

# SUPREME COURT OF INDIA

Punjab State Coop. Agricultural Development Bank

Vs.

Gurnaib Singh

(G.B. Pattanaik and Doraiswamy Raju JJ.)

08.11.2001

## ORDER

1. The Punjab State Cooperative Agriculture Development Bank, the defendant in the suit is the appellant. The plaintiff filed a suit for declaration that his services right from the inception namely 17.1971 should be counted for the purpose of his seniority. It is undisputed that in the year 1971 there was no statutory rules governing the field of appointment to the different posts in the Bank. On an application being filed by the plaintiff, he was appointed on 2.7.1971 for a tenure of six months. Thereafter on a fresh application being filed, he was further appointed on 4.1.1972 till 25.5.1972. The plaintiff was not in service from 26.5.1972 till 5.3.1973 and on 5.3.1973, on the basis of an application made by the plaintiff on 1.3.1973, he was appointed. The Deputy Registrar however recommended to the Board that the plaintiff could be given a regular appointment and this was acceded to by the Board. He was thus regularly appointed in the Bank with effect from 6.3.1973. The dispute centers round the question as to whether the period of service from 2.7.1971 till 6.3.1973 with the aforesaid break could be counted towards the seniority of the plaintiff in the cadre of clerks under the Bank.

2. While the plaintiff on being appointed on regular basis with effect from 6.3.1973 was continuing, a set of Rules came into force called "*The Punjab State Cooperative Land Mortgage Bank Service (Common Cadre) Rules 1978*" (hereinafter referred to as "the Recruitment Rules"). Rule 10 of the aforesaid Rules deals with the question of seniority. The plaintiff appears to have filed a representation on 23.6.1992 which stood rejected and again another representation on 21.10.1992 which was also rejected by the Managing Committee on 6.9.1993. The present suit was filed for the relief as already stated. The Bank took the stand that the regular appointment of the plaintiff having been made with effect from 6.3.1973 and the earlier period being purely adhoc and that also not being continuous, question of considering that period for the purpose of seniority would not arise. The learned trial Judge accepted the said contention of the defendant and dismissed the plaintiff's suit. On an appeal being filed the lower appellate authority, namely the Additional District Judge relying upon the provisions of the Industrial Disputes Act more particularly Section 25F, and then considering the requirements therein came to hold that the plaintiff must be held to be in continuous service right from the inception and therefore the trial judge was in error in dismissing the suit. The judgment and decree of the trial judge having been reversed and the

appeal being allowed, the Bank tiled a second appeal. The High Court however dismissed the second appeal in limine. Hence the present appeal.

3. It is contended on behalf of the appellant that in view of the specific provisions in the Recruitment Rules specifically indicating that the concept of continuous appointment in Rule 10 will not apply to persons on purely provisional basis and in view of the fact that the plaintiff himself, after the break period, made subsequent application for being appointed, the so called appointment of 5.3.1973 which was later on regularised on 6.3.1973, must be held to be a fresh appointment in the eye of law and therefore the earlier period from 02.07.1971 till 25.05.1972 cannot be taken into account for reckoning the seniority of the plaintiff under Rule 10 of the Recruitment Rules. We find sufficient force in the aforesaid contention. Rule 10-A, no doubt, states that the inter se seniority of the members of-a service shall be determined from the dates of their continuous appointment to a post in the said category. A note has been appended to the said rule which states that the rule shall not apply to persons on purely provisional basis.

4. On the conceded fact that the initial appointment of the plaintiff was only for a period of six months and that too was on a provisional basis and then after a gap of one day, he was appointed afresh till 25.05.1972 and was not in service from 26.05.1972 till 05.03.1973 and in the very application filed on 01.03.1973, the plaintiff had made a request to the effect that his case should be considered for an appointment afresh as his name was registered in the Employment Exchange, we have no manner of doubt that the earlier period of service from 02.07.1971 till 06.03.1973 could not have been counted as a continuous service for the purpose of reckoning his seniority in the cadre, The learned District Judge therefore committed serious error in construing the relevant provisions and reckoning that period for counting the seniority of the plaintiff. The High Court committed error in dismissing the second appeal in limine. We, therefore, allow this appeal and set aside the judgment of the High Court as well as that of the learned Additional District Judge in appeal. The judgment of the trial court is restored and the plaintiff's suit stands dismissed. There will be no order as to costs.