

(2009) 10 P&H CK 0048

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Subhash Chander Sharma and
Others

APPELLANT

Vs

Punjab and Haryana High Court
and Others

RESPONDENT

Date of Decision: Oct. 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 229

Hon'ble Judges: Gurdev Singh, J; Adarsh Kumar Goel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, J.

This petition seeks quashing of report of Committee of three Hon"ble Judges dated 14.7.1998, Annexure P.9, regarding fixation of inter se seniority between direct recruits and promotee Assistants employed in this Court and for a further direction to follow report dated 12.7.1984 said to have been confirmed vide judgment of this Court dated 21.2.1989 in CWP No. 642 of 1987 and judgment of the Hon"ble Supreme Court dated 7.2.1997 in Civil Appeal Nos. 3704 and 3705 of 1990, with further consequential prayers.

2. Case of the petitioners is that they were recruited as Assistants on the establishment of this Court between May and December 1977. Service conditions of employees were earlier governed by the High Court Establishment (Appointment and Conditions of Service) Rules, 1952 (in short, "the 1952 rules") which were replaced by the High Court Establishment (Appointment and Conditions of Service) Rules, 1973. Under the 1973 rules, a provision (Rule 16) was made for filling up 50% of posts by direct recruitment. The said rules were made applicable w.e.f 1.3.1974 by order of Hon"ble the Chief Justice. However, rules involving financial implication were referred for approval under Article 229 of the Constitution and approval was

granted on a later date. Rule 30 prescribed the matter of determining inter se seniority. Direct recruitment quota was abolished by amendment w.e.f January 20, 1978. Since objections were filed to the tentative seniority list, Hon"ble the Chief Justice entrusted the hearing of objections to a learned Single Judge for deciding the same. He gave his decision vide order dated 24.5.1983, which was concurred by Hon"ble the Chief Justice. Against the said order, departmental appeal was preferred before two Hon"ble Judges who decided the same vide order dated 12.7.1984. The appeal was accepted. Operative part of the order is as under:

The principles that emerge from the above discussion are:

1. The quota of the direct Assistants in terms of Rule 16 of 1973 Rules shall be calculated out of the posts fallen vacant permanently with effect from March 1, 1974.

2. The inter se seniority of the promotees and direct Assistant under Rule 30(ii) of 1973 rules shall be determined on the basis of their length of continuous service as such.

3. The promotees Assistants regularly appointed during a particular period in excess of their quota for want of direct recruits and subsequently get adjusted against their own quota shall be given the benefit of their whole length of service as Assistant for determination of their seniority vis-à-vis the direct Assistants under Rule 30(ii) of 1973 Rules.

4. The direct Assistants irrespective of their seniority vis-à-vis the promotee Assistants under Rule 30(ii) of 1973 rules shall be entitled to be confirmed against the permanent posts of their quota with effect from the date the post for each becomes available and the incumbent eligible for confirmation on completing the period of probation prescribed under Rule 23 of 1973 rules.

3. The order of two Hon"be Judges on the administrative side was challenged by filing CWP No. 642 of 1987 which was decided by Division Bench on 21.2.1989. The order was affirmed except the date of enforcement of rule which was held to be 23.1.1975.

4. On appeal, the Hon"ble Supreme Court vide order dated 7.2.1997 held that the date of enforcement of rules will be 1.3.1974 and not January 23, 1975. It was accordingly directed that the High Court may now calculate the number of vacancies available to direct recruits and promotees on that basis and make consequential adjustments in the cadre. In compliance of the said order, impugned order dated 14.7.1998, Annexure P.9 has been passed by a sub committee of three Hon"ble Judges. Operative part of the impugned order is as under:

1) the total number of vacancies between the period from 1.3.1974 to 20.1.1978 were 63 and only 27 appointments by way of direct recruitment were made i.e. appointment of direct recruits was within their quota under Rule 16 of the 1973

rules.

2) Under Rule 30(ii), seniority of unconfirmed Assistants shall be determined on the basis of length of continuous service in the cadre of assistants.

3) the date of confirmation is to be assigned in each case by the Hon"ble Chief Justice by passing an appropriate order under Rule 31, taking into consideration the seniority between temporary and officiating assistants prepared under Rule 30(ii).

The contention of direct recruits that 50 per cent posts out of 54 permanent posts which fell vacant between 1.3.1974 to 20.1.1978 be allocated to them proportionately and they be confirmed against these permanent posts in their quota, cannot be accepted as in Rule 16, there is no reference to permanent or temporary posts. Reference is only to recruitment to the post, i.e. permanent and temporary both. The other contention that date of confirmation be assigned to them in proportion of their quota i.e. 50 per cent to the direct recruits and 50 per cent to the promotees, too cannot be accepted as no provision in that regard has been made in Rule 30 or 31. It is not possible to import quota rule in Rule 30 or 31 because the same is confined only to Rule 16 of the purpose of recruitment. Inter se seniority between the direct recruits and promotees has to be fixed strictly in accordance with rules 30 and 31 of the 1973 rules.

Orders of confirmation made in pursuance of judgment dated 21.2.1989 in Civil Writ Petition No. 642 of 1987 cannot stand as the said judgment has been set aside by the Hon"ble Supreme Court vide judgment dated 7.2.1997 in Civil Appeal No. 3705 of 1990. We have been informed that as on 28.2.1974, there were 123 posts in the cadre of Assistants i.e. 88 permanent posts and 35 temporary posts. Seniority of the persons who were working against permanent posts and already stood confirmed, is not in dispute. As regards others, Office is directed to prepare a combined seniority list of unconfirmed Assistants on the basis of their continuous length of service in the cadre of Assistants as provided in Rule 30(ii) of the 1973 rules. The list so prepared be placed before the Hon"ble Chief Justice for passing appropriate orders of confirmation under Rule 31 of the 1973 rules.

5. Contention raised in the petition is that the committee erred in holding that quota rule applied only at the stage of initial appointment and not for confirmation and confirmation of promotees in excess of their quota was liable to be reversed. Consequently, promotees should be held to be entitled to confirmation after the date of confirmation of petitioners and, thus, junior to the petitioners.

6. The petition has been opposed by filing a reply. Stand taken is that promotees were appointed as Assistants much before the appointment of writ petitioners and thus, the petitioners could not challenge their confirmation on the ground that the same was beyond the quota of promotees. Claim of the petitioners that to the extent of 50% of the total posts, the petitioners had prior right of confirmation could not be accepted and was rightly rejected by the sub committee. There was no quota

for confirmation. Quota was only for appointment. Mere fact that in compliance of order dated 21.2.1989, some orders of confirmation were passed subject to decision of the Hon"ble Supreme Court, the sub committee was justified in taking a fresh decision in the light of judgment of the Hon"ble Supreme Court.

7. We have heard Shri Deepak Sibal, learned Counsel for the petitioners and Shri Raman Mahajan, learned Counsel for respondent No. 1. It has been pointed out that all the contesting respondents have since retired. Impugned order has operated during pendency of this petition.

8. It has been submitted by Shri Sibal that the sub committee did not follow correct criteria. Quota and Rota system should be strictly adhered to at the time of recruitment as well as confirmation. Quota should be applied to the vacancies to be filled and roster had to be introduced while giving confirmation. Reliance has been placed on judgment of the Hon"ble Supreme Court in [Paramjit Singh and Others Vs. Ram Rakha and Others](#), , reiterated in [Paramjit Singh Sandhu and Others Vs. Ram Rakha Mal and Others](#), .

9. Question to be considered is whether the petitioners are entitled to the declaration sought for their prior right to confirmation and/or consequential seniority above promotees, who had been appointed and confirmed prior to the petitioners.

10. Rules 16 and 30 are as under:

Assistants:16(1) Vacancies in the cadre of Assistants shall ordinarily be filled by promotion form amongst the Clerks on the establishment of this Court on the basis of seniority-cum-merit.

Provided that the Chief Justice may, if he thinks fit to do so, fill any vacancy by direct recruitment from graduates of any recognized University on the basis of competitive test or otherwise or by transfer from an equivalent post under the Central Government or any State Government.

(2) 50% of the permanent as well as those temporary posts of Assistants which have been in existence for three years and those which remain in existence for the said period shall be in senior scale of Rs. 8001400, to be filled in by selection from amongst the confirmee Assistants on the basis of seniority-cum-merit.

30(i) Seniority shall be determined separately for each category of posts in the establishment;

ii) Upto the date of confirmation, seniority shall be determined by the length of continuous service in the particular category of posts.

iii) within the same category seniority shall be determined from the date of confirmation in the particular category. Seniority between persons confirmed on the same date shall be determined on the basis of their seniority as unconfirmed hands

in that category.

Provided that notwithstanding anything contained in these rules the inter se seniority of the existing members of the establishment in any particular category, as already settled by the Chief Justice or by any Judge or Judges prior to the coming into force of these rules shall not be disturbed because of anything contained in the rules;

iv) In case of any dispute regarding seniority the same shall be decided by the Chief Justice or by any Judge nominated by the Chief Justice for that purpose.

11. We are of the opinion that there is no merit in the petition whatsoever. Reference to the rule shows that quota of 50% is only for recruitment and there is no provision for quota in confirmation or further promotion. As already mentioned above, the petitioners were appointed from May 1977 onwards and the rule of 50% recruitment was itself repealed on January 20, 1978 before any of the direct recruit completed probation period of one year and thus became eligible for confirmation. Thus, after January 20, 1978, there being no separate quota, direct recruits as well as promotees were governed by common rule for seniority i.e. the length of service. The petitioners could not, thus, by any interpretation, seek right of prior confirmation only on the ground that promotees have been confirmed in excess of posts available to the promotee quota. The petition would have been liable to be dismissed on this short ground but even otherwise, we do not find any merit in the petition. The sub committee comprising of three Hon"ble Judges of this Court has considered the matter threadbare and rightly rejected the claim of the petitioners. In [The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others](#), , Para 20, referring to an identical rule, it was held that the rule was for appointment and not for strength of service. It was also held in para 13 that once an incumbent is appointed, his seniority has to be counted from the date of appointment and not from the date of confirmation. Rule of seniority based on confirmation was held to be bad, approving earlier judgments in [S.B. Patwardhan and Another Vs. State of Maharashtra and Others](#), and [Delhi Water Supply and Sewage Disposal Committee and Others Vs. R.K. Kashyap and Others](#), . Contrary view in Paramjit Singh (supra) to the effect that seniority should be based on date of confirmation, irrespective of length of service, cannot, thus, be held to be holding the field, as judgment in Direct Recruit (supra) is by larger Bench.

12. In the present case, promotees were admittedly senior to direct recruits and had longer length of service. Before the petitioners become eligible for confirmation, quota rule was deleted. Promotees could not be deprived of their seniority merely on the basis of calculating number of vacancies against which recruitment could be made.

13. Accordingly, we do not find any substance in the writ petition and the same is dismissed.