

(2017) 06 SHI CK 0053
In the High Court Of Himachal Pradesh
Case No : 17 of 2012

RAJINDER KUMAR

APPELLANT

Vs

HONBLE HIGH COURT OF H P AND OTHERS

RESPONDENT

Date of Decision : 21-06-2017

Acts Referred:

[Himachal Pradesh Higher Judicial Service Rules, 1973](#), Rule 7

Citation : (2017) 06 SHI CK 0053

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : Ramakant Sharma, T S Chauhan, Malay Kaushal, Vivek Singh Attri, K D Sood, Sanjeev Sood

Final Decision : Dismissed

Judgement

1. Under an advertisement issued by the Public Service Commission, advertisement whereof is comprised in Annexure P-1, 7 vacancies were notified to be filled up by competitive examination(s), amongst vacancies whereof, two stood reserved for aspirants, belonging to the Scheduled Caste and one stood reserved for aspirants, belonging to other backward classes. The petitioner, as well as respondent No.3 did uncontrovertedly appear in the H.P. Judicial Service Competitive Examination, 2003, examination whereof was conducted under the aegis of the H.P. State Public Service Commission. The petitioner qualified the H.P. Judicial Service Written Examination. Consequently, he under Annexure P-3 was summoned to appear in viva voce test. In sequel to his success therein, the petitioner under Annexure P-4 was appointed to the H.P. Judicial Services. The name of the petitioner continued to be reflected above the name of respondent No.3 in the gradation list(s) circulated by the High Court of Himachal Pradesh. The relevant gradation list(s) comprised in Annexures P-9 to P-11, reveal therein the occurrence of name of the petitioner, above the name of respondent No.3. The factum of revelation of the name of petitioner above the name of respondent No.3, especially in the gradation list(s) from 1.1.2006 to 1.1.2010, remained

unprotested by respondent No.3 upto 29.09.2010, whereat she made a representation to the Registrar General of High Court of H.P., Shimla, wherein she sought rectification(s) with respect to the inappropriate revelation of her name therein, rectification whereof stood concerted "in" her name therein being shown/to be occurring above the name of the petitioner. She along with her representation appended, annexure-B, annexure whereof comprises the apposite merit list published by the Secretary, Himachal Pradesh Public Service Commissioner, wherein, the name of respondent No.3 occurs higher in merit vis-a-vis the name of the petitioner.

2. The representation made by the petitioner was placed on 8.11.2010 before the Hon"ble Full Court, wherein, it was resolved that the matter be referred to a Committee of Hon"ble Judges to be constituted by Hon"ble the Chief Justice, for hence a decision being rendered upon the representation of respondent No.3. However, when the matter was placed on 2.6.2011 before the Committee of Hon"ble Judges, the committee concerned recorded the hereinafter extracted resolution:- "If on consideration, representation of Dr. Abira Basu, is found to have some merit, that will affect the seniority of S/Sh. Sachin Raghu and Rajinder Shiman, because she has claimed seniority above them, on account of her higher merit in the competitive examination. Therefore, before any decision is taken on the representation, it is desirable that S/Sh. Sachin Raghu and Rajinder Dhiman are afforded an opportunity to file their response to the representation of Dr. Abira Basu. We recommend accordingly."

3. In pursuance thereto, the judicial officers concerned, filed their respective response(s) to the representation made by respondent No.3, wherein, each espoused that the representation made by respondent No.3 is hit by delay and latches and hence is liable to be rejected. Also both the judicial officers in their respective responses furnished to the representation preferred by respondent No.3, voiced therein that since two posts "stood" under the apposite advertisement hence reserved for candidates belonging to the schedule caste category also when they evidently belonged to the aforesaid reserved category, besides when the relevant roster point allotted to the aforesaid category of candidates "fell above" the post(s) reserved for candidates belonging to the general category, hence, the occurrence of their names in the select list published by the Public Service Commission, being in consonance with the roster point falling to their category, whereupon, their letters of appointment acquired validation. Preeminently also they voiced that since the name of respondent No.3 did not figure in the initial select list drawn with respect to four posts reserved for candidates belonging to the general category, to category whereof respondent No.3 evidently belongs, hence, her representation warranted dismissal, imperatively when their respective inter se seniority is to be reckoned from the date of issuance of appointment letters, appointment letter(s) whereof with respect to the petitioner standing issued "prior to" issuance of appointment letter in respect of respondent No.3, concomitantly, rendered the petitioner to stand entitled to hold seniority above respondent No.3. The Committee of Hon"ble

Judges, "on" considering the propagation(s) made in the representation also "on" considering the espousals made by the objecting judicial officers concerned, recorded a decision, wherein, it accepted the representation made by respondent No.3. The reason assigned by the Committee of the Hon"ble Judges of this Court, while accepting the representation made by respondent No.3 "stood" anvilled upon the factum "of" prevalence at the apposite stage when the process for recruiting judicial officers stood initiated, "of" the relevant attractable rules, rules whereof stand christened as the Himachal Pradesh Judicial Service Rules, 1973, thereupon, with the proviso to Rule 7(2)(ii), Part V, pertaining to the reckoning of the relevant inter se seniority, graphically mandating that for determining the inter se seniority of judicial officers, who stand recruited to judicial services, in pursuance to a competitive examination held in any year, the order of merit obtained by them in the relevant examination, constituting the predominant mandated parameter for the relevant purpose also the Committee of the Hon"ble Judges had while accepting the representation made by respondent No.3 "alluded" to the latest Rules, which came into force on 20.03.2004, rules whereof stand nomenclatured as Himachal Pradesh Judicial Service Rules, 2004, wherein, the apposite Rule 13(3) holds an alike therewith mandate "with respect" to determination of the relevant inter se seniority.. The report of the Committee of Hon"ble Judges was accepted by the Hon"ble Full Court under a resolution passed in its meeting held on 29th September, 2011. The acceptance by the Hon"ble Full Court "of" the recommendations of the Committee of Hon"ble Judges, sequelled issuance of an order comprised in Annexure P-17, whereby, respondent No.3 was assigned seniority above one Sachin Raghu and Rajinder Kumar Dhiman. The petitioner is aggrieved by the aforesaid order, hence, is constrained to assail it, by preferring the instant writ petition before this Court.

4. The grounds as espoused by the learned counsel appearing for the petitioner for quashing Annexure P-17, "rests" upon the factum of the vigour of the reason(s) assigned by the Committee of Hon"ble Judges, for its hence accepting the representation of respondent No.3, suffering denudation, with respect to the facts at hand, especially when (a) the representation made by respondent No.3 is hit by delay and laches; (b) non occurrence of the name of respondent No.3 in Annexure P-4 holding the concomitant effect "of" assignment of seniority to respondent No.3 above one Sachin Raghu and one Rajinder Kumar Dhiman being afflicted with an enhanced malady of "its" being in derogation of the number of posts "advertised" under Annexure P-1, "to be filled" up from amongst candidates belonging to the general category, to category whereof respondent No.3, evidently belongs, especially when the issuance of appointment letters upon the aforesaid "preceded" issuance of appointment letters upon the representationist, wherefrom alone their inter se seniority is computable. Though the learned counsel appearing for the petitioner in anvilling the aforesaid submission has hence attempted "to except" the application hereat of the mandate of the proviso to Rule 7(2)(ii) of the Himachal Pradesh Higher Judicial Service Rules, 1973, proviso whereof stands extracted hereinafter, yet his

concert to scuttle the application hereat of the clout of the proviso to the apposite Rule(s) aforesaid, carries "no" sustainable force in the apparent face of their occurring a vivid depiction in Annexure P-14, with respect to respondent No.3 "in" the apposite competitive examination "securing" a merit higher than the petitioner and also a merit higher than one Sachin Raghu, besides when the reflections with respect to the aforesaid fact borne in Annexure P-14 "acquire conclusivity", given theirs not being concerted to be ripped of their tenacity, thereupon, the ensuing sequel is that with the apposite proviso holding a firm mandate with respect to the determination of inter se seniority of judicial officers, who conjointly appear in the apposite test, "enjoining reverence" being meted to their respective merit "acquired" in the relevant test, also with the proviso hence not meteing any deference to assignment(s) of roster point(s) to the category (ies) within whose domain, the objectors to the representation of respondent No.3 fell, nor hence, theirs being the reckonable parameter for determining the relevant inter se seniority. In aftermath, rather the proviso to Rule 7 of the Himachal Pradesh Higher Judicial Service Rules, 1973 making a striking communication qua the relevant determination being made from the published order of merit in which "they" stood placed in the relevant competitive examination(s), in the published order of merit whereof, the name of the respondent No.3 occurs above the name of the petitioner, renders the reliance placed upon the apposite rules by the Committee of the Hon"ble Judges "to be" both, appropriate as well as tenable especialy when it falls in consonance with Annexure P-14. The relevant proviso to Rule 7 of the Himachal Pradesh Higher Judicial Service Rules, 1973 reads as under:- "7. (1) The High Court shall prepare and maintain a list of members of service appointed in order of seniority.

(2) The High Court shall prepare a list of members of Service, arranged in order of seniority as determined in the manner specified below:

(i) The persons appointed to the service Rule 7 (Part IV) of these rules shall be senior to all others appointed under Rule 5 (Part III) and their inter se seniority shall be the same as determined under Himachal Pradesh Subordinate Judicial Service.

(ii) In case of persons appointed under rule 5 (Part III) seniority in the service shall be determined by the order in which appointments are made to the service. Provided that persons recruited on the results of the competitive examination in any year shall be ranked inter se in the order of merit in which they are placed at the competitive examination on the results of which they are recruited, those recruited on the basis of an earlier examination being ranked senior to those recruited on the basis of the later examination."

5. The effect of the aforesaid conclusion is that even if, the roster point prescribed for the category to which the objectors to the representation of respondent No.3 "fell" occurs higher vis-a-vis the roster point prescribed for candidate(s) falling in the general category, the prescriptions in the apposite roster point(s) "not" holding any relevance, given their effect standing effaced by

the proviso to Rule 7 of the Himachal Pradesh Higher Judicial Service Rules, 1973, "predominantly", when no challenge stands cast to the vigour/vires of the prevalent apposite Rules. Nowat, with conclusivity standing acquired by Annexure P-14, also with hence this Court determining that the proviso to the apposite Rules holds its fullest command and clout "with respect to" the determination of inter se seniority of judicial officers, who stand recruited through a common competitive examination, thereupon, for facilitating that the play/might of the proviso is efficaciously carried forward, it would be unbefitting to attract thereon the purported malady of delay and laches, also it would be concomitantly unbefitting to conclude that, hence, the instant petition also stands infected with the aforesaid malady, conspicuously, when on its invocation, this Court would proceed to concomitantly conclude that there is room for workability hereat "of the principle of estoppel", "for" correcting even a palpably void continuing erroneous apposite reflection with respect to the relevant inter se seniority, whereupon the vigour of the relevant prevailing proviso would also stand untenably denuded. Moreover, when hence the objectors concerned "would" despite their seniority standing determined in stark transgression of the relevant proviso "to" the apposite Rules, "continue to" untenably hold seniority above respondent No.3. Since, the appointment letters issued with respect to one Sachin Raghu and with respect to the petitioner, though do not unravel therein the name of respondent No.3, yet they appear to be issued "in" infraction of Annexure P-14, wherein, the name of respondent No.3 "occurs" above the names of the objectors concerned. It appears, that hence the appointment letters issued to one Sachin Raghu and to the petitioner, "stood" hence issued in gross derogation of Annexure P-14 also in gross derogation of the mandate of the apposite Rules. Obviously, hence, the mandate of the appointment letter(s) though issued prior in time with respect to the petitioner and with respect to one Sachin Raghu vis-a-vis their issuance with respect to respondent No.3, "is irreverable" for the relevant purpose. The Registry of this Court in/on their anvill, also appears to have drawn up the gradation list(s) wherein there was a concomitant erroneous reflection qua the name of the petitioner and of one Sachin Raghu occurring above the name of respondent No.3 "despite" her(s) in consonance with the apposite Rules standing entitled to be ranked therein "above" the petitioner as well as above one Sachin Raghu, gross error whereof stood ordered to be rectified by a committee of Hon"ble Judges of this Court. The Hon"ble Apex Court in Dr. H. Mukherjee versus Union of India, AIR 1994 SC, 495 has held that the merit/seniority list prepared by the Public Service Commission concerned, on the basis of the respective inter se merit of competing contestants "attains finality". The aforesaid mandate recorded by the Hon"ble Apex Court also holds its fullest sway hereat. Consequently, the merit/select list comprised in Annexure P-14, as stands "drawn" by the H.P. Public Service Commission has to be meted its apposite deference. However, despite no challenge being thrown against the aforesaid order of merit of candidates prepared by the H.P. Public Service Commission, it appears that Government concerned had untenably issued appointment letters upon the objectors concerned, "prior to" issuance(s)

thereof vis-a-vis respondent No.3, issuance(s) whereof is in derogation of the mandate of the Hon"ble Apex Court comprised in a decision reported in Jatinder Kumar versus State of Punjab, AIR 1984, S.C., 1850 wherein it is propounded that the government "cannot" make any picking and choosing from the "merit list". Hereat, it appears that the government has arbitrarily chosen the petitioner and one Sachin Raghu for appointment also hence, it has arbitrarily ignored to issue an appointment letter to respondent No.3 despite "hers", for reasons aforesaid, being along with the aforesaid standing entitled to be appointed to the post to which she stood selected, given hers holding a higher ranking vis-a-vis them, in the competitive examination(s) wherein all participated. The aforesaid judgment also propounds the proposition that the relevant inter se seniority amongst contestants, is determinable on the anvil of the order of merit acquired by each, in the competitive examination(s), rather than on anvil of the date of appointment/confirmation, wherefrom, the inevitable ensuing corollary "is" that with the merit list prepared by the H.P. Public Service Commission, in sequel, to the participation, in the relevant examination, "of" the petitioner along with respondent No.3, hence holding preponderance also when therein the name of respondent No.3 "occurs" above the name of the petitioner, renders it to enjoy force in the matter of determination of seniority inter se the petitioner and respondent No.3, despite the precedingly issued appointment letter(s) upon the petitioner vis-a-vis respondent No.3.

6. Lastly, with this Court for all reasons aforesaid concluding, that the order appointing the petitioner comprised in Annexure P-4, wherein, the name of respondent No.3 "does not" occur being in stark transgression of the order of merit comprised in Annexure P-14, wherein, the name of respondent No.3 occurs above the petitioner, on anvil thereof the petitioner cannot disturb the efficacy of the apposite proviso existing in the relevant Rules. More so, when on its might/play standing attracted, it "cannot" oust the claim of respondent No.3 "to secure" in the apposite seniority list "a" rank higher than him. Also when the relevant orders/gradation lists are legally void and when there is no limitation for challenging in valid orders/gradation lists, as mandated in State of M.P. versus Syed Qamarali 1967 SLR 228, P.L.Shah versus Union of India, & Anr, 1989, AIR, SC 985 and M.R. Gupta versus Union of India and others 1996 AIR, S.C., 669, also when unless the apposite corrections are made in the seniority lists/gradation lists with respect to their inter se respective seniority, it would result in perpetration of a continuing wrong upon the aggrieved besides when there is no limitation prescribed for correcting a continuing wrong rather it being rectifiable upon its standing noticed, also begets a firm inference that the representation of respondent No.3, is not hit by delay and laches nor also the petitioner can contend that the impugned decisions are lacking in legal potency.

7. For the foregoing reasons, there is no merit in the instant petition which is accordingly dismissed. All pending applications also stand disposed of. Records be sent back forthwith.