
(1998) 11 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1194 of 1996

Harbhajan Singh	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 17-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 121 PLR 707

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : Baldev Prashad, for the Appellant; P.D.S. Chinna, D.A.G. for Respondent Nos. 1 to 4 and B.R. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Is the action of the department in denying the petitioner the benefit of service rendered by him in the consolidation Department for the purpose of fixation of seniority in the Transport Department illegal and violative of the Rules? This is the short question that arises for consideration in this writ petition. A few facts may be briefly noticed.

2. The petitioner was selected by the Subordinate Service Selection Board, Punjab, for appointment as a Clerk. His name was forwarded by the Selection Board and he was appointed as a Clerk in the office of the Deputy Commissioner, Gurdaspur. The petitioner had joined service on October 22, 1959. In the year 1960, he was transferred to the Department of Consolidation of Holdings. The petitioners alleges that the Department of Consolidation was a branch of the Revenue Department and that the transfer had been made as the consolidation proceedings were being carried out in the State. He continued working as a Clerk in the Consolidation Department till the year 1971 when a decision to wind up the department was taken. Thereupon, vide order dated July 28, 1971 the petitioner was "appointed" as a Clerk in the Punjab Roadways. He joined on August 5, 1971. After having joined the Transport Department, the petitioner

claimed the benefit of the service rendered by him in the Revenue and the Consolidation Departments for the purpose of determination of his seniority. The petitioner averred that this representations were rejected vide order dated September 14, 1995. A copy of this order has been produced as Annexure P-16 with the writ petition. Aggrieved by this order, the petitioner has filed the present writ petition. He alleges that the action of the Government in denying him the benefit of the service rendered by him in the Revenue and Consolidation Departments towards the fixation of his seniority in the Transport Department is violative of the instructions issued by the Government and contrary to the Rule laid down by the Full Bench of this court in Kartar Singh and others Vs. State of Punjab and others, . The petitioner, consequently, prays that the order dated September 14, 1995 be quashed and that the respondents be directed to determine his seniority on the hypothesis that he had joined service in the Transport Department on October 22, 1959. He also prays for the grant of consequential benefits.

3. A written statement has been filed on behalf of the respondents by the Director, State Transport, Punjab. A preliminary objection that the petition has been filed after a lapse of 25 years has been raised. On merits, it has been pointed out that the petitioner was given a fresh appointment as a Clerk in the Transport Department. Consequently, the benefit of seniority on the basis of the service rendered in the Consolidation Department was not admissible. On representations having been received the matter was referred to the Chief Secretary. The Secretary, Subordinate Services Selection Board had advised that the seniority of the employees had to be determined by the department which was competent to resolve the issue. The respondents maintain that the petitioner is not entitled to the benefit of the service in the Consolidation Department under the Rules. Consequently, his claim was rightly rejected.

4. Learned Counsel for the parties have been heard.

5. The two questions that arise for consideration are:-

1. Is the petitioner's claim liable to be rejected on the basis of delay and laches?
2. Is the petitioner entitled to the benefit of service rendered by him from October 9, 1959 to August 4, 1971 for the purpose of determination of his seniority in the Transport Department?

Regarding 1.

6. It is the admitted position that a large number of employees were rendered surplus in the Consolidation Department. On their retrenchment they were absorbed in various departments including the Punjab Roadways. Vide order dated July 28, 1971, a copy of which has been produced as Annexure P-2 with the writ petition, 25 persons including the petitioners were appointed as Clerks in the scale of Rs. 110-250 plus allowances. In this order the petitioner's name appears at Serial No. 14. The order categorically says that the appointment shall

be governed according to the rules and instructions issued by the Government in respect of the "Roadways Services". Thereafter, a seniority list had been issued in the year 1973. A copy of this list has been produced by the petitioner as Annexure P-5 with the writ petition. In this list his name appears at serial No. 226. This list was described as the "final seniority list of Clerks of Punjab Roadways...." The petitioner had been assigned his position in the list on the basis that he had joined service on August 5, 1971. It appears that the petitioner submitted certain representations. However, there is nothing on record to indicate that the department had even entertained his claim. On the contrary, as mentioned by the petitioner in paragraph 11 of the writ petition, the seniority list was issued on July 4, 1980 in which the position as depicted in the earlier list had been reiterated. Even at this stage the petitioner was happy by merely submitting certain representations. He did not approach any Court of law. It is only in January, 1996 that the petitioner filed the instant writ petition.

7. It is, thus, clear that the final seniority list had been issued in the year 1973. The position was reiterated in the year 1980. The petitioner did not do any thing except submitting certain representations. Apparently, the writ petition was filed almost 23 years after the final seniority list had been issued.

8. Mr. Baldev Prashad, learned Counsel for the petitioner, points out that the representations had been rejected only vide order dated September 14, 1995. A copy of this communication has been produced as Annexure P-16 with the writ petition. Thus, the counsel submits that the petition had been filed within five months of the rejection of this claim by the Government. The contention cannot be accepted.

9. Firstly, it is the admitted position on the record that the final seniority list had been issued in the year 1973. Thereafter, there was no provision under which the petitioner may have been entitled to submit any representation or appeal. Even if it is assumed that one representation could be submitted, it did not mean that the petitioner was entitled to endlessly wait for its decision or to keep on making repeated representations. In any event, another seniority list was issued in the year 1980. Even in that list the petitioner had been assigned his seniority on the basis that he had entered into service on August 5, 1971. Still the petitioner did not take any steps to challenge the list. He waited till January, 1996. In these circumstances, it is apparent that the claim was highly belated. Still further so far as the order dated September 14, 1995 is concerned, it deserves notice that the petitioner had submitted some appeal on April 24, 1995. By this communication he was merely informed that the appeal which had been made to the Transport Minister has been consigned to the record. Obviously, the appeal was not maintainable under any rule and, in any event was one in the series of representations. It did not extend the period of limitation so as to entitle the petitioner to claim that the petition was not barred by laches.

10. In view of the above, the first question is answered against the petitioner. It is held that the claim is highly belated. The writ petition is liable to be dismissed

on this ground alone.

Regarding 2

11. Even though the writ petition is liable to be dismissed on the ground of delay, it appears appropriate to consider the petitioner's claim on merits also.

12. It is admitted position that the petitioner had joined service in the Transport Department on August 5, 1971. At that time the conditions of service governing the members of the Ministerial establishment were regulated by the provisions of the Punjab Transport Department (State Service Class-III) Rules, 1963. The seniority had to be "determined from the date of their continuous appointment in the service". The service was defined as comprising of the posts specified in column 2 of Appendix-A to the Rules. Thus, the date from which a person continuously held the post specified in the Appendix to the Rules formed the basis for determination of his seniority. The petitioner had started holding the post of Clerk in the Transport Department from August 5, 1971. His seniority was, admittedly, determined on that basis. This action was in strict conformity with the provisions of the Rules.

13. Mr. Baldev Prashad contends that the petitioner had been absorbed and not appointed. Learned Counsel submits that by absorption, the element of a fresh appointment was eliminated and, thus, the benefit of continuity of service should be admissible. This contention cannot be accepted. A perusal of the letter of appointment issued to the petitioner indicates that the "retrenched officials of the Consolidation Department" were "appointed as Clerks in the scale of Rs. 110-250 ..." It is, thus, clear that there was no absorption. There was only appointment. This appointment was of persons who had already been retrenched from the Consolidation Department. There was no element of continuity. It was for all the intents and purposes a fresh appointment. Accordingly, the benefit of the past service was not per se admissible.

14. Mr. Baldev Prashad points out that on the absorption of the petitioner in the Transport Department his pay has been duly protected. Learned Counsel has not been able to point out any specific averment in this behalf in the petition. Irrespective of that, the mere factum of protection of pay will not entitle the petitioner to claim that he was entitled to the benefit of continuity of service. If the department had given the benefit of protection of pay, it would only imply that a limited relief has been granted. However, there is nothing on record to show that the benefit of past service had been either promised or granted. In fact, according to the rules the benefit of the past service was not admissible.

15. Learned Counsel has referred to the decision of a learned Single Judge of this court in Gurnam Singh v. Financial Commissioner, Revenue, Punjab and Ors. 1996(2) R.S.J. 168. In this case, relying upon the observations of the Full Bench in Kartar Singh and others Vs. State of Punjab and others, , it was held that the benefit of the past service was admissible to the petitioner on his absorption in the Revenue Department. The factual position in this case was basically different.

The petitioner was initially appointed in the Revenue Department. He was transferred to the Consolidation Department. Then he had been reverted to the Revenue Department. In this situation, relying upon the rules as also the instructions issued by the Government vide letter dated July, 21 1978, it was held that the benefit of the past service was admissible in the present case. The provisions of the 1963 Rules only talk of seniority from the date a person is appointed to hold a post included in the schedule. Since the petitioner had been appointed to such a post on August 5, 1971, the benefit of previous service from October 9, 1959 is not admissible.

16. Learned Counsel for the petitioner has also referred to the instructions issued by the Government vide letter dated July 21, 1978. A copy of these instructions has been produced as Annexure P-9 with the writ petition. These instructions were issued by the Deputy Secretary to Government Punjab (Revenue Department) to the Commissioners of various Divisions and the Deputy Commissioners etc. This was a communication from the Revenue Department to the various officers in different Divisions and the Director of Consolidation. It was neither addressed to nor meant for the Transport Department. In fact, the Revenue Department was not in a position to issue any instructions to the Transport Department. Thus, these instructions did not bind the Director, State Transport or the authorities in other Departments of the Government. In fact, it appears that even when the Director, State Transport had asked the Chief Secretary for an advice, the matter was referred to the Subordinate Service Selection Board who had informed him that he was competent to determine seniority of the employees in accordance with the rules. This is precisely what the department did.

17. There is another aspect of the case. Admittedly, the petitioner was at serial No. 226 at the seniority list. The persons who had joined service in the year 1959 were placed in the seniority list at Nos. 2 to 6. If the petitioner's claim was to be accepted, he would be entitled to be placed at No. 6. In other words, he would supersede 220 persons. These persons have not even been impleaded as parties. Their interest would be prejudicially affected without their being afforded an opportunity of being heard.

18. Learned Counsel for the petitioner points out that the petitioner has already retired from service in the year 1996. It may be so. Yet, the fact remains that changing the seniority list which had been finalised in the year 1973 after a lapse of 25 years and that too without affording an opportunity of hearing to about 220 persons would be wholly unjust and unfair. It would not be proper to do so in the exercise of extra-ordinary jurisdiction Under Article 226 of the Constitution.

19. No other point has been raised.

20. In view of the above even the second question is answered against the petitioner.

21. Resultantly, there is no merit in this writ petition. It is, consequently,

dismissed. Since the petitioner has already retired from service, there will be no order as to costs.