
(2009) 01 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : C.W.P No. 20173 of 2006

Dr. Suresh Kumar Mangal and Others	APPELLANT
Vs	
State of Haryana and Others	RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2009) 2 ILR (P&H) 217 : (2009) 3 SLR 258

Hon'ble Judges : M.M. Kumar, J;Jitendra Chauhan, J

Bench : Division Bench

Advocate : R.K. Malik and Yashdeep Singh, for the Appellant; Harish Rathee, D.A.G., R.N. Lohan, for Respondent Nos. 9, 13 and 24 and Sunil Panwar, for Respondent Nos. 10, 11 and 20, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—A short question of law raised in this petition filed by the promotees under Article 226 of the Constitution is should the seniority of members of Haryana Civil Medical (Group-A) Service be governed on the principle of continuous length of service as per the provisions of Rule 11 of the Haryana Civil Medical (Group-A) Service Rules, 1981 (for brevity "the Rules") or by the instruction dated 24th November, 1962 which provide that date of recommendation in respect of direct recruits by the Public Service Commission be regarded as determinative date for fixing their inter se seniority. The Petitioners have prayed that order dated 1st December, 2006 (P-15) passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Health be quashed which seeks to follow the principle of determining seniority from the date of recommendation of the Haryana Public Service Commission as per the instructions dated 24th November, 1962.

2. Facts are beyond any pale of controversy. The Petitioners were promoted as H.C.M.S. Class-I in the service known as H.C.M.S. (Group-A) on 21st June, 1996 from the post of Medical Officers (P-1). The private Respondents who are direct

recruit to the service were recommended for appointment on 20th June, 1996. All of them however were appointed to the service much later. One appointment letter to a private Respondent has been placed on record (P-2) which is dated 13th July, 1996. The Petitioners have claimed that the private Respondents having been appointed subsequent to the date of their promotion, therefore they would rank senior to them as the continuous length of service is the principle laid down in Rule 11 of the Rules. In all the seniority list issued from time to time the Petitioners have always been shown senior to private Respondents. In that regard, the Petitioners have placed reliance on the seniority list dated 1st September, 1997, 1st June, 2000 and 1st September, 2003 (P-3 to P-5). The seniority list has been drawn on the basis of Rule 11 of the Rules. The seniority lists have also been followed because many promotees being senior to private Respondents were further promoted or given charge of the post of Civil Surgeon, P.M.O. Deputy Director.

3. The Petitioners have also made averments that private Respondent No. 20 had filed a civil suit seeking a declaration that he being direct recruit was entitled to rank senior to the promotees. The Civil Court passed a decree on 16th August, 2003 and declared him senior to the promotees. Even the first appeal filed by the Respondent-State was dismissed by the learned Addl. District Judge upholding the decree of the Civil Judge,--vide his order dated 1st April, 2004 (P-10). On further appeal filed by some of the Petitioners belonging to the promotees" quota, this Court accepted the prayer of the private Respondent No. 20 and allowed the suit to be dismissed as withdrawn so as not to affect the rights of the Petitioners who were the Appellants before this Court in RSA No. 4156 of 2004 decided on 6th July, 2006 (P-II). However the Respondent-State was directed to finalize the seniority of the Senior Medical Officer belonging to the service by granting adequate opportunity to all of them. Thereafter a tentative seniority list was circulated on 24th August, 2006 (P-12) and objections were invited to be filed by 8th September 2006. The Petitioners filed CWP No. 13976 of 2006 (P-13) which was disposed of on 8th September, 2006 by extending the period of filing objections upto 13th September, 2006 and the writ petition was disposed of on 8th September, 2006. The Petitioner then filed objections bringing to the fore the issue of determining seniority on the basis of continuous length of service as per Rule 11 of the Rules (P-14) and on the basis claimed themselves to be senior to the private Respondents. The objection raised by the Petitioner have been rejected by the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Health on 1st December, 2006 with the observation that seniority is to be determined on the principle laid down in the instructions dated 24th November, 1962 (P-16) that in respect of direct recruit the seniority would be reckoned from the date of recommendation of the Public Service Commission.

4. The Respondent-State has filed written statement. The broad facts have been admitted but it has made an attempt to defend the determination of seniority on the principle laid down in the instructions dated 24th November, 1962 (P-16). It has also been asserted in Para 6 of the written statement that merit fixed by the

Public Service Commission should not be disturbed and the seniority must be fixed from the date of recommendation by the Public Service Commission and the objections have been rightly rejected.

5. We have heard learned Counsel for the parties.

6. The basic principle which requires determination in the instant case is whether the instructions dated 24th November, 1962 would continue to operate once the subject matter has been occupied by the rules in the year 1981 which were framed in pursuance of proviso to Article 309 of the Constitution. Rule 11 of the Rules which is relevant for determining the controversy raised in this case reads as under:

Rule 11.--Seniority, inter se of members of the Service shall be determined by the length of continuous service on any post in the Service.

Provided that in the case of members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority.

(a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;

(b) a member appointed by promotion shall be senior to a member appointed by transfer; and

(c) in the case of members appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred;

(d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member, who was drawing a higher rate of pay in his previous appointment and if the rates of pay drawn are also the same. Then by the length of their service in the appointments, and if the length of such service is also the same, the older member shall be senior to the younger member.

7. A bare perusal of the Rule would show that inter se seniority of the members of the service is required to be determined on the basis of the principle of continuous length of service. It is further clear from the perusal of the rule that no significance is to be accorded to the date of recommendation made by the Public Service Commission as a principle for determining seniority of the direct recruits. For the direct recruits amongst themselves the order of merit determined by the Commission has to be regarded as final. Therefore for all intents and purposes the principle of continuous length of service as laid down in Rule 11 of the Rules has to be a guiding factor for determination of seniority. It is well settled principle of law that once the rules have been framed in pursuance of powers under proviso to Article 309 of the Constitution then the instructions on the same subject would not operate as has been held in the case of Union of

India Vs. Madras Tele S.C. and S.T. Social Welfare Association, . The same principles were laid down in the case of K.K. Parmar and Others Vs. H.C. of Gujarat thr. Registrar and Others, . All these principles of law are so well settled as to entertain any doubt since 1967 when the Constitution Bench had laid down the law in the case of Sant Ram Sharma Vs. State of Rajasthan and Another, .

8. The instructions have only one object of determining batch seniority of direct recruit namely that the date of their recommendation would be the date which would determine their inter se seniority by freezing the order of merit as determinative principles. However, the instructions dated 24th November, 1962 could not be made the basis for determining seniority of a member of service which include promotees. Even otherwise the date of recommendation by the Public Service Commission may not have any relationship to become a criteria for determining seniority, therefore the impugned order dated 1st December, 2006 (P-15) is unsustainable in law and is declared ultra vires of Rule 11 of the Rules.

9. For all the reasons given above, the instant petition succeeds. The order dated 1st December, 2006 (P-15) is hereby quashed. The Petitioners deserve to rank senior to the private Respondents on the basis of continuous length of service and are declared senior to them. We further direct Respondents No. 1 and 2 to consider the Petitioners for promotion to the next higher post of Principal Medical Officers/Civil Surgeons/Deputy Directors (Senior Scale) by treating them senior to the private Respondents on the basis of continuous length of service. The needful shall be done within a period of three months from the date of receipt of copy of this order.