent State and has nothing to do with vacancies or seniority where both were at the relevant time serving. This letter is annexed as Annexure 2 appearing at page 288-289 of the Paper Book. The petitioner Luthra was however given benefit of next below rule as Additional District and Sessions Judge with effect from July 28, 1967. This unfortunate episode seems to be the sheet-anchor of the argument of respondent 3 in claiming seniority over the petitioner. It is true that by virtue of the letter referred to above respondent 3 was appointed as Additional District and Sessions Judge prior to the petitioner but since this appointment was made subject to the next below rule it is manifest that seniority of

petitioner over respondent 3 was fully protected; otherwise if in fact the respondent 3 was to be given seniority over the petitioner, the question of giving benefit of the next below rule to the petitioner would not have arisen. The letter referred to above was passed by the order of the Chief Justice and the Judges of the High Court. In these circumstances, therefore, merely because respondent 3 got a pro forma promotion and was temporarily appointed as Additional District and Sessions Judge six months before the petitioner that will not make him senior to the petitioner. This fact is borne out by another circumstances. The petitioner was also appointed as Additional District and Sessions Judge on November 25, 1967 and while both the petitioner and respondent 3 were holding the same post at Delhi, the petitioner was confirmed as District and Sessions Judge in his parent State of Haryana on October 2, 1970. On the other hand, respondent 3 was appointed as Additional District and Sessions Judge, Delhi, on June 5, 1968 and continued as Additional District and Sessions Judge till May 17, 1971. Respondent 3, however, was confirmed as Sub-Judge on June 5, 1968 but was confirmed as District and Sessions Judge, Delhi several years after.

7. On August 27, 1970, Delhi Higher Judicial Service and Delhi Judicial Service Rules were framed by the Lt. Governor in consultation with the Delhi High Court. On March 22, 1971 Shri Khanna respondent 3 was appointed as Member, Income Tax Tribunal at Jaipur. About two months thereafter, i.e. on May 17, 1971 there was a regular notification initiating the constitution of the Delhi Higher Judicial Service with effect from May 17, 1971 by which in the Higher Service Judicial Service the petitioner was put at S. No. 7 and respondent 3 at S. No. 8. This notification may be extracted thus :

In pursuance of the provision of Rule 6 of the Delhi Higher Judicial Service Rules, 1970, the Administrator of Delhi is pleased to appoint substantively in consultation with the High Court, the following persons from the States noted against each, to the Delhi Higher Judicial Service at its initial constitution with effect from May 17, 1971 and in order of seniority indicated :

#1. Shri Rajinder Nath Registrar, Delhi High Court, Himachal Aggarwal New Delhi Pradesh
#2. Shri Fauja Singh Addl. District & Punjab Gill Session Judge, Delhi
#3. Shri Mohinder Member (Punjab) Official - Do - Singh Joshi Language (Legislative) Commission, Ministry of Law, Government of India
#4. Shri Kashmir Addl. District & Session - Do - Singh Sidhu Judge, Delhi
#5. Shri Om Nath - Do - - Do - Vohra
#6. Shri Jagminder Das - Do - - Do - Joshi
#7. Shri Gulshan Rai - Do - - Do - Luthra
#8. Shri Dev Raj Khanna - Do - - Do - ##

8. Thus, this notification would show that whatever may have been the position prior to the coming into force of the new Service, the petitioner was treated to be senior to respondent 3. As we have already stated that both the petitioner and respondent 3 were practically recruited through the same source and were members of the same Service though for a short period the petitioner was allotted to Haryana and respondent 3 to Punjab but that would not introduce any break in the service of either of them or bring about a change in their seniority. Unfortunately, however, it appears that the confusion was worse confounded by a decision taken by the Delhi High Court on a representation filed by respondent 3. It appears that after the final list under the Delhi Higher Judicial Service was notified and approved respondent 3 filed a representation on January 21, 1972 claiming seniority over the petitioner. This representation appears to have been accepted by the High Court on June 10, 1976 which runs thus :

I am desired to say that Shri D. R. Khanna a member of the Delhi Higher Judicial Service, at present on deputation as Judicial Member, Income Tax Appellate Tribunal

made a representation dated January 25, 1972 (copy enclosed) requesting that for the reasons stated therein he may be placed above Shri G. R. Luthra in the Gradation List of the officers of the Delhi Higher Judicial Service. The comments of Shri Luthra on the aforesaid representation of Shri Khanna were obtained Subsequently, both the officers filed counters, copy of each one of which is enclosed. Both Shri Khanna and Shri Luthra were heard by a Committee of two Hon'ble Judges who submitted a report which was considered on the Administrative side by the Full court in its meeting held on May 20, 1976 and it was decided that in view of Rule 6(3) of the Delhi Higher Judicial Service Rules, 1970, as interpreted by the Supreme Court in G. R. Luthra v. Lt. Governor, Delhi ((1975) 3 SCC 258 : 1974 SCC (L&S) 541 : AIR 1974 SC 1908), Shri Khanna is senior to Shri Luthra. I am directed to request that orders of the Administrator may be obtained in this behalf and necessary amendment in Delhi Administration's Notification No. 1 (74/76-Judl.) dated May 15, 1971 be made.

Thus, the basis of the order of the High Court was the interpretation of Rule 6(3) of the Delhi Higher Judicial Service Rules, 1970. Section 6(3) runs thus :

The seniority of the candidates appointed at the initial constitution shall be in accordance with the length of service rendered by them in the cadres to which they belong at the time of their initial recruitment to the service provided that the inter se seniority as already fixed in such cadres shall not be altered.

A perusal of this rule would manifestly show that the petitioner was treated as senior to respondent 3 throughout his whole career and even in the initial recruitment by which the Delhi Higher Judicial Service came into existence, the petitioner was shown senior to respondent 3, and, therefore, on a plain reading of Rule 6(3) there was no merit in the representation of respondent 3 and according to the second part of the rule since inter se seniority had already been fixed initially, the petitioner would be deemed to be senior to respondent 3 and this seniority could not be altered. With due respect to the Hon'ble Judges we feel that the construction placed by High Court on Rule 6(3) was not correct. The High Court appears to have relied on a decision of this court in G. R. Luthra, Additional District Judge, Delhi v. Lt. Governor, Delhi ((1975) 3 SCC 258 : 1974 SCC (L&S) 541 : AIR 1974 SC 1908), which is clearly distinguishable from the facts and circumstances of the present case and in which the history of the services of the two officers had not been placed or argued nor was respondent 3 a party to that petition and, therefore, his case never came up for consideration before this Court. Therefore, this Court had no occasion to consider the various aspects of the question which ex-hypothesis did not arise. The facts and circumstances under which the petitioner's seniority was maintained by giving a pro forma promotion to respondent 3 and protecting the seniority of the petitioner by concept of next below rule was also not brought to the notice of the Court.

9. In fact, in the case of G. R. Luthra v. Lt. Governor, Delhi ((1975) 3 SCC 258 : 1974 SCC (L&S) 541 : AIR 1974 SC 1908), this Court clearly laid down that the criterion for the determination of seniority under the Delhi Rules was the length of service rendered by the candidates during the period when they were rendering service either as District Judge or as Additional District and Sessions Judge against permanent or temporary posts. From the notification dated May 19, 1971 which has been extracted above it would be seen that Mr. Sidhu, Mr. Vohra and Mr. Jain over whom the petitioner Luthra was claiming seniority were shown at S. Nos. 4, 5 and 6, that is to say above the petitioner Luthra. This Court therefore obviously held that length of service of these officers

being more than the petitioner Luthra, the claim of the petitioner Luthra was wholly untenable. In this connection, this Court observed as follows : (SCC P. 263, paras 32, 33)

Rule 6(4) of the Delhi Rules shows that the respondents and the appellant were absorbed in the Delhi Higher Judicial Service from the States of Punjab and Haryana. The length of service rendered by them as Additional District and Sessions Judges is the criterion to fix the seniority. The word 'cadre' includes both permanent and temporary posts. To confine cadre to permanent posts under the Delhi Rules would be to render the Rules totally unworkable and impracticable because at the time of initial recruitment the persons came on deputation from State mostly in their temporary capacity as Additional District and Sessions Judges.

For these reasons we are of opinion that the respondents Sidhu, Vohra and Jain had been rightly treated as senior to the appellant on the ground that the length of service rendered by the respondents in the cadre of District and Additional District and Sessions Judges to which they belonged at the time of initial recruitment is longer than that of the appellant.

In the instant case also the petitioner and respondent 3 have been drawn from different sources and different States before they were absorbed in the Delhi Higher Judicial Service and it would appear from the notification mentioned above that while the petitioner Luthra was shown at S. No. 7, respondent 3 was placed at S. No. 8. Therefore, on a parity of reasoning adopted by this Court in the case cited above the case of respondent 3 claiming seniority over the petitioner Luthra cannot be accepted. Thus, the High Court in recommending that respondent 3 should be treated as senior to the petitioner Luthra acted against the express decision of this Court cited above and that the order of the High Court, therefore, was legally erroneous and if given effect to would have been violative of Article 16 of the Constitution.

10. Moreover, Rule 6(1) of the Delhi Service Rules, runs thus :

6(1) For initial recruitment to the service, the Administrator shall, in consultation with the High Court, appoint persons to the service substantively from amongst the following :

(a) District Judges and Additional District Judges functioning as such in the Union Territory of Delhi on deputation from other States.

Clause (a) makes it absolutely clear that persons to the higher Service would be recruited only from those District and Additional District Judges who were actually functioning in the Union Territory of Delhi on deputation from other States. It is common ground that on this crucial date respondent 3 was not functioning either as District Judge or as Additional District Judge but was on deputation with the Income Tax Tribunal. In view however of the affidavit given by the respondent 3 we refrain from giving any findings as to whether or not respondent 3 was validly appointed because respondent 3 had conceded in his affidavit that he would not press his claim of seniority over the petitioner and, therefore, we need not take into consideration the provisions of Rule 6(1)(a) of the Rules.

11. Thus, on an overall consideration of the various aspects of the matter discussed above, we are satisfied that the petitioner Luthra was senior to respondent 3 and was rightly placed above respondent 3 in the initial constitution of the Delhi Higher Judicial Service by virtue of the

notification dated May 19, 1971, and is, therefore, entitled to such right as he may have and shall be deemed to be senior to respondent 3. The order of the Lt. Governor (respondent 1) based on the recommendation of the High Court treating the petitioner to be junior to respondent 3 is legally erroneous and is quashed as by making respondent 3 senior to the petitioner the right of the petitioner under Article 16 is clearly violated.

12. The petition is accordingly allowed, but in the circumstances of the case there will be no order as to costs.

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