

(2023) 04 CHH CK 0074
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 2573 Of 2008

Pawan Kumar Jha

APPELLANT

Vs

High Court Of Chhattisgarh

RESPONDENT

Date of Decision : 17-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 04 CHH CK 0074

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : T. K. Tiwari, Prasoon Bhaduri, S. S. Marhas, Abhishek Sinha

Final Decision : Dismissed

Judgement

1. The petitioner by way of the present petition is seeking a direction to the respondent authorities to reckon the seniority of the petitioner from the date of his initial appointment i.e. 9th May, 1991 and place him at Sr. No.3 of the gradation list dated 27.01.2004 and grant other consequential benefits as well, as has been granted to the employees situated at Sr. No.3 to 20 in the gradation list dated 27.12.2004.

2. Brief facts of the case are that the petitioner was ab initio appointed as AG-III in the year 1991 in the Establishment of High Court of Madhya Pradesh and was confirmed on the said post vide order dated 10.12.1997. After bifurcation of the State of Madhya Pradesh in the year 2000, the State of Chhattisgarh and the High Court of Chhattisgarh as well came into existence. In the year 2001, an advertisement for appointment on various posts was issued including that of AG-II. The posts of AG-II were against permanent substantive posts having 5 years experience on the post of AG-III or equivalent post in District/High Court. The petitioner applied for the post of AG-II, as he was having the requisite criteria for the said post, but while applying for the same, he raised a condition that if his past seniority would be counted, then only he would join the post. The applications received pursuant to the said advertisement for the post of AG-II

were not decided for a period of almost 3 years and during the said period, the posts of AG-II were filled up by way of promotion from the post of AG-III. In the year 2004, a call letter was issued to the petitioner on 12.01.2004, whereby the petitioner was asked to appear for personal interview on 07.02.2004 along with requisite certificates. The petitioner appeared in the interview and was declared successful securing the position at Sr. No.1 and thereafter he was issued appointment letter dated 10.02.2004. The said letter contained a condition that if the petitioner does not join the service within 10 days therefrom, his services would stand cancelled automatically. The petitioner requested the Registrar General, High Court of Chhattisgarh for grant of extension to join services reiterating his earlier condition regarding claim of grant of seniority, upon which he was granted extension up to 1st week of May, 2004. Ultimately, the petitioner joined his duties on 01.05.2004. On 27.12.2004, the provisional gradation list was published, wherein the petitioner stood at Sr. No.24. The petitioner being aggrieved by the same, as his juniors working in the Establishment of the High Court of Madhya Pradesh were placed above him in the gradation list, preferred representations before the respondent authorities, but the same got cancelled, which resulted into filing of writ petition before the High Court of Chhattisgarh bearing WPS No.937/2007. Vide order dated 20.02.2007, the respondent authorities were directed to consider and decide the representation of the petitioner regarding grant of seniority. In compliance of the order of this Court, the representation of the petitioner was considered and got rejected, which again resulted into filing of the present petition.

3. The reliefs sought for by the petitioner are as under:-

"10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records concerning the case of the petitioner from the possession of the respondent authorities.

10.2 that, this Hon'ble Court may kindly be pleased to issue a writ of mandamus directing the respondents No. 1 to 3 to reckon the seniority of the petitioner from the date of initial appointment i.e. 9th May, 1991 and place the petitioner at Sl. No. 3 of the gradation list dated 27.1.2004 and direct the respondents No. 1 to 3 to grant all other ancillary and consequential benefits of promotion as has been afforded to other employees mentioned at Sl. No 3 to 20 in the gradation list of 27.12.2004.

10.3 that, this Hon'ble Court may kindly be pleased to issue an appropriate writ and quash the entire gradation list of Annexures P/12, P/13 & P/17.

10.4 Any other relief or relief (s) which this Hon'ble Court may deem fit or proper in the facts and circumstances of the case.

10.5 Cost of the petition may also be awarded."

4. Learned counsel for the petitioner submits that the rejection of the representation of the petitioner seeking seniority is illegal and against the rules.

The appointment of the petitioner in the High Court of Chhattisgarh is by way of direct recruitment. According to the Rules of 1996 and 2003, the post of AG-II being a feeder post, the same cannot be filled up by way of direct recruitment and it can only be filled up by way of promotion. The advertisement for the post of AG-II was published in the year 2001, therefore, the Rules of 1995 being in force were applicable to the service conditions of the petitioner. Had the said rules been made applicable, the selection of the petitioner would have been a selection against a 'substantive selection post' by promotion. Rule 14 of the Recruitment Rules of 1995 provides the nature of appointment, which is either appointment or promotional appointment. The selection of the petitioner as well as other employees vide appointment order dated 10.02.2004 is an appointment through promotion. Even the Rules of 2003 also provides that the post of AG-II is a promotional post and the employee holding the post of AG-III can only apply for the said post, as such the nature of appointment of the petitioner is not a fresh appointment but an appointment through promotion. He further submits that the petitioner had been performing his duties in the High Court of Madhya Pradesh since 1991 without any break, therefore, his seniority in the gradation list ought to have been counted from the initial date of his appointment and not from the date of confirmation on the post of AG-II. The time to be reckoned for the purpose of seniority can be governed by the Rules, if framed, or in absence of the Rule the same would be governed by the time when the employee starts performing his functions and duties after the appointment order is issued. In case of the petitioner, the length of service ought to have been reckoned from 9th may 1991 i.e. the initial date of appointment on the post of AG-III. The experience being sole criteria/qualification of selection, the length of service/experience rendered by an employee cannot be overlooked while assessing the seniority, particularly when the past length of service of other employees performing in the identical institution the similar nature of work, duties and functions have been considered so. The vacancies to the post of AG-II as flashed in the advertisement are feeder category posts, in which the past length of service of the petitioner is required to be considered. Therefore, the petitioner cannot be treated as a fresh entrant. The date when the vacancies against regular permanent substantive posts were available, the seniority ought to have been counted from the date when the vacancies for AG-II were advertised for being filled up. The respondents No. 1 to 3 have at no point of time controverted the said conditions raised by the petitioner for computation of his entire past service for all practical purpose. The respondents No. 1 to 3 may not say that the appointment of the petitioner in the High Court of Chhattisgarh on the post of AG-II being a direct recruitment, the same does not confer any right to the petitioner to claim the benefits of computation of his past services rendered in the High Court of Madhya Pradesh. When the process for appointment on the post of AG-II in pursuance of the advertisement was going on, there was no reason for the respondents No. 1 to 3 to not fill up the posts so advertised. Before making appointment from outside on the post of AG-II while the process for the same in pursuance of the advertisement was on, the Rules of 1996 and 2003 were

neither amended nor was there any notification relaxing the same. The act of the respondents No. 1 to 3 is in flagrant violation of the provisions of Articles 14 & 16 of the Constitution of India in not adhering to the rules made by none else but the institution itself, which clearly provides that the post of AG-II shall be filled up by way of promotion from amongst the AG-III. Learned counsel has placed his reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of R. B. Desai and another vs S. K. Khanolkar and others, reported in AIR 1999 SC 3306 and in the matter of Devsharan Dilliwar and others vs High Court of Chhattisgarh and others rendered by this Court in WP No.3926/2005 vide order dated 19.10.2011.

5. Learned counsel for the respondents jointly submit that the condition mentioned by the petitioner in his application/letter written to the Department of High Court Chhattisgarh dated 21.04.2001 regarding grant of seniority based on past service though contains a contingent offer but the same cannot be taken as a basis or precondition to accept the post of Assistant Grade-II. Any candidate cannot impose a condition of appointment to its employer and the same is de hors the service condition rules or against the terms of advertisement issued for filling up the vacancy. In the instant case, the petitioner was appointed by an order dated. 10.02.2004 (Annexure P/9) by way of direct recruitment. From perusal of the letter of appointment, it is unambiguous that the seniority of the selected candidates is to be determined by their position in the merit list. The petitioner is a direct recruitee and his conditions of appointment are governed only according to conditions mentioned in the appointment order. The petitioner consciously accepted the appointment order, joined the service, as such the conditions in his appointment order are applicable to him. It was also specifically mentioned in the appointment order that the petitioner was given appointment purely on ad hoc basis for one year and thereafter he will be given initial appointment on probation for a period of two years. Therefore, the appointment order dated 10.02.2004 holds the field and governs the terms of appointment qua his services in the establishment of High Court of Chhattisgarh. The petitioner knowing fully well had joined the post of Assistant Grade-II and therefore it is submitted that the petitioner was given a fresh appointment through direct recruitment along with others. The petitioner without any protest or demur accepted such fresh appointment and gave his joining to the post of AG-II. Having accepted the new assignment, the petitioner cannot be permitted to re-agitate the issue and go back to the pre-condition impose by him while joining the post. Here it is pertinent to mention that the petitioner is claiming seniority on the basis of services rendered by him in the High Court of Madhya Pradesh, but the same cannot be considered inasmuch as in the instant case fresh appointment was made in a different establishment i.e. High Court of Chhattisgarh. It is further reiterated that the past service tenure of the petitioner can only be counted for the purpose of pensionary benefits in view of the relevant rules. It is pertinent to mention that apart from petitioner, some other employees of the establishment of High Court of M.P. were also appointed to the

post of AG-II in the establishment of the High Court of Chhattisgarh but the other employee had accepted the appointment to be a fresh one and no grievance was ever raised by them. Prior to joining the establishment of this High Court, the petitioner tendered his resignation to the establishment of High Court of M.P. and only after acceptance of the resignation, the petitioner joined the establishment of this High Court. It is submitted that the persons who came from State Administrative Tribunal i.e. respondents No. 13 & 14 were already Assistant Grade-I prior to their absorption in the establishment of this High Court. Therefore the Assistant Grade-I of the then S.A.T. were kept above the petitioner. Similarly the translator of this establishment and the translator came from the S.A.T. i.e. respondents No. 15, 16 and 17 were senior to the petitioner in respect of their pay scale. The employees of District Establishment i.e. respondents No. 26 to 28 were also AG-II prior to appointment of the petitioner. Therefore, the said persons were kept above the petitioner in the seniority list. It is submitted that it is settled proposition of law that an employer is not bound by the condition imposed by any employer prior to joining to the post. As against this, the employee is bound to follow the condition imposed in his appointment order and after acceptance of such appointment with the conditions, the appointment order is binding and the employee is estopped to challenge the same to escape any condition of appointment, as such the petitioner cannot challenge the seniority at this stage under any legal right. Therefore, the petition may kindly be dismissed.

6. Heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.

7. The main grievance of the petitioner is that his seniority should be counted from the date of his initial appointment in the parent department i.e. the State of Madhya Pradesh and he be placed above the employees based on his seniority in the erstwhile Establishment i.e. the High Court of Madhya Pradesh and has taken a plea that he had already intimated/requested the Department in this regard before his joining. In order to substantiate his stand, the petitioner has relied upon the order dated 19.10.2011 passed by the Division Bench of this Court in WP No.3926/2005, parties being Devsharan Dilliwar and others vs High Court of Chhattisgarh and others. The close scrutiny of the order dated 19.10.2011 would make it lucid that the facts of the present case and that of passed in WP No.3926/2005 are distinguishable from each other, as in the aforesaid writ petition, the petitioners therein were on deputation and were seeking seniority from the date they were absorbed in their actual Department, but in the present case, the petitioner was appointed through direct recruitment and after tendering his resignation to the High Court of Madhya Pradesh, he joined in the Establishment of the High Court of Chhattisgarh.

8. The Division Bench of this Court in para 19 of WP No.3926/2005 held as as under:-

"19. 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 the 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, a decision was taken to take suitable persons of Class-II 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."

A bare reading of the same would make it unambiguous that the case of the present petitioner is entirely different than that of passed in the aforesaid writ petition, as the petitioners therein were appointed on deputation, but in the present case, the petitioner was appointed through direct recruitment. Thus, the reliance placed by the petitioner is of no help to him.

9. Perusal of the document (Annexure-R/1), which is an acceptance letter of resignation tendered by the petitioner before the respondent No.1, would postulate that the petitioner submitted his resignation letter to the High Court of Madhya Pradesh and after resigning from the post of AG-III, he joined his services in the Establishment of High Court of Chhattisgarh, which is evident from the appointment order dated 10.02.2004 (Annexure-P/9). Apposite it would be take note of the fact that apart from the petitioner, one more employee namely T. Shashikala had also resigned from her service from the previous High Court along with the petitioner and was appointed along with the petitioner in the Establishment of the High Court of Chhattisgarh, but she chose not to agitate or litigate.

10. The petitioner has taken a stand in his defence that his seniority should have been counted from the date of his initial appointment for the reason that he had already intimated the Department in this regard and has filed document (Annexure-P/7), which is a letter written by him to the Department of High Court of Chhattisgarh, and argued that he had already foisted the conditions, based on which he would accept the appointment order, if he is otherwise selected. The relevant part of the letter is as under:

"In case I am selected/appointed, I will accept the assignment subject to the following conditions:-

“(1) that my past service tenure shall be counted for all the purposes and all the consequential benefits shall be reserved.

(2) that better prospects for future promotions are given.”

The appointment order dated 10.02.2004 (Annexure-P/9) depicts that the petitioner and other employees were appointed on the following conditions:-

The condition No.9 of the said appointment order (Annexure-P/9) speaks volume, wherein it has been categorically mentioned that the seniority of the employee shall be counted based on their seniority in the appointment order. Thus, the plea taken by the petitioner that he had already intimated the Department regarding his seniority to be counted from the date of his initial appointment in the High Court of Madhya Pradesh is not favourable to him, as he had joined the post knowingly well the conditions of the appointment order, particularly the condition No.9 thereof. It would be apt to mention here that it is not the case where the petitioner was employed/appointed for the first time in the government job and if he had discernment that his case would not be considered, he may not have joined the establishment. True it is that after formation of the State of Chhattisgarh and the Establishment of the High Court of Chhattisgarh, the Department was in need of dexterous candidates/employees and they were also employed on deputation and subsequently absorbed in the Department, albeit there was uncertainty apropos their seniority initially, but subsequently they were absorbed from the date of their first joining in the Establishment of the High Court of Chhattisgarh, but such is not the case here. In the present case, the petitioner is seeking seniority based on the services rendered by him in the previous Department of the High Court of Madhya Pradesh despite the conspicuous fact that he was appointed through direct recruitment and he joined the services in the Establishment of the High Court of Chhattisgarh after tendering his resignation to the Department of the High Court of Madhya Pradesh, but he remained avowed to the conditions foisted by him in the letter written to the Department of High Court of Chhattisgarh apropos seniority from the date of his initial appointment in the erstwhile Department.

11. It is well settled proposition of law that the employer is not bound by the conditions imposed by an employee prior to the joining on the post. It is the absolute volition of an employee to join the services or not and the Department is nowhere obligated to accept the conditions foisted by the employee. True it is that the posts of AG-II were advertised against the experienced AG-III atleast having 5 years experience or equivalent posts in District/High Court, but the fact remains that no such condition was mentioned in the appointment order (Annexure-P/9) that the past services of the employees shall be counted. The petitioner joined his services after tendering his resignation to the previous Department and was recruited through direct recruitment. The appointment order of the petitioner only fortifies that the seniority of the petitioner or other employees shall be counted as per their seniority in the appointment order.

12. In view of the foregoing discussions, this Court is of the considered view that the petitioner has not been set at naught by the respondent Department while fixing his seniority and once the petitioner joined his services, he is bound to follow the conditions enumerated in the appointment order (Annexure-P/9), wherein it is unequivocally mentioned that the seniority of the employees shall be counted as per their seniority in the appointment order, as such the petitioner is not entitled to any relief claimed by him.

13. The petition being sans stratum deserves to be and is hereby dismissed. No order as to cost (s).