

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 5356 of 1997@@
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Kulwant Kr. Sood ...Appellant (s)

Versus

State of H.P. & Anr. ...Respondent(s)

(With office report)

Date : 07/11/2001 This petition(s)/appeal(s) was/were called
on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAİK
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner/(s) Mr. Himinder Lal, Adv.
Appellant(s)

For Respondent(s) Mr. Rajiv Nanda, Adv.

UPON hearing counsel, the Court passed the following
O R D E R

.....L.....I.....J
.SP2

The appeal fails and is dismissed in terms of the
signed order. No costs.

.SP1

(J.S. Rawat)
Court Master

(Suneet Bala Sharma)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 5356 of 1997@@
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Kulwant Kr. Sood ...Appellant (s)

Versus

O R D E R~@@
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This appeal is by an employee who assails the order dated 15th November, 1996 passed by the Himachal Pradesh Administrative Tribunal, Shimla (the Tribunal).

The appellant was initially recruited as a Clerk in Himachal Pradesh Secretariat in the pay scale of Rs.110-250. The post of Assistant is a higher post in the pay scale of Rs.225-500. The recruitment to these posts is made under the rules framed by the Governor under proviso to Article 309 of the Constitution of India called "The H.P. Secretariat Class III Service (Recruitment) Promotion and Certain conditions of services) Rules, 1973", hereinafter referred to as "the Recruitment Rules").

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Certain posts of Assistants being available to be filled up in the Office of the Resident Commissioner of Himachal Pradesh, New Delhi, an advertisement had been issued and the option of the departmental candidates serving in Himachal Pradesh Secretariat was also taken. The appellant offered to serve as an Assistant in the Resident Commissioner's Office at New Delhi. After his application was forwarded to the Resident Commissioner who was the Head of the department, he was finally selected and later on appointment letter was issued in his favour from the Office of the Resident Commissioner at New Delhi on 5.7.74. That letter of appointment unequivocally indicates that the appointment was to a temporary post on the terms and conditions mentioned therein. One of the conditions was that no Travelling Allowance was to be paid for joining the post in Delhi. The Secretariat Administration at Shimla relieved the appellant to enable him to join his duties in the Office of the Resident Commissioner at New Delhi and by order dated 16th May 19974, it was stated that the appellant would sever all service connections from the Secretariat w.e.f. the date of his being relieved. The appellant thereafter joined the post of Assistant in the Office of the Resident Commissioner, New

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Delhi. While he was so continuing, the Governor appears to have passed an order of integration of the employees in the Office of the Resident Commissioner with the employees serving in the Secretariat on 27th of July 1984. It was stated therein that the integration would take effect from 01.03.1984. This order dated 27th of July, 1984 was superseded by an order of the Governor dated 7th of August, 1986 and under the said order of 7th August, 1986 the integration was sought to be taken effect to w.e.f. August 19, 1986. The said order was later on withdrawn in the year 1997. In 1999 however the order of withdrawal stood withdrawn and as on now, therefore, there has been an integration of the

Office of the Resident Commissioner with that of the Secretariat.

The appellant approached the Tribunal claiming inter alia that his services w.e.f. the date of his absorption in the Office of the Resident Commissioner should be taken into consideration for the purposes of seniority in the integrated cadre. At any rate, it was contended that it should be taken into account at least from 1984, the date on which there has been an integration of the two cadres. The Tribunal however
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taking into account the peculiar facts and circumstances of the case and inaction on the part of the governmental authorities in not confirming the post against which the appellant was serving, directed that the appellant would be entitled to have his seniority w.e.f. 30th November, 1980 and consequential benefits flowing therefrom inasmuch as it is on account of not declaring the post permanent which stood on the appellant's way of being confirmed and consequentially getting his seniority in the cadre. Though the State Government assailed this order of the Tribunal, but this Court did not grant special leave to the State. Therefore the direction of the Tribunal that the appellant would be entitled to have his seniority in the unified cadre w.e.f. 30th November, 1980 has reached its finality. The only question that arises for consideration is, whether from any earlier point of time, the appellant could claim that his seniority should be counted. It is no doubt true as contended by the appellant that he has been selected through a process of selection by the appointing authority for the post of Assistant way back in the year 1974 and he has been serving as an Assistant in the Office of the Resident Commissioner continuously from that date. But the question of counting his service for the purpose of seniority
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in a unified cadre would not arise inasmuch as until the Office of the Resident Commissioner was unified with that of the Secretariat, question of determination of seniority in a cadre does not arise.

Seniority of an employee is always required to be determined in a cadre on the basis of the relevant principles enunciated either in the Rules for Recruitment or in the absence of a rule, by an administrative instruction which remain operative in the field. But in the case in hand, the cadre itself having been unified only in the year 1984, it is difficult for us to accept the contention of the appellant that his services from 1974 should have been counted for the purpose of his seniority in the unified cadre. The Tribunal however has taken a sympathetic view and has granted the appellant seniority in the unified cadre w.e.f. 30th November, 1980 and this is because of the inaction on the part of the governmental offices in not taking steps for confirming the post in question. In this view of the matter and in view of the equitable consideration which have weighed with the Tribunal, we see no justification for our interference with that order of the Tribunal and grant the relief to the appellant for the purposes of his seniority in the unified
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cadre in respect of any services rendered prior to 30th November, 1980 notwithstanding the fact the appellant was recruited as an Assistant way back in the year 1974. In our considered opinion, there is no rules or even an equitable consideration on the basis of which the relief sought for in this appeal, could be granted to the appellant. The appeal accordingly fails and is dismissed, but in the circumstances there will be no order as to costs.

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(G.B. PATTANAİK)@@
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New Delhi;
November 07, 2001.

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(DORAISWAMY RAJU)@@
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