

(2011) 10 CHH CK 0007
In the Chhattisgarh High Court
Case No : Writ Petition No. 2926 of 2005

Devsharan Dilliwar and Others

APPELLANT

Vs

High Court of Chhattisgarh and Others

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2011) 2 CGBCLJ 397

Hon'ble Judges : Nawal Kishore Agarwal, J; I.M. Quddusi, J

Bench : Full Bench

Advocate : P.S. Koshy and Mr. Vaibhav Shukla, for the Appellant; Sanjay K. Agarwal, Advocate for the Respondent No. 1 and Mr. Vinay Harit, D.A.G. for the Respondent No. 2. and Mr. B.P. Sharma, Advocate for the Respondents No. 3 to 41, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi J.

1. By way of the present petition the petitioner, who first come on deputation in the establishment of respondent No. 1 from different District Court of the State of Chhattisgarh and later on, absorbed by the respondent No. 1 have sought following substantial relief"s:-

? That, the Hon"ble Court be pleased to quash that portion of the orders of appointments (Annexure P-7, P-8 and P-9) which make it as on order of deputation and that too for a period of only 2 years only.

? That, the gradation List of AG-III published on 01.05.2004 and 27.12.2004 (Annexure P/21 and P/26) be also quashed.

? That, the respondent No. 1 be directed not only to compute the seniority of the petitioners in the establishment of the respondent No. 1 from the date of their taking over on the post of AG-III as from the date the petitioners have joined duty in the establishment of the respondent No. 1 but in the matter of promotion

as AG-II and AG-I, the services rendered by these petitioners in the District Courts be also taken into consideration.

? That, the respondent No. 1 be also directed to give promotion to the petitioners on the post of AG-II and AG-I from a retrospective effect i.e. prior to the date when the juniors of the petitioners were promoted.

That, the Hon"ble Court be farther pleased to give all the consequential benefits accruing to the petitioners on refixation of their seniority taking into account the services rendered by them in the District Courts.

That, the Hon"ble Court be further pleased to declare Rule 12 (2) (c) of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961 being arbitrary, discrimination and unjust and therefore ultra virus of the provisions of Article 21 of the Constitution of India.

Briefly stated, facts of the case are that the petitioners were initially appointed in the different District Courts of the then State of Madhya Pradesh on different posts. After formation of new State of Chhattisgarh and establishment of new High Court of Chhattisgarh at Bilaspur, it was felt necessary to fill up the required posts in the establishment of respondent No. 1 within the shortest possible time, but considering the fact that in normal course the recruitment would take a longer time, a decision was taken by the respondent No. 1 to take suitable persons on deputation and accordingly, a letter dated 17.01.2001 was issued by the respondent No. 1 to all the District Courts of the State to send list of Class-III employees desirous of joining the respondent No. 1 on deputation Pursuant to said letter, the concerned District Establishments forwarded names of the petitioners herein, as they had shown their willingness to serve in the establishment of respondent No. 1 Accordingly, vide orders of Annexure P-7, P-8 & P-9 the petitioner were appointed in the establishment of respondent No. 1 as Assistant Grade-III, the is to say, the grade equivalent to the post on which the petitioners were already working in the District Establishment. The appointment order of the petitioner further states that the petitioners will be on deputation for a period of two years and they were directed to join on 26th February, 2001. In compliance of the appointment order, the petitioner joined their services in the establishment of respondent No. 1 on 26.02.2001 & 05.02.2001, respectively.

On 06.11.2003 the respondent No. 1 after extending deputation period of the petitioner from time to time, invited options from all the employees, including the petitioners, appointed on deputation for their absorption in the establishment of respondent No. 1 and the petitioners have consented for the same. Pursuant to the options submitted by the petitioners, vide order dated 28.04.2004 (Annexure P-20) their services were absorbed in the establishment of respondent No. 1 on the post of Assistant Grade-III.

After absorption of the petitioners, the respondent No. 1 published a provisional gradation list of the Assistant Grade-III on 01.05.2004 inviting objections from the employees. The petitioner finding that in the provisional list of Assistant

Grade-III their names have been shown below the employees who were appointed in the establishment of respondent No. 1 much after them i.e. respondents No. 3 to 41 herein. They immediately submitted their objections and prayed for fixation of their seniority from the date of their joining in the establishment of respondent No. 1 and proper placement in the final gradation list in the cadre of Assistant Grade-III, that is to say, above the names of respondent no. 3 herein. However, the respondent No. 1 ignoring the objecting placement of the petitioners in the gradation list, published the final gradation list on 27.12.2004 in which also names of the petitioners have been shown below the names of respondent No. 3 to 41 herein. Aggrieved therewith the petitioners have submitted various representations before the respondent No. 1 but when no favourable response on their representations was received by the petitioners, they filed the present writ petition.

2. Learned counsel for the petitioner would argue that seniority of the petitioners in the cadre of Assistant Grade-III must be counted from the date of their initial appointment on deputation basis in the establishment of respondent No. 1 i.e. from 22.02.2001 & 02.02.2001 respectively and grant of seniority to the petitioners as per provisions of Rule 12 (2) (c) of the Rules of 1961 i.e. from the date of their absorption, is arbitrary as the same would take away the service rendered by the petitioners as "deputationist" with the respondent No. 1 and therefore the Rule 12 (2) (c) of the Rules of 1961 is liable to be struck down being ultra vires to the Constitution of India. It has further been submitted by the learned counsel for the petitioners that the State of Madhya Pradesh i.e. the parent body which had originally enacted the Rules of 1961 and which was adapted by the State of Chhattisgarh after its creation, on realizing the error in the provision of law had amended the clause (c) of sub-rule (2) of Rule 12 of the Rules of 1961 by way of Notification dated 16.02.2005 and in place of "present department" the words "parent department" have been substituted and in place of the words "whichever is later", the words "whichever is earlier" have been substituted. Reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others,

3. Learned counsel for the respondent no. 1 would argue that the petitioners were appointed on deputation for a period of two years and the said period was extended from time to time. Thereafter, vide memo dated 06.11.2003 options were invited from all the employees, who came on deputation, for their absorption and in the said memo it was made clear to all of them that in case they opt for absorption, their seniority will be counted as per Rule 12 (2) (c) of the Rules of 1961 read with Notification dated 02.04.1998 issued by the General Administration Department. The petitioners herein opted for their absorption and therefore vide order dated 28.04.2004 (Annexure P-20) the petitioners' services were absorbed in the establishment of respondent No. 1 and thereafter final gradation in the establishment of respondent No. 1 and thereafter final gradation list of Assistant Grade-III was published by the respondent No. 1 giving

appropriate position to the petitioners i.e. from the date of their absorption. Therefore, the petitioners now cannot take u-turn and challenge their absorption, which they have accepted with the open eyes. He has further submitted that the petitioners were not holding the equivalent post i.e. Assistant Grade-III cadre post, in the District Court establishment on regular basis prior to their appointment on deputation to the respondent No. 1 establishment and therefore they cannot claim seniority from the date of appointment on deputation in the establishment of respondent No. 1 particularly in view of the option submitted by them pursuant to memo dated 06.11.2003.

4. Learned counsel for respondents" No. 3 to 41 has submitted that the petitioners after accepting their absorption without any demur or protest have challenged the constitutional validity of the Rules of 1961, which is not permissible under the law. He has further submitted that safest criteria for counting the seniority is the date of substantive appointment and in the present case date of appointment of the petitioner in the establishment of respondent No. 1 vide gradation list dated 27.12.2004 is appropriate. He has further submitted that prior to appointment on deputation in the establishment of respondent No. 1 the petitioners were either unconfirmed or temporary employees of the District Courts concerned and therefore they are not entitled for grant of seniority from the date of their appointment on deputation in the establishment of respondent No. 1 Reliance is placed on the judgment of the Hon"ble Supreme Court in the matter of Indu Shekhar Singh and Others Vs. State of U.P. and Others, .

5. We have heard learned counsel appearing for the respective parties. We have also carefully perused the record.

6. From the pleadings made by the petitioners in the writ petition and the arguments advanced by learned counsel for the petitioners, we observe that dispute in this case is confined to the constitutional validity of the Rule 12 (2) (c) of the Rules of 1961, as amended upto 1998, as the main grievance of the petitioners is that use of expressions "present department" and "whichever is later" in clause (c) sub-rule (2) of Rule 12 the Rules of 1961 has the effect of taking away the services rendered by the petitioners in an equivalent cadre in the parent department or at least the service rendered by them as deputationists in the establishment of respondent No. 1 and therefore, the same is arbitrary, unreasonable and ultra vires to Articles 14 & 16 of the Constitution of India.

7. Since the whole controversy centres around this clause (c) of sub-rule (2) of Rule 12 of the Rules of 1961, which was in force at the time when the petitioners were appointed on deputation in the establishment of respondent No. 1 as at that time the State of Chhattisgarh and the High Court of Chhattisgarh had not framed the rules with regard to absorption of a deputationist and the Rules of 1961 were made applicable, we deem it appropriate to reproduce it as it is:-

(c) In the case of a person who is initially taken on deputation and absorbed later

(i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer") his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has however been holding already (on the date of absorption) the same or equivalent grade on regular basis, in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority, from the date he has been holding the post on deputation or the date from which he has been appointed on a regular basis to the same or equivalent grade in his present department whichever is later.

8. At this stage, it would be useful to mention that the State Government of Madhya Pradesh by Gazette Notification dated 16.02.2005 made following further amendments in clause (c) of Rule 12 (2), which reads as under:-

(1) for the words "present department" the words "parent department" shall be substituted. This amendment shall be deemed to have come into force with effect from 2nd April, 1998.

(2) for the words "whichever is later" the words "whichever is earlier" shall be substituted. This amendment shall be deemed to have come into force effect from 14th December, 1999.

Though the gazette notification regarding above amendment was issued in the year 2005 but the amendments have deemed to be effective much prior to the date of reorganization of the State of Madhya Pradesh. It may be noticed here that the State of Madhya Pradesh was reorganized on 01.11.2000 and the State of Chhattisgarh was formed, but in any case that amendment cannot be made effective in the State of Chhattisgarh unless the same is adopted by the State of Chhattisgarh or the State makes its own amendment as has been notified by the State of Madhya Pradesh in the year 2005.

9. It is settled proposition of law that giving a plain meaning to the words used in the statute would not be resorted to when there is a sense of possible injustice. In such as case, simple application of the words in their primary and unqualified sense is not always sufficient and will sometimes fail to carry out the manifest intention of lawgiver as collected from the statute itself and the nature of subject-matter and the mischiefs to be remedied. If the plain words lead apparently to do some injustice or absurdity and at variance with, or not required by, the scope and object of the legislation, it would be necessary to examine further and to test, by certain settled rules of interpretation, what was the real and true intention of the legislature and thereafter apply the words if they are capable of being so applied so as to give effect to that intention. Where the plain literal interpretation of statutory provision were to manifestly result in injustice never intended by the legislature, the court is entitled to modify the language used by the legislature so as to achieve the intention of the legislature and to produce a rational construction.

10. In the matter of H.S. Vankani and Others Vs. State of Gujarat and Others,

the Hon''ble Supreme Court has held thus:-

43. It is a well-known rule of construction that the provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). The principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. It is a well-settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly.

11. In the matter of *Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others*, the Hon''ble Supreme Court has held that "the object of construction of a statute being to ascertain that of the Legislature, it may be presumed that neither injustice nor absurdity was intended. If, therefore literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.

12. In the above connection reference may also be made to following maxims:-

Ut res magis valeat, quam pereat: That an act may avail, rather than perish. This is a rule of construction underlying that rule which directs such a construction to be put upon an ambiguous document (or ambiguous words therein) as that the document shall be and remain valid, and not be or become invalid from uncertainty, or illegality or other like cause.

Benignae faciendae sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat, quam pereat; et verba intentional non e contra debent inesse:- Construction are to be made liberally on account of the ignorance of the unprofessional, so that the thing may rather avail than perish; and words ought to be made subservient to the intention, not contrary to it. The judges will rather apply the words of the document to fulfil its lawful intent, than destroy such intent because of insufficient language, for to the intention, when once discovered; all technical forms of expression must give way. But it should be borne in mind, in applying this maxim, that the intention is not to be gathered from anything outside the instrument.

Benignior sentential in verbis generalibus vel dubiis est praeferenda:- Where words are general or doubtful, that construction which is more liberal, shall be followed.

13. In the matter of *Sub Inspector Rooplal (supra)*, in somewhat similar circumstances, the Hon''ble Supreme Court has held thus:-

20. The relevant part of the memorandum impugned in the writ petitioner referred to above, reads thus:

Even in the type of cases mentioned above, that is, where an officer initially comes on deputation and is subsequently absorbed, the normal principles that the seniority should be counted from the date of such absorption, should mainly apply. Where, however, the officer has already been holding on the date of absorption in the same or equivalent grade on regular basis in his parent department, it would be equitable and appropriate that such regular service in the grade should also be taken into account in determining his seniority subject only to the condition that at the most it would be only from the date of deputation to the grade in which absorption is being made. It has also to be ensured that the fixation of seniority of a transferee in accordance with the above principle will not effect any regular promotions made prior to the add the following sub-para (iv) to para 7 of general principles communicated vide OM dated 22.12.1959:

(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer"). His seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has so ever been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account infixing his seniority, subject to the condition that he will be given seniority from-

? the date he has been holding the post on deputation, or

? the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.

(emphasis supplied)

A perusal of clause (iv) of the memorandum shows that the author of this memorandum has taken inconsistent views in regard to the right of a deputationist to count his seniority in the parent department. While in the beginning part of clause (iv) in clear terms he says that if a deputationist holds on equivalent grade on regular basis in the parent department, such regular service in the grade shall also be taken into account in fixing the seniority. In the latter part the author proceeds to say-

...subject to the condition that he will be given seniority from the date has been holding the post or the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.

The use of the words "whichever is later" negatives the right which was otherwise sought to be conferred under the previous paragraph of clause (iv) of the memorandum. We are unable to see the logic behind this. The use of the words "whichever is later" being unreasonable, it offends Article 14 of the Constitution. It is also argued on behalf of the appellants that this memorandum is further violative of Articles 14 and 16 of the Constitution inasmuch as it

arbitrarily takes away the service rendered by the deputationist when he is absorbed in the Delhi Police which right of a civil servant cannot be taken away without the authority of law. We have noticed earlier that the petitioners, who are the appellants in the civil appeals, were regularly appointed as Sub-Inspectors in BSF on the date of their deputation. We have also accepted the fact that the post of Sub-Inspector held by them in BSF is equivalent to the post of Sub-Inspector (Executive) in the Delhi Police to which they stood deputed. That being the case, in view of the judgment in the cases of R.S. Makashi, Wing Commander J. Kumar, and Madhavan it is clear that they are entitled to count the service rendered by them in the post of Sub-Inspector (Executive) in the Delhi Police. Therefore, such a right of the appellant-petitioners could not have been taken away in the garb of an office memorandum which is impugned in the above writ petition. This view of ours finds support from a judgment of this Court in the case of K. Anjaiah v. K. Chandraiah. In that case this Court was considering a statutory regulation which in almost similar terms used in the office memorandum with which we are concerned, deprived the civil servants of their past service in the parent department. The Regulation involved in the said case reads:

9. (1) The persons drawn from other departments will carry on their service and they will be treated as on other duty for a tenure period to be specified by the Commission or until they are permanently absorbed in the Commission whichever is earlier.

(2) The services of those staff members working in the Commission, of deputation basis and who opted for their absorption in the Commission, shall be appointed regularly as the staff in the Commission, in the cadre to which they belong, as per the orders of Government approving their appointments batch by batch and to determine the seniority accordingly. For this purpose the Commission may review the promotions already affected.

22. However, in that case this Court instead of striking down the said Regulation, upholding the contention that a deputationist is entitled to count his seniority absorbed in the deputed post, observed thus: (SCC p. 22. para 7)

When the Commission finally takes a decision to permanently absorb these deputationists after obtaining their option the question of their inter se seniority in the Commission crops up and Regulation 9(2) deals with the said situation. In the case of R.S. Makashi v. I.M. Menon this Court had indicated that it is a just and wholesome principle commonly applied to persons coming from different sources and drafted to serve a new service to count their preexisting length of service for determining their ranking in the new service cadre. The said principle was reiterated by this Court in K. Madhavan case. A three-Judge Bench judgment of this Court in the case of Wing Commander J. Kumar. Also reiterated the aforesaid well-known principle in the service jurisprudence,...

23. It is clear from the ratio laid down in the above case that any rule, regulation

or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 and 16 of the Constitution. Hence, liable to be struck down. Since the impugned memorandum in its entirety does not take away the above right of the deputationists and by striking down the offending part of the memorandum, as has been prayed in the writ petition, the rights of the appellants could be preserved, we agree with the prayed of the appellant-petitioner and the offending words in the memorandum "whichever is later" are held to be violative of Articles 14 and 16 of the Constitution, hence, those words are quashed from the text of the impugned memorandum. Consequently, the right of the appellant-petitioners to count their service from the date of their regular appointment in the post of Sub-Inspector in BSF, while computing their seniority in the cadre of Sub-Inspector (Executive) in the Delhi Police, is restored.

14. Thus, from the above it is manifestly clear that it is well-settled principle of interpretation of statutes a construction should not be put on statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly. It is also evident from the judgment of S.I. Rooplal's case (supra) that any rule, regulation or executive instruction which has the effect of taking away the service rendered by a deputationist in an equivalent cadre in the parent department while counting his seniority in the deputed post would be violative of Articles 14 & 16 of the Constitution of India.

15. Keeping the above principles in mind, we shall now examine the clause (c) of the Rule 12(2) quoted above.

16. A plain reading of beginning part of clause (c) would show that in the case of a person who has already been holding the same or equivalent grade in his parent department on regular basis, his seniority shall be counted from the date he was holding the same or equivalent grade in his parent Department. However, in the latter part it provides that subject to condition that he will be given seniority, from the date he has been holding the post on deputation or the date from which he has been appointed on a regular basis to the same or equivalent grade in his present department whichever is later. Thus, it is manifestly clear that the use of words "whichever is later" and "present department" in the latter part of the Rule 12 (2) (c) has the effect of taking away the right which was otherwise sought to be conferred under the previous part of the clause (c) of the Rule 12 (2), hence, it is liable to be struck down being absurd and non-est in the eye of law. However, since the impugned clause (c) of the Rule 12 (2) of the Rules of 1961 in its entirety does not take away the right of the petitioners, therefore, we are of the view that ends of justice would be served by striking down the following part of the text of the impugned clause (c):-

...subject to the condition that he will be given seniority, from the date he has been holding the post on deputation or the date from which he has been appointment on a regular basis to the same or equivalent grade in his present

department, whichever is later.

17. So far as the argument advanced by learned counsel for the respondents that the petitioners are not entitled to count their previous service for seniority in the cadre of Assistant Grade-III as on the date of the deputation or absorption the petitioner were not holding equivalent post in their parent department on regular basis is concerned, as per-up of the District Court, it is admitted fact that post of Process Writer falls under the category of Class-III employees under which the post of "Assistant Grade-III also comes as per set-up of the High Court. In the present case, the petitioner No. 1 was appointed as "Process Writer" in the District Court, Rajnandgaon vide order dated 05.03.1997 and his services were regularized vide order dated 17.05.1999 from the date of his initial appointment. The petitioner No. 2 was initially appointed as "Chokidar" and subsequently promoted to the post of "Peon" and thereafter again promoted to the post of "Process Writer". The petitioner No. 3 was appointed as Assistant Grade-III itself in the establishment of District Court, Raipur on 06.03.1999 on regular pay-scale i.e. Rs. 3050-75-3950-4590/-. Thus from the appointment/promotion orders of the petitioners it is abundantly clear that prior to their appointment on deputation in the establishment of respondent no. 1 the petitioners were working as Class-III category employees in their respective parent department either on the basis of direct recruitment or on the strength of promotion orders. Therefore, the argument of learned counsel for the respondents that the petitioners were not holding the equivalent cadre in the District Court establishment on regular basis prior to their appointment on deputation in the establishment of the respondent No. 1 and therefore they cannot claim seniority from the date of appointment on deputation, has no force.

18. So far as the reliance placed by the respondents on the judgment of the Hon"ble Supreme Court in the matter of Indu Shekhar Singh's case (supra) is concerned, in that case under the Rules there was no provision for recruitment/absorption of deputationists and the offer of absorption was made not in terms of any specific power under the said Rules, but in exercise of its residuary power and in these circumstances the Hon"ble Supreme Court has held that "there was no fundamental right in regard to counting of past services rendered in an autonomous body. Past services can be taken into consideration only when Rules permit the same or where special situation exists entitling the employee to obtain such benefit of past service. Such is not the position here. In the present case looking to the emergent circumstances, as newly created High Court was in dire need of experienced employees, as decision was taken to take suitable persons of Class-III category on deputation and subsequently they were absorbed in the establishment of respondent No. 1 subject to condition that their seniority shall be counted in accordance with Rule 12 (2) (c) of the Rules, 1961. Thus, the law laid down in the afore-cited case law is of no help to the respondents herein for the reasons that the facts of that case are distinguishable from the facts of the present case.

19. On the basis of aforesaid discussions, we hold that the words".... subject to the condition that he will be given seniority, from the date he has been holding the post of on deputation or the date from which he has been appointed on a regular basis to the same or equivalent grade in his present department whichever is later" of clause (c) of Rule 12 (2) of the Rules of 1961 are liable to be struck being absurd and non-est in the eye of law and accordingly, the same are hereby struck down.

20. The respondent No. 1 is to prepare and publish a fresh gradation list of the Assistant Grade-III counting seniority of the petitioner in accordance with the existing rules, that is to say, after excluding the part of clause (c) of the Rule 12 (2) which has been struck down by this order. The petition is allowed to the extent indicated above. No order as to costs.