
(2011) 08 P&H CK 0197
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 342 of 2011

Shyam Lal Gupta and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Constitution of India, 1950 — Article 141

Punjab Civil Secretariat (State Service Class — III) Rules, 1952 — Rule 9

Citation : (2011) 08 P&H CK 0197

Hon'ble Judges : M.M. Kumar, J; Gurdev Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.

1 The instant appeal under Clause X of the Letters Patent Appeal is directed against judgment dated 30.06.2011 rendered by the learned Single Judge dismissing the writ petition filed by the Appellant holding that the service rendered by them in erstwhile Department of Consolidation of Holding which was wound up, could not be counted for the purposes of seniority after their absorption as Clerk in Punjab Civil Secretariat.

2. There is no dispute on facts that the writ Petitioner-Respondent were initially appointed on 20.04.1960 (Annexure P-1). They had started working in the office of the Settlement Officer Consolidation of Holdings, Patiala. However, their services were retrenched on 03.03.1966. Thereafter, they were absorbed on 02.04.1966 (Annexure P-3) and they were offered appointment as temporary Clerk in Punjab Civil Secretariat on 27.04.1966 (Annexure P-4). The Respondent-State issued instructions on 21.07.1978 (Annexure P-6). According to Clause 3 of the instructions it was stipulated that the ministerial staff of the consolidation department absorbed in any other department may be assigned seniority on the basis of the continuous length of service in the same or equivalent cadre. Despite, the fact that a favourable departmental memo was issued the Appellant

did not proceed for enforcement of their rights and instead kept on making representation after representation. One such representation was made on 25.09.1989 (Annexure P-7) and the other one was made on 06.12.1989 (Annexure P-8). Thereafter, it was followed by a legal notices dated 14.11.1990 (Annexure P-11 & P-12).

3. In the written statement filed by the Respondent State of Punjab, an objection was raised that the Appellant joined service of the State of Punjab before reorganization of the States of Punjab and Haryana but made a representation against their existing seniority for the first time in 1989. With regard to the instructions dated 21.07.1978 concerning fixation of seniority by granting benefit of earlier service it has been point out that a question of seniority of Appellant is governed by Rule 9 of the Punjab Civil Secretariat State Service Rules 1952. According to the aforesaid rules seniority is to be fixed from the date of substantive appointment in the Punjab Civil Secretariat. An objection has been raised with regard to huge delay by private Respondents in their written statement.

4. The learned single Judge has dismissed the writ petition by holding that all the Appellant has already retired except Appellants No. 3 and 5 who had expired. The learned single Judge appears to hold that even if the benefit of service rendered in the erstwhile department of consolidation of holdings is counted no benefit would in fact accrue to the Appellants. Thus, the claim made by the Appellant on the basis of the Full Bench judgment of this Court rendered in Kartar Singh and Ors. v. State of Punjab and Ors. 1989 (4) SLR 340 was rejected. The learned Single Judge has invoked the principle of no work no pay.

5. We have heard the learned Counsel for the parties and are of the view that the conclusion reached by the learned Single Judge is correct although we may not be able to accept the reasoning adopted in the impugned judgment. It is true that the instructions dated 21.07.1978 (Annexure P-6) were issued which stipulated that the ministerial staff of the Consolidation Department absorbed in any other department deserved to be assigned seniority on the basis of the length of continuous service in the same or equivalent cadre. It is also true that the aforesaid instructions have been upheld by Full Bench of this Court in Kartar Singh's case. However, the Appellant filed the writ petitions only in the year 1991. Firstly, they have cause of action available to them in the year 1966 and at best they could have approached the Court in the year 1978 after instructions were issued on 21.07.1978. However, they preferred to maintain blissful silence with regard to their right of seeking benefit of seniority by adding to their advantage of the service rendered by them in the erstwhile department of consolidation of holding. Merely because the instructions dated 21.07.1978 (Annexure P-6) have been upheld by a Full Bench in the year 1989 would not arm the Appellant with a fresh cause of action. The aforesaid question have been considered and debated before another Full Bench of this Court in the case of Punjab State Electricity Board, Patiala and another Vs. Ashok Kumar Sehgal and

others, . In that case the Assistant Lineman had approached the Court for promotion to the post of Lineman in the Punjab State Electricity Board after more than 10 years of promotion of their junior. The reason given for belated filing of the writ petition was that the educational qualification imposed by the rules were declared inapplicable in the case of promotees by the Hon''ble the Supreme Court in the case titled as Punjab State Electricity Board v. Ravinder Kumar Sharma AIR 1987 SC 367. Dismissing the claim made by a Assistant Linesman after a period of 10 years for his promotion their Lordships of the Full Bench in para 52 held as under:

52. For the abundance of legal authority on the proposition that delay and laches play a significant part in the grant or denial of relief to a writ Petitioner, we have no option but to adversely comment that not a word has been said in his petition by Ashok Kumar Sehgal as to why he did not challenge a similar quota rule in 1970, for then he was an Assistant Linesman, and then again on his promotion to the post of Linesman in 1973 why did he cannot challenge that rule in that year, and even as late as July, 1977 when statedly his junior Ramesh Kumar was promoted as Line Superintendent. The unexplained delay of 10 years assumes significance when we know and can conceive what would have transpired in that decade and how many innocent Line Superintendents would have become entitled to sit back and consider that their appointment and promotion effected a long time ago would not be set aside after a lapse of a number of years. Thus, on this ground also Ashok Kumar Sehgal should have been denied the relief.

(emphasis added)

6. A perusal of the aforesaid para would show that the question of delay cannot be explained merely because a judgment favourable to an employee has been delivered by the Courts including the Hon''ble Supreme Court which is considered as declaration of law under Article 141 of the Constitution. If in that situation explanation of delay could not be accepted it would be well-nigh impossible to accept the explanation rendered by the Appellant on the ground that the Full Bench of this Court in Kartar Singh's case (supra) has upheld the validity of instructions dated 21.07.1978. Accordingly, we find that the writ petition suffered from delay and laches and ought to have been dismissed on that ground by the learned Single Judge. Accordingly following the aforesaid reasoning we are inclined to dismissed the appeal.

7. There is another aspect which needs to be highlighted. The matter concerning seniority cannot be reopened as it unsettled the settled position. The aforesaid proposition has been laid down as a concept of law by a Constitution Bench of the Hon''ble Supreme Court in the case of Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, .

8. As a sequel to the above discussion, the appeal does not merit admission. It is found to be wholly without substance and the same is hereby dismissed.