

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.2304/1999@@
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Balwinder S.Dhillon Appellant (s)

VERSUS

State of Punjab & Ors. Respondent(s)
(With Office Report)

Date : 21.02.2002 This appeal was called on for hearing today.@@
AA

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAİK
HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Appellant (s) M/s. Naresh Kaushik,Ms.Shilpa Chohan,Devashish
Bharuka & Mrs. Lalitha Kaushik,Advs.

For Respondent (s) Mr. V.A. Mohta,Sr.Adv.
Mr. Ashok K.Mahajan,Adv.

M/s.H.S.Munjral,Ms.Kawaljit Kochhar and
Rajeev Sharma,Advs.for
Mr. R.S.Suri,Adv.

UPON hearing counsel the Court made the following

O R D E R

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

Mr. Naresh Kaushik,Adv. for the appellant started
his arguments at 2.00 p.m. and concluded at 2.30p.m.
The appeal is dismissed.

.SP1
(Y.P.Dhamija) (Suneet Bala Sharma)@@
AA
Court Master Court Master@@
AAAAA

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2304/1999@@
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Balwinder S.Dhillon ...Appellant

Vs.

State of Punjab & Ors. ...Respondents

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....J.
.SP2

This appeal is directed against the impugned judgment of the High Court wherein the question of inter-se-seniority between the appellant and respondent No.3, both of whom were direct recruits to the post of Sub-Divisional Engineer, a post born in the Class-II of the Government is involved. It is undisputed that this appellant as well as said respondent No.3 were recruited to the service on the basis of a selection made by the Punjab Public Service Commission. The service conditions of these employees are governed by a set of rules framed under proviso to Article 309 of the Constitution called the Punjab Development and Panchayat (Class-II) Service Rules 1974 (hereinafter referred to as the "Recruitment Rules"). The case of the appellant is that even though both of them were selected by the Public Service Commission, and in adjudging merit the Commission has ascribed a higher position to the respondent No.3 than the appellant, but since the period of probation in case of the respondent No.3 was extended, the said respondent No.3 must

- 2 -

be held to be an appointee from the date of the completion of the extended period of probation and not earlier and that being the position, the appellant must be held to be senior to the respondent No.3 inasmuch as by legal fiction he would have a longer continuous length of service in the cadre. The High Court, however, on examining the relevant provisions of the recruitment rules, has come to the conclusion that the seniority of the members of the cadre is governed by rule 13, and in view of the proviso to rule 13, in respect of the members recruited by direct appointment the order of merit determined by the Commission, would govern the inter-se-seniority in view of the language of the proviso prohibiting that the said position shall not be disturbed in fixing the seniority.

It is contended by the learned counsel for the appellant that the Note -2 to rule 13, rule 12 which deals with the period of probation and rule 10 must be conjointly read, and on such a conjoint reading the conclusion is irresistible that the proviso to rule 13 would be subject to rule 12 and other provisions dealing with probation, and therefore the judgment cannot be sustained. To appreciate this contention, it would be appropriate to notice the aforesaid rules 10,12 and 13.

.....L.....J.....
.SP1

12.(1) Persons appointed to a post in the Service shall remain on probation for a period of two years, if recruited by direct appointment and one year if recruited otherwise:

13. The seniority inter se of members of the Service shall be determined by the length of continuous service on a post in each cadre of the Service.

Provided that in the case of members recruited by direct appointment the order of merit determined by the Commission shall not be disturbed in fixing the seniority.

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

It may be stated that the probation is provided both for the direct recruitment as well as for persons recruited otherwise including promotion. The main portion of rule 13 stipulates that the inter-se-seniority of the members of the service shall be determined by the length of continuous of service on a post in each cadre of the service. Thus, continuous length of service is the ordinary rule. But so far as direct recruits are concerned, the proviso to rule 13 takes it out of the main part of rule 13. Under the proviso, the merit determined by the Commission would govern the seniority, and it cannot be disturbed in fixing the seniority. Note-2 appended to the aforesaid rule therefore would apply to all those cases, which are not covered by the proviso and the seniority is governed by the main part of rule 13. That also is the effect, if a conjoint reading of rules 10, 12 and 13 is made. We are unable to accept the contention of the learned counsel for the appellant that even in the case of direct recruits notwithstanding the proviso,

in the event the probation period is extended, then such direct recruits can be held to be a member of the service only on completion of extended probationary period and their seniority would be reckoned from that date.

That apart, from the records it transpires that the probation period of the respondent No.3 had not been extended immediately after the completion of period of two years, but it stood extended only by an order dated 10th July, 1985, which order however has, in the meantime, been altered by the Government by order dated 10th January, 1997. It is stated to us that the legality of the said order of 10th January, 1997 is the subject matter of a pending Writ Petition before the High Court. We express no opinion on merits of the same. But we fail to understand how the probation of an employee could be extended in 1985 extending the same from 1982 to 1984. However, in view of our interpretation of the rules of seniority, as already stated, we need not delve into the matter any further. In our view, there is no merit in the appeal. The appeal stands dismissed.

.SP1
.....J.
(G.B. PATTANAİK)

.....J.
(S.N. VARIAVA)

New Delhi,
February 21, 2002

.....J.
(K.G.BALAKRISHNAN)