

SUPREME COURT OF INDIA

G. R. Luthra, Additional District Judge, Delhi

Vs.

Lt. Governor, Delhi

C.A.No.777 of 1973

(A. N. Ray, C.J.I. and K. K. Mathew, J.)

03.09.1974

JUDGEMENT

RAY, C. J.:-

1. This is an appeal by special leave from the judgment dated 21 August, 1972 of the Delhi High Court Reported in (1973) 1 Service Law Report 54.
2. The appellants challenged the notification dated 15 May, 1971 determining the respondents K. S. Sidhu, O.N. Vohra and J. D. Jain to be senior to the appellant in the Delhi Higher Judicial Service.
3. The appellant and the respondents were recruited to the Delhi Higher Judicial Service in accordance with the recognition of the Delhi Higher Judicial Service Rules hereinafter referred to as the Delhi Rules.

4. The respondent Sidhu was appointed as a Subordinate Judge on 27 October, 1948 in the former Pepsu State. The respondents Vohra and Jain and the appellant were selected and appointed as Subordinate Judges in the Provincial Civil Service (Judicial Branch) in the Punjab State on the result of the competitive examination. The respondents Vohra and Jain were appointed as Subordinate Judges on 4 August, 1950 and the appellant was appointed on 7 August, 1950.

5. The respondent Sidhu was appointed as an officiating or temporary Additional District and Sessions Judge on 15 January, 1966 in the State of "Punjab".

6. The respondent Jain was appointed as Senior Subordinate Judge in Delhi on 12 October, 1966. The appellant was also made first the Additional Senior Subordinate Judge on 12 October, 1966.

7. The Delhi High Court was established on 31 October, 1966.

8. On 1 November, 1966 the State of Punjab and reorganised. Two different States of Punjab and Haryana were formed.

9. The Central Government in exercise of its power under the Punjab Reorganisation Act, 1966 allocated the respondents Sidhu, Vohra and Jain to Punjab and the appellants to the State of Haryana with effect from 1 November, 1966.

10. On or about 2/3 November, 1966 a select list of officers to be recruited to the Delhi Judicial Service showing the order of seniority was prepared.

11. The respondent Vohra was appointed on 17 March, 1967 as Assistant Sessions Judge, Delhi. On 24 April, 1967 the respondent Vohra was promoted and appointed as temporary Additional District and Sessions Judge, Delhi against a permanent post.

12. The respondent Sidhu was transferred to Delhi and appointed on 1 May, 1967 as Additional District and Sessions Judge on deputation. He had already been appointed as officiating Additional District and Sessions Judge on 15 January, 1966 in Punjab.

13. The respondent Jain was given promotion on 23 June, 1967 as Additional District and Sessions

Judge in his parent State of Punjab in the Punjab Superior Judicial Service while he was still on deputation. On 11 August 1967 the respondent Jain was promoted and appointed as temporary Additional District and Sessions Judge, Delhi against one of the temporary posts.

14. On 28 July, 1967 the appellant was given promotion as Additional District and Sessions Judge in his parent State of Haryana while he was still working on deputation as Senior Subordinate Judge, Delhi.

15. On 27 August, 1970 the Delhi Higher Judicial Service Rules, 1970 were promulgated.

16. On 2 October, 1970 the appellant was confirmed as District and Sessions Judge in his parent State of Haryana whilst he was still functioning as Additional District and Sessions Judge on deputation.

17. On 22 February, 1971 the respondent Sidhu was confirmed as District and Sessions Judge in his parent State of Punjab whilst he was still functioning in Delhi as Additional District and Sessions Judge on deputation.

18. On 15 May, 1971 the Administrator of Delhi issued a Gazette Notification appointing substantively the respondents and the appellant to the Delhi Higher Judicial Service on its initial constitution. The respondents Sidhu, Vohra and Jain and the appellant were shown one after another in the order of seniority.

19. On 17 May, 1971 the appellant and the respondents assumed charge as Additional District and Sessions Judges Delhi as members of the Delhi Higher Judicial Service.

20. On 1 September, 1971 the appellant made a representation to the High Court of Delhi, against the fixation of his seniority and claimed seniority over the respondents Sidhu, Vohra and Jain. On 23 October, 1971 the High Court rejected the representation of the appellants.

21. The seniority of the respondents and the appellant depends on the construction of Rule 6 (3) of the Delhi Rules. Rule 6 (3) states that the seniority of the candidates appointed at the initial constitution shall be in accordance with the length of service rendered by them in the cadre 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.

22. Rule 6 (1) of the Delhi Rules states that for initial recruitment to the service which means the Delhi Higher Judicial Service the Administrator shall, in consultation with the High Court, appoint persons to the service substantively from amongst the (a) District Judge and Additional District Judges functioning as such in the Union Territory of Delhi on deputation from other States : (b) District Judges and Additional district Judges whose names may be recommended by their respective States for appointments.

23. The appellant's contentions are twofold.

24. First, the expression "the length of service rendered by them in the cadres to which they belong means that the length of service has to be considered only with reference to the substantive appointment to permanent posts which alone were included in the service on 17 May, 1971, which is the relevant date for the purpose of determining seniority. The appellant was confirmed on 2 October, 1970 as District and Sessions Judge in his parent State of haryana. The respondent Sidhu was confirmed on 22 February, 1971 as district and Sessions Judge in his parent State of Punjab. Therefore the appellant is senior to the respondent Sidhu because the appellant is confirmed earlier in point of time than the respondent Sidhu. Both of them belong to the cadres of District Judges. The respondents Vohra and Jain are not yet confirmed as District Judges. They belong to the cadres of Additional District and Sessions Judges. Therefore, they cannot be senior to the appellant.

25. Second the length of service rendered by the candidates in the cadres to which they belong at the time of their initial recruitment to the service can have reference only to the cadre of Additional District and Sessions Judges and the cadre of District and Sessions Judges from which recruitment was made in accordance with Rule 6 (1). Cadre is permanent establishment. The word "belong" in the expression "cadre to which they belong" means that a person is a member of the cadre in a substantive appointment against a permanent post. The use of the expression "cadres" in contrast to the expression "cadre" which is used in Delhi Judicial Service Rules shows that recruitment is from two distinct cadres of Additional District and Sessions Judges and District and Sessions Judges. For purpose of seniority what is relevant is the date of confirmation and not the date of appointment in an officiating or temporary capacity.

26. In order to examine the contentions of the appellant it is necessary to appreciate as to why and for whose benefit these Delhi Rules were framed. These Rules were framed for those who were functioning as Additional District and Sessions Judges at Delhi. There were 11 such persons. In Rule 6 (3) the concentration is on the length of service rendered by the candidates appointed at the initial constitution. At the initial constitution of the Delhi Higher Judicial Service it appears that the respondents and the appellant were all rendering service as Additional District and Sessions Judge. The fallacy of the appellant is that the appellant wants to equate cadre with substantive appointment

to a permanent post. This construction totally overlooks the fact that the Delhi higher Judicial Service was constituted with persons who rendered service as Additional District and Sessions Judges in temporary posts or in temporary capacity against permanent posts. There were altogether five permanent and six temporary posts of District and Sessions Judges and Additional District and Sessions Judges. The respondents and the appellants were all recruited as temporary Additional District and Sessions Judges. The important yardstick in the determination of seniority is the length of service rendered by them in the cadre. "Cadre post" in the Fundamental Rules means a post as specified in the Schedule and includes a temporary post. The Delhi Higher Judicial Service Rules does not define "cadre" but defines 'cadre post' to include a temporary post. The words 'in the cadre to which they belong' in Rule 6 (3) cover the cases of permanent as well as temporary Additional District and Sessions Judges at the time of initial recruitment.

27. In Fundamental Rule 9 (22) "permanent post" means a post carrying a definite rate of pay sanctioned without limit of time. Fundamental Rule 9 (30) defines "temporary post" as a post carrying a definite rate of pay sanctioned for a limited time. Temporary posts may be posts created to perform the ordinary work for which permanent posts already exist. Temporary posts may also be temporary addition to the cadre of a service. "Cadre" in Fundamental Rule 9 (4) means the strength of a service or part of a service sanctioned as a separate unit. In the case of temporary addition to the cadre of a service the power of the authorities to create such a post will depend on the provisions of the Rules. Isolated posts may be created for the performance of special tasks unconnected with the ordinary work which a service is called upon to perform. Such temporary posts are treated as unclassified and isolated ex-cadre posts. Here again the power to create the post depends on the provisions contained in the Rules. Where however temporary posts are considered as temporary additions to the cadre of a service the incumbents of those posts will draw their time scale pay.

28. The Punjab Superior Judicial Service rules 1983 define "cadre post" to mean a permanent post in the service and "ex-cadre" post means a post of the same rank as a cadre post. The aforesaid Punjab Rules show that cadre mean "incumbents of both permanent and temporary posts. Rule 12 of those Punjab rules states that the seniority of the substantive members of the service, whether permanent or temporary, shall be determined with reference to the respective dates of their confirmation. These Punjab Rules are referred to only for the purpose of showing that where confirmation is the decisive factor to determine the seniority the Rule states so.

29. The appellant was appointed a temporary Additional District and Sessions Judge on 25 November, 1967 against one of the temporary posts created by the Government of India. The respondents Sidhu, Vohra and Jain had all been appointed temporary Additional Judges on 15 January, 1966; 24 April, 1967; and 11 August, 1967 respectively earlier than the appointment of the appellant.

30. It is apparent that the respondents Sidhu, Vohra and Jain were rendering longer service as Additional District and Sessions Judge than the appellant in the cadre of District and Additional

District and Sessions Judge to which they belonged.

31. The appellant was confirmed on 2 October, 1970 as District Judge in the Haryana Judicial Service and the respondent Sidhu was confirmed as District Judge on 22 February, 1971 in the Punjab Judicial Service. The confirmation of the appellant and the respondent Sidhu was against permanent posts in Haryana and Punjab Judicial Service because of the accident of permanent posts falling vacant at that time in their home States from which they came on deputation. To determine seniority according to confirmation in permanent posts is to wipe out the length of service rendered by the candidates appointed at the initial constitution of the Delhi Higher Judicial Service. The respondents are in fact senior to the appellant in regard to appointment as Additional District and Sessions Judges.

32. The criterion for the determination of seniority under the Delhi Rules is 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 in permanent or temporary capacities.

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 States mostly in their temporary capacity as Additional District and Sessions Judges.

34. 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 appellant. The respondents and the appellant were all functioning as Additional District Judges on deputation at Delhi at the time of the initial constitution of the Delhi Higher Judicial Service. The respondents were appointed prior to the appellant as Additional district and Sessions Judge. The respondents rendered longer service as Additional district and Sessions Judge vis-a-vis the appellant. The appeal, is, therefore, dismissed. In view of the fact that there was no order in the High Court parties will pay and bear their own costs.

Appeal dismissed.