

Before M. Rama Jois & J. L. Gupta, JJ.

SOHAN LAL,—Petitioner.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 5971 of 1992.

May 27, 1992.

Constitution of India, 1950—Art. 226 & 227—Haryana Food and Supplies Department Sub Officer (Group C) Service Rules 1982—Rule 11—Whether the services rendered by the petitioner on ad hoc basis before his regular appointment in Civil Service counts for purpose of seniority—Held that ad hoc service is not to be counted for purposes of seniority.

Held, that the expression “member of service” has got a special connotation in relation to seniority, for rule 11 of the Rules, provides that *inter se* seniority of the members of the service shall be determined by the length of continuous service on any post in the service. It means that it regulates the seniority of the members appointed on regular basis either by promotion or by direct recruitment to any particular cadre.

(Para 4)

Held, that the Supreme Court has clearly laid down that the service rendered on *ad hoc* basis shall not be counted for seniority. Similar view expressed earlier in *Masood Akhtar Khan's* case has been reiterated in paragraph 6. This being the latest judgment of the Supreme Court declaring the law on the point has to be followed by us. The *ratio* clearly applies to the interpretation of rule 11 of the Rules.

(Para 5)

Further, held that therefore, for the reasons aforesaid, we answer the question as below :

“The service rendered by a person on ad hoc basis before his regular appointment to a cadre in civil service does not count for seniority”.

A. S. Tewatia, Advocate, for the Petitioner.

Jagdev Sharma, Addl. A. G. Haryana, for the Respondent.

JUDGMENT

Mandagadda Rama Jois, J.

(1) In this writ petition, the following question of law arises for consideration :—

“Whether the services rendered by a person on ad hoc basis before his regular appointment to a cadre in a civil service counts for the purposes of seniority ?”

2. The brief facts which have given rise to the above question of law are these. The petitioner had been appointed as a Sub-Inspector in the Food and Supplies Department of the State of Haryana on *ad hoc* basis on April 16, 1969. Originally it was only for a period of six months. Subsequently, he was allowed to continue from time to time till June 27, 1972. Again he was appointed on *ad hoc* basis by an order made by the Director on April 5, 1973 and he continued till September 30, 1973. He was regularly recruited to the post on April 18, 1974. As stated in paragraph 2, in the merit list, prepared by the Subordinate Services Selection Board he was at serial number 96 out of 115 candidates arranged according to merit. In this writ petition, he seeks for the writ of *mandamus* to the respondents to count his previous *ad hoc* service *inter alia* for the purpose of seniority. It is in these circumstances, that the question arises for consideration.

3. In the first instance, we wish to refer to the statutory rules regulating the fixation of seniority. The rules are the Haryana Food and Supplies Department Sub-officer (Group C) Services Rules, 1982 (hereinafter called the Rules). Rule 11 is the relevant rule providing for seniority. It reads :—

“Seniority, *inter se* of members of the service shall be determined by the length of continuous service on any post in the service :

Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre :

Provided further that in the case of members appointed by direct recruitment, the order of merit determined by that Board shall not be disturbed in fixing seniority :

Provided further that in case of two or more members appointed on the same date, their seniority shall be determined as follows :—

- (a) a member appointed by direct recruitment shall be senior to a member appointed by promotion or by transfer;
- (b) a member appointed by promotion shall be senior to a member appointed by transfer;
- (c) in the case of members appointed by promotion or by transfer seniority shall be determined according to the seniority of such members in the appointments from which they were promoted or transferred; and

(d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay preference being given to a member who was drawing a higher rate of pay in his previous appointment, and if the rates of pay drawn are also same, then by the length of service in the appointment and if the length of service is also the same the older member shall be senior to the younger member."

According to the above rule, the seniority of a member of the service has to be counted by the length of continuous service on any post in the service. According to the second proviso, in the case of a member appointed by direct recruitment, the merit determined by the Board shall not be disturbed in fixing seniority.

(4) The expression "member of service" has got a special connotation in relation to seniority, for rule 11 of the Rules, provides that *inter se* seniority of the members of the service shall be determined by the length of continuous service on any post in the service. It means that it regulates the seniority of the members appointed on regular basis either by promotion or by direct recruitment to any particular cadre. Apart from that, as far as this case is concerned, the second proviso is a complete answer to the contention urged by the learned counsel for the petitioner. According to that proviso in the case of members appointed by direct recruitment, the order of merit determined by the Board shall not be disturbed in fixing seniority. So far as the seniority of the petitioner is concerned, it stands fixed by the order of the merit arranged by the selection Board while preparing the select list. As stated earlier, out of 115 candidates, included in the selection list, the petitioner ranks at serial number 96. Therefore, the petitioner's claim that his *ad hoc* service must be added for purposes of fixation of his seniority is clearly untenable. The learned counsel for the petitioner, however, relied upon the decision of the Supreme Court in *G. P. Doval v. Chief Secretary, Government of U.P.* (1), and *Delhi Water Supply and Sewage Disposal Committee v. R. K. Kashyap* (2), in support of his contention. No doubt, in the above judgments, there are observations to the effect that *ad hoc* service has to be counted for purposes of seniority, but the Supreme Court was not dealing with a case which is covered by the specific statutory rules like the present one

(1) 1994 (2) Service Law Reporter 555.

(2) 1988 (6) S.L.R. 33.

which governs the fixation of seniority of the petitioner. Therefore, the *ratio* of the said two decisions is of no assistance to the petitioner.

(5) The learned Additional Advocate-General, Haryana, however, relied upon the Supreme Court decision in *Union of India v. S. K. Sharma* (3). The relevant part of the judgment are paragraphs 5 and 6. They read :—

“In our view the Tribunal was totally wrong in granting seniority to the respondent for the period of *ad hoc* appointment on the post of Professor (Senior Scale), in the facts and circumstances of the present case and wrongly applied the *ratio* of *Narendra Chadha's case* (*supra*). The respondent was regularly selected as Professor (Junior Scale) and in view of the fact that the aforesaid post in the Civil Engineering Department was not vacant, he was adjusted against the post of Professor (P. G. Course) and subsequently against the post of Professor (Senior Scale) on *ad hoc* basis in his own grade. It is no doubt correct that the Tribunal in the earlier application No. T-159 of 1986 by order dated 12th June, 1986 had allowed arrears of pay and allowances for the period 28th June, 1969 to 29th September, 1973 for the post of Professor (Senior Scale), but that was allowed by the Tribunal on the ground that the respondent had actually worked against the post of Professor (Senior Scale) though on *ad hoc* basis. Such order of the Tribunal granting pay and allowances cannot confer any right on the respondent to claim seniority also on the post of Professor (Senior Scale). The approval of U.P.S.C. for the continuation of the respondent on the post of Professor (Senior Scale) on *ad hoc* basis was merely for the purpose of granting pay and allowances and it cannot be considered as a regular appointment of the respondent on the post of Professor (Senior Scale). It may be further noted that the respondent was selected for the post of Professor (Junior Scale) on regular basis on 28th June, 1969 and according to the extant rules three years service on regular basis on the post of Professor (Junior Scale) was necessary for promotion to

the post of Professor (Senior Scale). Thus the respondent was not even eligible for promotion to the post of Professor (Senior Scale) prior to June 28, 1972 till he completed three years of service on the post of Professor (Junior Scale). In view of this ground also the respondent was not entitled to claim any seniority on the post of Professor (Senior Scale) from 28th September, 1969 the date of his *ad hoc* appointment on such post. *Narendra Chadha's case* (supra) does not give any assistance at all to the respondent and the Tribunal was wrong in applying the *ratio* of *Narendra Chadha's case* to the present case. It was held by this Court in *Narendra Chadha's case* that persons having been allowed to function in higher posts for 15 to 20 years with due deliberation it would be unjust to hold that there is no sort of claim to such posts and such persons could be reverted unceremoniously or treated as persons not belonging to the service at all, particularly where the Government is endowed with the power to relax the rules to avoid unjust results."

"In *Masood Akhtar Khan and others v. State of Madhya Pradesh and others* (4), it was held that if the initial appointment is not made according to the rules, subsequent regularisation of his service does not entitle an employee to the benefit of intervening service for seniority. Seniority has to be reckoned from the date of regular appointment and not to be counted from the date of any stop-gap appointment."

As can be seen from the above, the Supreme Court has clearly laid down that the service rendered on *ad hoc* basis shall not be counted for seniority. Similar view expressed earlier in *Masood Akhtar Khan's case* (supra) has been reiterated in paragraph 6. This being the latest judgment of the Supreme Court declaring the law on the point has to be followed by us. The *ratio* clearly applies to the interpretation of rule 11 of the Rules. We are, therefore, of the opinion that the *ratio* in *S. K. Sharma's case* (supra), is apposite to this case.

(6) Our attention was, however, drawn to the decision in C.W.P. No. 8063 of 1991, decided on September 2 1991, rendered by another Division Bench of this Court in which there is a

direction to determine seniority by taking into consideration the *ad hoc* service. We have gone through the said judgment. Rule 11 of the Rules which provides for fixation of seniority and which emphatically provides that the ranking arranged by the selection Board shall not be disturbed had not been brought to the notice of the Division Bench as a result Rule 11 has not been considered or interpreted. The decision is of no assistance to the petitioners. Moreover, the Division Bench decision runs counter to the decision of the Supreme Court in S. K. Sharma's case (*supra*). It is impermissible for us to follow the Division Bench judgment not only in view of rule 11 of the Rules, but also in view of the ration of the decision of the Supreme Court in the subsequent judgment in S. K. Sharma's case (*supra*). Therefore, for the reasons aforesaid, we answer the question as below :—

“The service rendered by a person on *ad hoc* basis before his regular appointment to a cadre in civil service does not count for seniority.”

7. We, however, wish to make it clear that we do not express any opinion on the question whether the *ad hoc* service counts for leave, increment and pension. Our answer is only in relation to the counting of *ad hoc* service and fixation of seniority. As far as the fixation of pay, pension or increments are concerned, the petitioner will be at liberty to make a specific demand if he has not already been given the relief. He shall be at liberty to approach this Court if the said grievance is not redressed. This writ petition is dismissed.

J.S.T.

Before Hon'ble Jawahar Lal Gupta, J.

SHRI SAT PAL AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 6048 of 1991.

August 19, 1992.

Punjab Town Improvement Act, 1922—Ss. 60, 61, 62 and 63—Remuneration payable to staff of Tribunal—Such remuneration whether a concession—Reduction of remuneration retrospectively—Whether executive has power to do so.