

State of H. P.

Vs

J. L. Sharma and Another

Civil Appeal No. 7767 of 1997

(G. N. Ray, G. B. Pattanaik JJ)

18.11.1997

JUDGMENT

PATTANAİK, J. –

1. Delay condoned.

2. Leave granted.

3. This appeal by special leave is directed against the judgment of the Himachal Pradesh Administrative Tribunal, Shimla dated 16-12-1996 passed in OA No. 109 of 1987. The respondents are promotee officers to the Himachal Pradesh Forest Service Class II. They filed an application before the Tribunal for a direction that the direct recruits to the Forest Service Class II are entitled to their seniority from the date of their joining after completion of the training and not from the date of their joining the training 7 at the Forest Research Institute in terms of the notification dated 30-4-1986. The Tribunal by the impugned judgment having granted that relief and having held that the direct recruits are only entitled to get pay while continuing under training in the Forest Research Institute and will not get the benefit of seniority vis-a-vis the promotees, the State has come up in appeal.

The question that arises for consideration, therefore, is whether a direct recruit will be entitled to count the training period for the purpose of his seniority in the service or not? The answer to this question will depend upon the relevant service rules which govern the conditions of service of the employees in a particular State.

4. The learned counsel appearing for the appellant-State contends that the Rules framed by the Governor under proviso to Article 309 of the Constitution dealing with the conditions of service in respect of Himachal Pradesh Forest Service (Class II) is called the Himachal Pradesh Forest Service (Class II) Recruitment, Promotion and Certain Conditions of Service Rules, 1966. Rule (4) thereof provides that the method of recruitment to the post in the said service, age-limit, qualifications and other matters connected therewith shall be as specified in columns 5 to 18 of the said Schedule. Thus the Schedule itself becomes a part of the statutory Recruitment Rules determining the conditions of service. By notification dated 30-4-1986 Schedules to the Rules were amended and in column (10) the following provision was inserted :

"The candidates selected for training at Forest Research Institute and Colleges, Dehradun or at any other place, shall while undergoing the training be treated as 'in-service' candidates from the date of joining the Institute, During the period of

training, the candidates shall receive pay in the lowest stage of the pay scale of HPFS-II applicable to the service and allowances admissible thereon during the first year and at the second stage of that scale during the second year :

Provided that the second increment shall be granted only when a direct recruit has passed the prescribed examination(s) from the institute/college concerned."

5. In view of the amended provisions of the Recruitment Rules, the training period of a direct recruit will have to be treated as "in service", and therefore, the said period necessarily will have to be counted for the purpose of determining the seniority of a direct recruit in the service. The Tribunal, according to the learned counsel for the appellant, was in error in interpreting the aforesaid provision of the Rules. In support of his contention reliance has been placed on a decision of this Court in the case of R. S. Ajara v. State of Gujarat, ((1997) 3 SCC 641 : 1997 SCC (L&S) 851) Mr. Sharma, the learned counsel appearing for the promotee-respondents, on the other hand contended that the Rules read as a whole clearly indicate that the amended provisions merely conferred a right upon a candidate joining the Institute for training to get pay in the lowest stage of the pay scale of Himachal Pradesh Forest Service Class II and the said training period cannot be counted for the purpose of determining the seniority of the direct recruits. According to the learned counsel, if column (10) of the Rules is interpreted to mean that the training period of a direct recruit would also be counted for seniority then the said interpretation will be repugnant to the several other provisions of the Rules and it will not be Possible to harmonize the inconsistencies. The learned counsel further contended that in view of the decision of this Court in Prafulla Kumar Swain v. Prakash Chandra Misra (1993 Supp (3) SCC 181 : 1993 SCC (L&S) 960 : (1993) 25 ATC 242) which is a three-Judge Bench judgment of this Court, the training period of a direct recruit cannot be counted for determining seniority in the service. According to the learned counsel the aforesaid amended provisions do not purport to fix the seniority of the direct recruits and it merely specified the monetary emoluments which a selected candidate would get during the period of training. They do not become members of the service during the period of training but merely treated as "in service". This is also apparent from the letters issued by the State Government to the successful candidates indicating that the officers shall be on probation for two years on joining the Department of the Forest Farming and Conservation after completion of their S.F.S. course from their respective batches commencing from 1-4-1985, 1-11-1985 and 1-4-1986. The learned counsel further urged that column (7) of the Schedule clearly provides that before becoming a member of the service, a direct recruit has to obtain certain essential qualifications, one of them being a Diploma course at the Forest Research Institute and College, Dehradun or its equivalent. This being the position a direct recruit cannot be said to be a member of the service even before obtaining the essential qualifications, and therefore, the training period cannot be counted for the purpose of seniority. In this connection, the learned counsel in his written notes has placed reliance on the judgment of this Court in A. N. Sehgal v. Raje Ram Sheoran. (1992 Supp (1) SCC 304 : 1993 SCC (L&S) 675 : (1993) 24 ATC 559) It was further urged that under the Rules even a direct recruit is required to undergo probation for a period of two years, and therefore, until successful completion of the said probation period there is no appointment to the cadre and consequently no question of counting the training period for the purpose of seniority. In this view of the matter, the counsel urged that the Tribunal rightly disposed of the application by holding that the training period of direct recruits will be treated only for the purpose of getting pay and not for the purpose of seniority.

6. In view of the rival submissions at the Bar the only question that arises for consideration is as to what is the correct interpretation of column (10) of the amended Recruitment Rules which statutorily declares the period of training to be "in service". Under the Constitution under Article

309 the legislature has the power to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Under proviso to Article 309 the President in case of the Union and the Governor in case of a State has been empowered to make rules regulating the recruitment and conditions of service of persons appointed until provision in that behalf is made by or under an Act of the appropriate legislature. In exercise of such power under the proviso to Article 309 the Recruitment Rules to the Himachal Pradesh Forest Service Class II has been made and the said Rules also has been amended. The amended Rules, therefore, is a competent legislation determining the service conditions of persons recruited to the Himachal Pradesh Forest Service Class II. In R. S. Ajara case ((1997) 3 SCC 641 : 1997 SCC (L&S) 851) this Court considered the question as to whether training period of a direct recruit can be taken into account for fixation of seniority in the cadre. In that case, the statutory Recruitment Rules did not at all deal with the question of seniority of the officers directly recruited and promotees. The Government, however, passed a resolution dated 31-1-1992 declaring therein that the training period of directly recruited Assistant Conservators of Forests in Gujarat State Forest Service, Class II, shall be taken into account for the purposes of seniority. This Court considered the aforesaid resolution of the Government and came to hold that since in the statutory Recruitment Rules there is no provision for determination of inter se seniority between the promotees and direct recruits and there being no provision which can be said to be contrary to the aforesaid administrative resolution of the State Government, the resolution must be held to be valid and the period during which a direct recruit undergoes training can be taken into account for determining his seniority in the cadre of Class II Forest Service. The case in hand is a much stronger case than the case which was for consideration before this Court in R. S. Ajara ((1997) 3 SCC 641 : 1997 SCC (L&S) 851) since in the present case the statutory Recruitment Rules itself contained the stipulation that the training period shall be treated to be "in service", We are unable to accept the interpretation given by the Tribunal to the amended provisions of column (10) of the Rules to the effect that the training period of direct recruits will be treated only for the purpose of getting pay and not for the purpose of seniority. If really the legislative intent would have been to grant pay to the candidates while on training then it would not have been necessary to indicate that "while undergoing the training be treated as 'in-service' candidates from the date of joining the Institute". The language of column (10) as amended by the Third Amendment Rules of 1986 is clear and unambiguous and unequivocally indicates that the period of training shall be treated as "in service". We do not find any prohibition or restrictions in the statutory rules prohibiting the "in service" period for being counted for the purpose of seniority. This being the position in our considered opinion the Tribunal committed serious error of law in holding that the training period will be treated to be "in service" only for the purpose of getting pay and not for the purpose of seniority. No such limited interpretation can be given to the express language used in column (10) and on the other hand on giving a full effect to the provisions of column (10) the conclusion is irresistible that the training period will be treated as a part of the service and will necessarily, therefore, be counted for the seniority of the direct recruits. The decision of this Court in Prafulla Kumar Swain case (1993 Supp (2) SCC 181 : 1993 SCC (L&S) 960 : (1993) 25 ATC 242) on which the learned counsel for the respondent relied upon is of no assistance inasmuch as in the said case Regulation 12(c) in unmistakable terms had provided that the training period will not count as service under Government and service will count only from the date of appointment to the service after successful completion of the course of training. In fact the aforesaid decision has been duly noticed by this Court in R. S. Ajara case ((1997) 3 SCC 641 : 1997 SCC (L&S) 851) and on account of the distinctive features of regulation containing a prohibition it has been held that the decision is of no application. We have also considered the submissions of the learned counsel for the respondent that such interpretation of ours would be repugnant to other provisions of the Recruitment Rules but on a

thorough scrutiny of the Rules we do not find any repugnance which can be said to occur on account of the interpretation given by us to column (10) of the Schedule and other columns in the Schedule. We have also carefully gone through the decision of this Court in the case of A. N. Sehgal (1992 Supp (1) SCC 304 : 1993 SCC (L&S) 675 : 1993) 24 ATC 559) and we do not find anything stated therein contrary to what we have indicated in the present case in interpreting the provisions of the Recruitment Rules determining the service conditions of the employees of the Himachal Pradesh Forest Service Class II. In the aforesaid premises the impugned judgment and order of the Tribunal is set aside and OA No. 109 of 1987 stands dismissed. It is held that the training period of the direct recruits shall be counted for determining the seniority in the service provided of course the said direct recruit successfully completes the training and then is absorbed in Class II Forest Service. This appeal is allowed but in the circumstances there will be no order as to costs.