

(2009) 01 P&H CK 0150
In the Punjab And Haryana At Chandigarh

Kurukshetra University and Another

APPELLANT

Vs

Raghubir Singh Issar and Others

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Citation : (2009) 154 PLR 308

Hon'ble Judges : Nawab Singh, J;J.S. Khehar, J

Bench : Division Bench

Judgement

J.S. Khehar, J.—The respondent was inducted into the service of the appellant-University as Steno typist by an order dated 11.9.1972 (Annexure P-1). The appointment letter issued to the respondent inter-alia contained the following condition:

4. Since you have not qualified the test prescribed for this post you will not be allowed any annual increment till you qualify in a test, which may be held for you every six months or in any other test which may be held for general recruitment to Steno Typists.

It is not a matter of dispute that the respondent did not qualify the prescribed test. Despite the aforesaid, the Executive Council of the appellant-University by an express order ordered the removal of the condition extracted above, from the order of the respondent's appointment. This is apparent from the averments made in paragraph 5 of Annexure R7, enclosed with the written statement filed by the appellant-University, in response to the writ petition preferred by the respondent. Paragraph 5 of Annexure R7 is being extracted hereunder;-

Many tests were held. The last test in which he appeared was held on 14th April, 1977. 93 candidates took up the test. Test was in shorthand and typing. 9 candidates were selected. All other 8 candidates except Mr. Issar qualified the test. Mr. Issar still did not qualify the test. The University then thought that in this situation his service might be dispensed with, but taking a lenient view again the selection committee in so far as he was concerned, passed the following

order in respect of Sh. Issar:

The condition of qualifying the test on him may be removed. But Sh. Issar's work and conduct will be watched for one year and he will be made regular only if he earns a good report for the year 1977-78.

2. The only submission advanced at the hands of the learned Counsel for the appellants is that for the purposes of determination of seniority, the respondent deserved to be assigned seniority with effect from the date, from which, condition 4 (extracted above) incorporated in the order of appointment dated 11.9.1972, was ordered to be removed. It is the vehement contention of the learned Counsel for the appellants, that the learned Single Judge was wholly unjustified in allowing seniority to the respondent by ignoring the aforesaid condition in the order of appointment of the respondent.

3. We have considered the solitary contention of the learned Counsel for the appellants.

4. It is not a matter of dispute that seniority of the respondent is to be determined under Clause 11 of the Service Rules meant for University employees, which is contained in the University Calender Volume III. The relevant clause is being extracted hereunder:

Seniority of Member of the Service

Unless otherwise decided by the Executive Council the seniority of member of the Service shall be decided as under: The seniority inter-se of the members of the service holding permanent posts shall be determined by the dates of their confirmation in the post and in the case of members holding temporary posts or appointed in an officiating capacity from the date of their joining the post. Provided that the inter-se seniority of persons selected for appointment by direct recruitment shall be in the order of merit, determined by the Selection Committee, irrespective of the date on which such a person joins or is confirmed subsequently.

Seniority of a member of the service in terms of the aforesaid provision is to be determined (in case of direct recruits) in the order of merit at the time of direct recruitment. After the appointment of the respondent by way of direct recruitment to the post of Steno typist vide order dated 11.9.1972, he was confirmed as such, by an order dated 26.4.1978. The rule of seniority does not envisage any other pre-condition. Even the date of joining and confirmation of an employee pale into insignificant, in terms of the rules of seniority extracted herein-above. After the removal of condition 4, from the order of appointment of the respondent, there could have been no impediment so as to determine seniority in the order of his merit at the time of selection by way of direct recruitment. Although we are of the view that the aforesaid clause would be irrelevant for the purposes of determination of seniority (even if the same had not been removed by a subsequent order passed by the Executive Council), it is not necessary to

render any finding in respect of the effect of the said clause, in the facts and circumstances of the present case, because the same was subsequently ordered to be removed by Executive Council from the letter of appointment issued to the respondent.

5. Even though it was submitted by the learned Counsel for the appellants, that it was open to the Executive Council to pass a separate order for determination of the seniority of the respondent by ignoring the rule extracted here-in-above. Learned Counsel for the appellants could not invite our attention to any such determination at the hands of the Executive Council, by which a decision had been taken by Executive Council so as to determine the seniority of the respondent in a manner different to the one envisaged in Clause 11 (extracted here-in-above) of the Service Rules meant for University Employees, for the purposes of determination of the seniority of the respondent. Thus viewed, no further consideration on the matter under consideration is called for.

6. No other submission, besides those noticed here-in-above, were advanced at the hands of the learned Counsel for the appellants.

7. For the reasons recorded here-in-above, we find no merit in the instant appeal. Dismissed.