

Before Rajendra Nath Mittal, J.

AVINASH CHANDER,—Petitioner.

versus

STATE OF PUNJAB and another,—Respondents.

Civil Writ Petition No. 1078 of 1978.

May 17, 1980.

Punjab Food & Supplies Department (State Service Class III) Rules, 1968—Rules 3 and 11—Punjab Civil Service Rules, Volume I, Part I, Rule 4.21, Note 3—Person appointed on temporary basis against a temporary post—Such appointment—Whether can be said to be on ad hoc basis—Such employee—Whether a member of the service and governed by the rules—Government instructions requiring fixation of seniority from the date of regularisation—Seniority of the members of service—Whether to be fixed under rule 11 from the date of continuous appointment.

Held, that the Government could make additions to or reductions in the cadre of service whether permanently or temporarily under the provisions of rule 3 of the Punjab Food and Supplies (State Service Class III) Rules, 1968. Merely because the post was temporary and a temporary appointment was to be made against that post, it cannot be said that the appointment was on *ad hoc* basis. *Ad hoc* appointment is made as a stop-gap arrangement; for instance, if a selection is required to be made by following a particular procedure, an appointment made as a stop-gap arrangement to carry on the work of the Government before the regular selection. From a reading of clauses (1) and (2) of Note 3 to Rule 4.21 of the Punjab Civil Services Rules, Volume I, Part I, it is evident that a temporary post is considered to be a temporary addition to the cadre of the service if it is not created for the performance of special task unconnected with the ordinary work, which is generally performed by the service. Under proviso to rule 3, the Government can create temporary posts in the cadre. Therefore, it emerges that if temporary posts in the cadre are created by the Government, the persons appointed on these posts are members of the service and governed by the Rules. Thus, a person holding such a temporary post on temporary basis cannot be said to be employed on *ad hoc* basis.

(Paras 9, 10 and 12).

Held, that the Government cannot issue any instruction against statutory rules. Rule 11 provides that the *inter se* seniority of the members shall be determined from the date of their continuous appointment in the service. The Chief Secretary cannot lay down

any other principle for determination of the seniority of the members of the service. In case the Government wants to do so it should amend the rules. (Para 13).

Writ Petition under Article 226/227 of the Constitution of India praying :

- (a) *that a Writ in the nature of Certiorari or any other appropriate writ quashing para 7 of the Order Annexure P/7, be issued.*
- (b) *that Writ in the nature of Mandamus directing the respondents to fix the seniority of the petitioner on the basis of continuous length of service with effect from 12th June, 1971, when he was appointed as Sub-Inspector in the Department.*
- (c) *that any other Writ, Order or Direction as this Hon'ble Court may deem fit under the circumstances of the case, be issued.*
- (d) *that the record of the case be sent for.*
- (e) *that the cost of the petition be awarded to the petitioner. Further praying that during the pendency of the Writ Petition, the reversion of the petitioner from the post of Junior Analyst to that of Sub-Inspector be stayed.*

And also praying that the condition of issuance of notice in respect of the prayer as stated to the respondents kindly be dispensed with as the petitioner is likely to be reverted at any time.

Kuldip Singh, Bar-at-Law, with S. S. Shergil, Advocates, for the Petitioner.

M. J. Singh Sethi, Additional A. G., Punjab, for the respondents.

(JUDGMENT

Rajendra Nath Mittal, J. (Oral).

(1) This judgment will dispose of Civil Writ Petition Nos. 1078, 1116, 1604, 1639, 1640 and 3288 of 1978, which contain the same question of law. The facts in the judgment are being given from civil writ petition No. 1078 of 1978.

Avinash Chander v. State of Punjab and another (R. N. Mittal, J.)

(2) The case of the petitioners is that the Director of Food and Supplies Department, Punjab (respondent No. 2) invited applications for direct recruitment to the posts of Sub-Inspectors in the Food and Supplies Department. In response to the advertisement, the petitioner submitted his application in March, 1971. He was asked to appear in a written test. He qualified that test and thereafter he was asked to appear for interview, in the office of the District Food and Supplies Controller, Jullundur. Then he was offered the post of a Sub-Inspector in the office of respondent No. 2,—*vide* order, dated June 12, 1971 (Copy Annexure P. 4). The conditions of service of the petitioner in that Department, are governed by the statutory rules known as the Punjab Food and Supplies Department (State Service Class III) Rules, 1968 (hereinafter referred to as 'the Rules'). Later he was promoted to the post of Junior Analyst,—*vide* order, dated January 21, 1975.

(3) It is further averred that during the period from 1971 to 1977 various seniority lists were circulated by respondent No. 2 and in all the lists the seniority of the petitioner had been shown on the basis of his continuous length of service, from the date of appointment, i.e., June 12, 1971. Respondent No. 2,—*vide* order, dated February 14/15 1978, appointed him on regular basis with effect from January 1, 1973, wherein it has been stated that his seniority would be determined in accordance with Chief Secretary's instructions, dated January 29, 1973. With effect from January 1, 1973. The petitioner has challenged the aforesaid condition *inter alia* on the ground that according to the Rules his seniority has to be determined from the date of his continuous appointment in the service and not from the date of regularisation in the service.

(4) The writ petition has been contested by the respondents who *inter alia* pleaded that in the first instance the petitioner was appointed on *ad hoc* basis. It is further stated that the date for the fixation of his seniority would be from January 1, 1973, i.e., the date with effect from which he has been regularised.

(5) Mr. Kuldip Singh, learned counsel for the petitioner, has argued that the petitioner was appointed to the service on June 12, 1971 on temporary basis. Later he was regularised on February 14/15, 1978 with effect from January 1, 1973. He argues that according to Rule 11 of the Rules the seniority of the petitioner shall be determined from the date of his continuous appointment in the

service. He also argues that the Chief Secretary could not issue any instruction against the Rules. According to him, the seniority of the petitioner, therefore, should be taken from June 12, 1971 and not from January 1, 1973.

(6) Mr. M. J. S. Sethi, learned Additional Advocate-General, submits that the petitioner was appointed on *ad hoc* basis on June 12, 1971 by the District Food and Supplies Controller, Kapurthala. He further submits that the Rules are not applicable to those employees who are appointed on *ad hoc* basis. He then urges that under the Rules, Director of Food and Supplies Department was the appropriate authority to make appointments and he appointed the petitioner,—*vide* letter, dated February 14/15, 1978 with effect from January 1, 1973. Earlier, the petitioner's appointment was not valid as he was appointed by the District Food and Supplies Controller, Kapurthala. Therefore, the Rules will be applicable to him with effect from January 1, 1973. He also argues that the Chief Secretary had specifically mentioned in the letter, dated January 29, 1973 that the seniority of the officers, who were being made permanent would be determined with effect from January 1, 1973. According to him, in the aforesaid situation his seniority has rightly been determined with effect from January 1, 1973.

(7) I have given due consideration to the arguments of the learned counsel. I, however, agree with the submissions, of Mr. Kuldip Singh. Before dealing with the submissions, reference may be made to the two relevant rules. Rule 3 says that the service shall comprise the posts shown in Appendix 'A' to the Rules. A proviso has been added to this rule wherein it is said that nothing in the Rules shall affect the inherent right of the Government to make additions to or reductions in the cadre of the Service whether permanently or temporarily. Rule 11 deals with seniority of members of the service. It says that the seniority *inter se* of members of service shall be determined by the date of their continuous appointment in the Service. Thus it is evident from Rule 11 that the seniority of a member is taken from the date of his continuous appointment in the Service.

(8) The first question that arises is whether the petitioner was appointed by the Director or by the District Food and Supplies Controller. The posts of Sub-Inspectors were advertised by the Director in February, 1971. The petitioner, in pursuance of the

Avinash Chander v. State of Punjab and another (R. N. Mittal, J.)

advertisement (Annexure P/1), filed an application for appointment against one of the posts. He received a letter, dated March, 1971 (Annexure P/2) from the Director, Food and Supplies, Punjab, informing him that an examination would be held at Jullundur and he should appear in the examination. After the examination having been held, he received another letter in May, 1971 (copy Annexure P/3) informing him that he had qualified the test and directing him to appear for interview in the office of the District Food and Supplies Controller, Jullundur. In pursuance of the letter he appeared for interview. Then he received the appointment letter, dated June 12, 1971 (copy Annexure P/4) from the District Food and Supplies Controller, Kapurthala. It may be highlighted that he was called for interview at Jullundur whereas appointed by the District Food and Supplies Controller, Kapurthala, as Sub-Inspector at Kapurthala. It is stated in the letter that he was liable to serve anywhere in the Punjab. From a perusal of the aforesaid letters it is evident that the recruitment of the petitioner was made under the orders of the Director, though the letter of appointment was sent by the District Food and Supplies Controller, Kapurthala. Subsequently, the same appointment was regularised by the Director,—*vide* letter, dated February 14/15, 1978 (copy annexure P. 7). It was specifically said in it that the petitioner had been regularised against that post. In case the earlier appointment had not been made by him, he would have made a fresh appointment and not regularised him. From the aforesaid circumstances, I am of the opinion that the petitioner was appointed as Sub-Inspector under the orders of the Director.

(9) The second question that arises for determination is whether the petitioner was appointed on *ad hoc* basis and thus was not governed by the Rules? It has already been mentioned above that the Government could make additions to or reductions in the cadre of service, whether permanently or temporarily under provisions of Rule 3. The petitioner was appointed on temporary basis against a temporary post and was later on regularised against it. It is not mentioned either in the advertisement or letters of appointment that the appointments were to be made on *ad hoc* basis. Normally it is mentioned in them. In the letter of appointment, dated June 12, 1971 the petitioner was offered a temporary appointment as Sub-Inspector, which he accepted. There is also nothing on the record to show that the post was created to do different type of work than that done by the members of the service. It is also nowhere said that an isolated post had been created for the

performance of special task, which was not connected with ordinary work. Merely because the post was temporary, it cannot be said that the appointment of the petitioner was *ad hoc*. *Ad hoc* appointment is made as a stop-gap arrangement for instance, if a selection is required to be made by following a particular procedure, an appointment made as a stop-gap arrangement to carry on the work of the Government before the regular selection. I do not think that the appointment of the petitioner falls in the above category. He was recruited through the Departmental Selection Committee. After taking into consideration all the above circumstances it cannot be said that the appointment of the petitioner was on *ad hoc* basis.

(10) Note 3 to Rule 4.21 of the Punjab Civil Service Rules, Volume I, Part I, deals with temporary posts. It reads/as follow:—

“Note 3.—

- (1) Temporary posts may be divided into two categories, viz. posts created to perform the ordinary work for which permanent posts already exist in a cadre, the only distinction being that the new posts are temporary and not permanent, and isolated posts created for the performance of special tasks unconnected with the ordinary work which a service is called upon to perform. An example of the latter type of post would be a post on a commission of enquiry. A distinction by strict verbal definition is difficult, but in practice there should be little difficulty in applying the distinction in individual cases. The former class of posts should be considered to be a temporary addition to the cadre of a Service whoever may be the individual appointed to the post; while the latter class of temporary posts should be considered as unclassified and isolated ex-cadre posts.
- (2) Temporary posts which by this criterion should be considered as temporary additions to the cadre of a Service should be created in the time-scale of the Service, ordinarily without extra remuneration. Incumbents of these posts will, therefore, draw their ordinary time-scale pays. If the posts involve decided increases in work and responsibility in comparison with the duties of the parent

Avnash Chander v. State of Punjab and another (R. N. Mittal, J.)

cadre generally, it may be necessary, to sanction a special pay in addition. Such special pay may only be allowed with the approval of the competent authority.

- (3) For isolated ex-cadre posts, it may occasionally be desirable to fix consolidated rates of pay. Where, however, the post is to be held by members of a service, it will ordinarily be preferable to create the post in time-scale of the holders service. The observations contained in paragraph 2 above will apply with equal force to the grant of special pay over and above the ordinary time-scale”.

From a reading of clauses (1) and (2) it is evident that a temporary post is considered to be a temporary addition to the cadre of the service if it is not created for the performance of special task unconnected with the ordinary work, which is generally performed by the service. Under proviso to rule 3, the Government can create temporary posts in the cadre. Therefore, it emerges that if temporary posts in the cadre are created by the Government, the persons appointed on these posts are members of the service and governed by the Rules.

(11) In the aforesaid view, I am fortified by the observations of a Division Bench in *Dharmesh Kumar and another v. The State of Haryana and another* (1), wherein the learned Bench after noticing Note 3 to rule 4.21 and a similar rule as is contained in rule 3 of the Rules, held thus:—

“This note clinches the matter in favour of the petitioner. Even under rule 3 of the Rules governing the Class III Services, the Government has a right to make additions to or reduction in the number of posts falling within the sanctioned strength of the cadre of the Service. There being nothing in the said rule 4.21 above-mentioned, note 3 thereto must be given its full effect in the case of the petitioners who, in our opinion, therefore, are as good members of the Service as these confirmed in the posts of Overseers”.

(12) Therefore, I am of the view that the petitioner in spite of holding a temporary post on temporary basis cannot be said to be

(1) C.W.P. 645 of 1978 decided on 23rd March, 1978.

on *ad hoc* basis. After his appointment, he became a member of the Service and was governed by the Rules.

(13) The last question that arises is whether the petitioner is entitled to his seniority from the date of appointment or from that of regularisation. It is true that in the letter, dated January 29, 1973, the Chief Secretary has said that the Government servants who would be regularised under the aforesaid letter would be entitled to the seniority from January 1, 1973. It is well settled that the Government cannot issue any instruction against statutory rules. The rule in the present case clearly provides that the *inter-se* seniority of the members shall be determined from the date of their continuous appointment in the Service. The Chief Secretary could not lay down another principle for determination of the seniority of the petitioner. In case the government wanted to do so it should have amended the rules. Consequently, the petitioner is not bound by the said letter. He is, therefore, entitled to his seniority from the date of appointment, i.e., June 12, 1971.

(14) The facts of the other writ petitions are similar and no additional argument was raised in them.

(15) For the aforesaid reasons, I accept the writ petitions and direct the respondents to determine the seniority of the petitioners from the dates of their appointment to the Service.

(16) No order as to costs.

H. S. B.

Before G. C. Mital, J.

POKHAR SINGH,—Appellant

versus

STATE OF HARYANA,—Respondent.

Regular First Appeal No. 1707 of 1978.

May 21, 1980.

Land Acquisition Act (1 of 1894)—Sections 3-D, 18, 26 and 54—Limitation Act (XXXVI of 1963)—Section 5—Reference under