

SUPREME COURT OF INDIA

Ishwar Chand Jain

Vs.

High Court of Punjab & Haryana

Writ Petition (civil) 516 of 1992

(G.B.Pattanaik, U.C.Banerjee and N.S.Hegde JJ.)

10.01.2001

JUDGMENT

U.C.Banerjee, J.

1. Judicial precedents are available in large numbers in regard to the irksome issue of inter-se seniority between the direct recruits and promotees. One direct recruit judicial officer, said to be aggrieved by the issuance of a Notification dated 13th December, 1990 in the matter of revision and refixation of the dates of confirmation of Districts/Additional District and Session Judges in Haryana Superior Judicial Service has brought this matter before this Court under Article 32 of the Constitution. On an analysis of the factual details, it can undoubtedly be said that the matter itself has a chequered career. The appellant joined the service on 2nd May, 1983 as a direct recruit Additional District & Sessions Judge in Judicial Service on probation for a period of 2 years. The contextual facts depict that shortly after joining the post and during the probationary period, the petitioner's services were terminated and in accordance with the existing Rules, the recommendation for such termination was duly sent to the State Government but the State Government in its turn however requested for a further probationary period of one year. Subsequently however, upon the expiry of the extended period the petitioner's services were terminated and it is against the termination order, that the petitioner moved this Court under Article 32 of the Constitution. By an order dated 26.5.1988 this Court however did set aside the order of termination and a direction was issued for reinstatement of the appellant with continuity of service together with all arrears of salary, allowances and other benefits and in terms thereof petitioner's service was confirmed with effect from 2nd May, 1986. Subsequent to the placement of the petitioner as above (i.e. to say from 2.5.1986), the petitioner however, moved an interlocutory application in the Civil Appeal No.811 of 1988 and this Court on 11th September, 1990 passed an order to the effect that the petitioner's entitlement for confirmation from 2nd May, 1985 cannot be doubted and the High Court was not right in confirming the petitioner with effect from 2nd May, 1986 and it is on this perspective a further direction was issued by this Court for confirmation of the petitioner with effect from 2nd May, 1985 within two months and the same was duly complied with recording the confirmation as directed. The petitioner however moved once again this Court, under Article 32 which is presently under consideration inter

alia for issuance of a Writ of Certiorari for quashing the order or notification dated 13.12.1990 regarding the placement of the petitioner in the seniority list. Incidentally, it is convenient to note at this juncture that the petitioner has been placed at Sl. No.27 in the seniority list. It is also convenient to note that whereas the petitioner claims placement immediately after Sl. No.18 i.e. Shri Krishan Kant in the pleadings before this Court but there is slight shift in the stand during the course of hearing since the petitioner (appearing in person) contended that as a matter of fact, the placement should have been immediately after Shri M.K.Bansal at Sl.No.20. Sl.No.19 and before Shri A.S.Garg who is placed at The second Writ Petition presently under consideration also contain two other prayers the first being for issuance of a proper writ striking down Rule 10 (2) regarding the date of confirmation of direct recruits and portion of Rule 12 regarding fixation of seniority on the date of confirmation as being violative of Articles 14 and 16 of the Constitution and secondly for issuance of a Writ of Mandamus directing the Respondent No.1 to refix the seniority of the petitioner in accordance with the rules after giving same interpretation which had been given for the petitioners and respondents in the case of H.L. Randev & Ors and for appropriate placement of the petitioner being senior to Respondent No.3 to 9 with all consequential benefits. As noticed above the petitioner during the course of hearing withdrew the names of Respondent No.3 Shri M.K. Bansal as also Respondent No.9 Shri B.L. Gulati and prayed for striking off the same from the Cause Title of the petition and in terms therewith this Court directed withdrawal of the names as prayed for by the petitioner. The principal grievance thus pertains to placement of Respondent Nos.4 to 8. It will not be out of context to note that Respondent Nos.4 to 8 have all retired from the Judicial Service and the petitioner himself is to retire shortly. Before proceeding with the matter further, a look at the prayers of the Interlocutory Application in the earlier disposed of appeal noted above would be convenient at this juncture: a) to fully implement the judgment passed in Civil appeal No.811 of 1988 decided on 26.5.1988. b) to confirm the petitioner Ishwar Chand Jain at least with effect from 2.5.1985 and to fix the seniority accordingly. c) to revise the A.C.R. for the year 1984-85 suitably i.e. from C (unsatisfactory) to B plus (Good) in the light of the judgment of this Honble Court. d) to pass such other further orders as this Honble Court may deem fit and proper in the circumstances of the case. It is in regard to the prayer (b) that Shri Mahabir Singh, learned Advocate appearing for the Respondents contended as a preliminary issue for consideration that since the petitioner has prayed for fixation of seniority in earlier Interlocutory Application, question of further fixation would not arise and the present application is barred under the doctrine of res judicata or constructive res judicata or principles analogous thereto. We are, however, not impressed with the preliminary objection of the learned Advocate since the seniority list under challenge in the petition is of 13th December, 1990 and the earlier petition was filed on 7th July, 1990 and the order thereon was passed on 11th September, 1990. In the premises, question of the challenge being barred by the doctrine of res judicata or constructive res judicata or under any principles analogous thereto does not and cannot arise and as such the preliminary objection of Mr. Mahabir Singh fails. Turning attention on to the merits of the matter, be it noted that prior to the completion of the probationary period the rules stood amended and Mr. Mahabir Singh, Advocate for the Respondents contended that it is the earlier rule which ought to be treated as the governing rule in the matter of placement of the petitioner in the seniority list and it is on this score, the petitioner while conceding the factum of the earlier rule being the

governing rule, contended that Rule 10(2) and a portion of Rule 12 however ought to be declared as invalid since the same is violative of Articles 14 and 16. Rule 10 (2) and Rule 12 as the Rules then stood and before amendment read as below: Rule 10. Probation (1) (2) On the completion of period of probation the Governor may, in consultation with the High Court confirm a direct recruit on a cadre post with effect from a date not earlier than the date on which he completes the period of probation.

“12. Seniority:-

The Seniority-inter-se of the substantive members of the service, whether direct recruits or promotee officers, shall be determined with the reference to the respective dates of their confirmation; (Emphasis supplied)

Provided that the seniority, inter-se of substantive members of the Service having the same date of confirmation shall be determined as follows:-

(i) in the case of direct recruits, the older in age shall be senior to the younger; (ii) in the case of promotee officers, in accordance with the seniority in the Punjab Civil Service (Judicial Branch) as it stood immediately before their confirmation; (iii) in the case of promotee officers and direct recruits, the older in age shall be senior to the younger.

The validity of Rule 10(2) also that of emphasised portion of Rule 12 as above, are under challenge in this Writ Petition.

In order however to appreciate the submissions made by the parties and for effective adjudication of the disputes between the parties it would be convenient to note Rules 2.1, 2.2 and 2.6 at this juncture and the same read as below:

Rules 2.1 Appointment to the Service means an appointment to a cadre post, whether on permanent, temporary or officiating basis or on probation.

Rules 2.2 Cadre post means a permanent post in the service.

Rules 2.6 Member of the service means a person

a) who, immediately before the commencement of these rules, holds a cadre post, whether on permanent, temporary or officiating basis, or on probation or

b) who is appointed to a cadre post in accordance with the provisions of these rules;

These rules, however, stood amended as noticed above and excepting the amendment to Rule 2.2 there is not much of a change introduced by the amendment to the rules since the amendments pertain to the alteration of number from earlier Rule 2.6 to present 2.5. Definition of Cadre post in terms of Rule 2.2 however has undergone a

substantive change: whereas in the earlier rule Cadre post meant a permanent post in the service, under the new and existing Rule. Cadre post means a post whether permanent or temporary in the service as regards seniority in terms of Rule 12. The amendment seems to be rather drastic in the sense that whereas the earlier Rule 12 specifically provided, that the seniority-inter-se would be dependant upon reference to the respective dates of their confirmation for both direct recruits and promotee officers, the amendment introduced the length of continuous service instead of dates of confirmation. (Emphasis supplied)

2. Turning on to the issue of the validity of the rules, it has been contended by the petitioner that the portion of Rule 12 of the Rules, which makes the seniority dependant on the date of the confirmation, is liable to be quashed being arbitrary and violative of Article 14 of the Constitution. The petitioner contended that his entitlement for assigning of seniority should be next to Shri Krishan Kant Agarwal as the other respondents being respondent Nos.3 to 8 were not members of the cadre on the date of joining the service by the petitioner i.e. on 2.5.83 while under the Notifications Nos.606 and 607 dated 13.12.1990 confirmation of the petitioner with effect from 2.5.85 and fixation of his seniority next to Shri RD Aneja and Ors. cannot but be ascribed to be illegal and void being contrary to the Punjab Superior Judicial Service Rules (as applicable to Haryana on 2.5.83) and in fact runs contrary to the directions issued by this Court in the Interlocutory Application No.1A in CA No.811/88. The petitioner contended that the petitioner is entitled to be confirmed with effect from 2.5.83 and have his seniority fixed next to Shri KK Agarwal and the seniority has to be assigned on the date of promotion/date of joining service since the appointment of the petitioner was on a vacant post on 2.5.83 and in the cadre having a total strength of 27 candidates and having regard to the ratio between the direct recruits and promotees, the former were entitled to 9 posts whereas promotees were entitled to 18 posts and since respondent Nos. 3 to 8 do not come within those 18 promotee officers and Shri KK Agarwal being placed at Item No.18 in the list of promotee officers there exists no manner of doubt as to the placement of the petitioner before respondent Nos. 3 to 8 as promotee officers. Mr. Mahabir Singh on the other hand contended that at the time of appointment of the petitioner along with two others in the Haryana Superior Judicial Service there were 27 permanent posts in the cadre. According to Rule 8(2) of the Punjab Superior Judicial Service Rules, 1963 (as applicable to the State of Haryana) in force on the relevant date, the number of posts to be manned by the direct recruits were nine. There were only 6 direct recruits in the service they being (1) Sh. N.S. Rao, (2) Sh. SK Jain, (3) Sh. R.K. Nehru (4) Shri Surinder Sarup (5) Sh. B.L. Gulati and (6) Sh. V.M. Jain. At the time of appointment of the petitioner along with two others in the Haryana Superior Judicial Service, only 24 officers (18 promotees and 6 direct recruits) were working against the permanent 27 cadre posts meaning thereby that 3 permanent posts were lying vacant. It may also be stated that prior to the amendment made in Rules 2(2) and 12 of the Punjab Superior Judicial Service Rules, 1963 (as applicable to the State of Haryana) with effect from 19.3.1984 only permanent posts were treated as cadre posts and seniority of members of Haryana Superior Judicial Service was to be determined with reference to the respective dates of confirmation. Incidentally, factors relating to confirmation in service of the officers of the Haryana Superior Judicial Service stand settled by the decision of this Court in *B.S. Yadav and Ors. v. State of Haryana and Ors.*¹ and the directions for

confirmation in service of the officers as contained therein are summarised as below: (i) A member of the service who had been appointed thereto by promotion would if he was otherwise fit for confirmation, was to be confirmed with effect from the date on which vacancy became available in the quota of promotees: (ii) a direct recruit could not be confirmed against a post available in the quota of direct recruits from a date earlier to the date on which he had satisfactorily completed his period of probation of two years. Incidentally, according to the instructions contained in Haryana Government letter No.6817-2GSI-76/28957 dated 29.10.1976 the policy of the State Government has been that the temporary posts which have been in existence in the permanent departments for five years or more and the work of which is of a continuous nature, would be made permanent by the Administration Department after obtaining formal concurrence of the Finance Department. On the wake of the observations and the directions of the Constitution Bench in Yadavs case (supra) Sh. IC Jain, the petitioner having joined Haryana Superior Judicial Service on 2.5.1983, could not be confirmed earlier to 2.5.1985 i.e. on completion of two years period of probation. It may also be stated that the Haryana Government vide their letter dated 24.12.1981 converted one post of District & Sessions Judge with effect from 24.12.1981 into cadre (permanent) post thereby revising the cadre strength from 18 to 19 of permanent posts. Against this post, Sh. R.K. Gupta (since retired) was confirmed. Similarly the Haryana Government vide their letter dated 1.6.1982 converted 8 temporary posts into permanent raising the cadre posts in the service from 19 to 27. Out of these 8 permanent posts, 3 posts were kept vacant for direct recruits to complete their quota and against 5 remaining posts S/Sh. O.P. Gupta (since retired), RC Jain (since expired), I.P. Vasissth, N.K. Jain and O.P. Gupta-II were confirmed with effect from 1.6.1982 as the records depict. In the meantime Sh. B.S. Yadav, Sh. O.P.Gupta and Sh. K.L. Wason retired from Haryana Superior Judicial Service with effect from 31.7.1982, 31.12.1982 and 31.5.1983 respectively and against these posts S/Sh. Krishan Kant, M.K. Bansal and A.S. Garg were confirmed. The Haryana Government vide their letter dated 10.11.1988 converted 1 temporary post of Joint Legal Remembrancer into permanent one with effect from 1.6.1983 and Sh. M.S. Nagra, was confirmed against this post. The Haryana Government vide their letter dated 14.11.1983 converted 3 temporary posts into permanent raising the cadre posts in the service from 28 to 31. Out of these 3 permanent posts, 1 post was kept vacant for direct recruits to complete their quota and against 2 remaining posts S/Shri S.B. Ahuja and Gorakh Nath were confirmed with effect from 14.11.1983. One permanent post in the cadre of promotee officers became available on the untimely death of Sh. V.K. Jain (I) on 22.11.1983 and against this permanent post Shr. R.D. Aneja was confirmed with effect from 22.11.1983. The petitioner Shri I.C. Jain was confirmed on 2.5.1985 i.e. on completion of two years period of probation against one of the permanent posts lying in the quota of direct recruits with effect from 14.11.1983 in accordance with the guidelines of this Court, referred to above. Thus, the petitioner had been given confirmation on the due date.

3. Incidentally be it noticed that the petitioner on 7th July, 1990 moved this Court as and by way of an Interlocutory Application in a disposed of matter being Civil Appeal No.811 of 1988 decided on 26.5.1988 for an order to confirm the petitioner at least with effect from 2.5.1985 and to fix the seniority accordingly. The other prayers are not being taken note of by reason of the fact that the same are not relevant for the present purpose. In that

Interlocutory Application, however and for the prayer as noted above, this Court observed having regard to the earlier decision as below:

4. In view of the above observation there was no adverse entry against the petitioner for the year 1984-85. The petitioner was in normal course entitled to confirmation with effect from 2.5.1985 as no adverse material was there against the petitioners work or conduct. But the High Court has confirmed the petitioner with effect from 2.5.1986 on the premise that the probationary period was extended. No order of the High Court extending probation has been placed before us. Since the initial period of two years probationary period had been completed the petitioner is entitled to be confirmed with effect from 2.5.1985. The High Court was not right in confirming the petitioner w.e.f. 2.5.1986. We accordingly, direct the High Court to consider the appellants case for his confirmation w.e.f. 2.5.1985 within two months and if necessary it may hear the officers (on administration side) who may be affected by such decision. The application is accordingly disposed of.

5. The confirmation thus stands effective from 2nd May, 1985 and not 2nd May, 1986 as was offered. It is in terms of this order that a Notification dated 13th December, 1990 was published recording the placement of the officers and as per the date of the confirmation being 2.5.1985 as directed by this Court, the Petitioner was placed at item No.27, i.e. immediately after Shri Gorakhnath and Shri Aneja but before Shri M.C. Agrawal. S/Shri Gorakhnath and Aneja having been confirmed on 14.11.1983 and 27.11.1983 respectively, cannot, but be treated as senior. This Court has already dealt with the issue and it is on the basis of the directions contained therein that the gradation list has been prepared and we see no reason to interfere with the same. The contention of placement immediately after Sh. Krishan Kant at No.19 and before Shri M.K. Bansal or Sh. AS Garg in our view does not and cannot arise in the contextual facts having regard to the decision of this Court as noticed above. It is not the date of joining which ought to be taken note of but date of confirmation and in any event since the issue has been dealt with by this Court once before, question of reopening of the same would not arise. It is on this score, however, that Mr. Mahabir Singh contended that the same is barred by the doctrine of res-judicata: whereas it can not be said to be strictly within the ambit of the doctrine but no further relief can be granted to the petitioner by reason of the finding of this Court in the absence of which, the decision of this court in Chandra Kishore Singhs case (*L. Chandra Kishore Singh v. State of Manipur*²) could have had some application, wherein this Court in paragraphs 14 and 15 of the Report (page 303), observed as below:-

14. Seniority itself based upon length of service is an acquired right of an employee which entitles him to be considered for further promotion. It is generally regulated by service rules. Such rules normally provide for determined seniority with reference to the date of appointment to the class, category and grade to which the appointment is made. It is determined only on the basis of the length of service. Such length of service may be on the basis of the difference of continuous officiation or on the basis of the difference of continuous officiation or on the basis of the difference of substantive appointment in the cadre or grade or service which may be reckoned from the date of confirmation on the basis of regularisation.

15. It is now well settled that even in cases of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority and shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of the Court in *G.P. Doval v. Chief Secretary, Government of U.P.*³

16. The probationary period in the matter under consideration however cannot be considered by reason of the settlement of the issue as above and also the factum of a contra service rule. Incidentally be it noted that the original two year probationary period was extended by the State Government for one year more, by reason whereof, this Court on a petition under Article 32 by the Petitioner redressed the grievance by recording that substantive placement of the Petitioner ought to be from 2.5.1985 and by reason of the finding and observation of this Court as regards substantive appointment neither any continuous officiation nor any probationary period can be considered to ascribe seniority to the petitioner herein. The direction to the High Court by this Court to consider the appellants case for confirmation with effect from 2.5.1985 answers all the queries raised in the matter, as such we need not even delve into the validity of the rules as raised by the petitioner herein and thus would leave the questions open. Significantly, petitioners rank and file has been determined by this Court at his own instance and having gained the desired objective, we should have thought that the litigious spirit would die down or be at its lowest ebb at least but unfortunately and we say so since we feel it expedient to record that the spirit continued unabated and undaunted and resultantly the instant proceeding, which is, to put it very mildly, a total abuse of the process of court. The petitioner herein, has been able to persuade this Court in the earlier matter to redress his grievances and even after obtaining the fullest benefit, the demand still remains to be insatiable, which in our view runs counter to all known principles of judicial ethics. Before we part with the judgment and record our conclusion in the matter we would wish to highlight one aspect of the matter which needs to be considered with care and caution so far as the judicial officers are concerned. Judiciary is one of the three organs of the State and owes constitutional responsibility. Responsiveness to the needs of a litigant to have the matter disposed of expeditiously cannot be decried in any way and in any event is the need of the day. The petitioner herein has been in the judicial service since 1983 (if that date had to be taken note of) and a long period of seventeen years has been spent more in the law courts in ventilating the personal grievance rather than redressing the grievances of the litigant public. All of us owe a duty to the public at large and one need not take the extreme recourse unless placed against a wall. There might be some grievances here and there or some dissatisfaction about service conditions but that will not otherwise authorise a judicial officer to indulge in fanciful litigations. With these observations we do feel it inclined to record our opinion in the matter to the effect that the writ petition has no merit and as such

the same stands dismissed with costs assessed at Rs. 2000/- to be paid to the Legal Aid Committee of this Court.

¹*AIR 1981 SC 561*

²*1999 (8) SCC 287*

³*1984 (4) SCC 329*