

(14) For the foregoing reasons, these petitions fail and are hereby dismissed, but without any order as to costs.

N. K. S.

Before S. S. Sandhwalia, C.J. and G. C. Mital, J.

B. D. BALI,—Appellant.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 129 of 1981.

August 5, 1982.

Punjab Service of Engineers Class II (P.W.D., Irrigation Branch) Rules, 1941,—Rule 9(2)—Officer drawing higher pay on deputation reverted to the parent department—Such Officer—Whether can ipso facto claim seniority over those drawing lesser pay in the parent department—Fixation of basic pay in the parent department under proviso (II) to Rule 9—Whether can be claimed by the officer as that which he was drawing on deputation.

Held, that many a time, the posts on which persons are sent on deputation, carry a higher pay but on reversion to the parent office, the incumbent again starts getting the pay scale of the parent department. Therefore, it cannot be said that merely because a person on deputation draws a higher pay, he would ipso facto be entitled to claim seniority over all those drawing lesser pay in the parent department.

(Para 5).

Held, that proviso (ii) of Rule 9 of the Punjab Service of Engineers Class II (P.W.D., Irrigation Branch) Rules, 1941, shows that seniority has to be reckoned on the basis of pay, which a member is permitted to draw on the first appointment. A reading of the plain language of the second proviso to Rule 9 clearly goes to show that if on appointment to Class II Service, an incumbent is permitted to draw higher pay in the scale than the initial stage in the seniority list he will rank next below all members already drawing that pay at that time. Proviso II does not govern how the pay is to be fixed. It merely talks of the result if on first appointment an incumbent is permitted to draw higher pay, then as a consequence thereto, he can claim seniority over members of the service already serving in case their pay at that time was less

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than him. Therefore, an officer on return from deputation cannot ask for the fixation of the same basic pay in Class II Service which he was drawing while on deputation.

(Para 7).

Letter Patent Appeal under Clause X of the Letter Patent against the judgment of Hon'ble Mr. Justice I. S. Tiwana, dated November 27, 1980 in the above mentioned Civil Writ Petition.

Kuldip Singh Advocate with Ravinder Chopra, Advocate, for the Petitioner.

J. L. Gupta, Advocate, for Respondent No. 11.

S. K. Sayal, for the State.

JUDGMENT

Gokal Chand Mital, J.

(1) In the Letters Patent Appeal two questions of law arise for our consideration on the admitted facts of the case:—

- (1) Whether drawing of higher pay on deputation would *ipso facto* make the incumbent senior when he reverts back to the parent department over all those drawing lesser pay; and
- (2) whether on the basis of proviso (II) to Rule 9 of the Punjab Service of Engineers Class II (P.W.D., Irrigation Branch) Rules, on return from deputation, the incumbent can ask for fixing of the same basic pay in Class II Service, which he was drawing while on deputation?

(2) Shri B. D. Bali (hereinafter referred to as Shri Bali) was appointed as temporary engineer under training on 23rd July, 1951 and was later on appointed as temporary engineer in Irrigation Department on 23rd January, 1952 in the pay scale of Rs. 250-750. There was an advertisement for the post of Assistant Works Manager in the Railway Workshop, Amritsar, carrying pay scale of Rs. 375-925. Shri Bali applied for that post and was selected and appointed as Assistant Works Manager on 27th August, 1954. During the year 1955, the Railway Workshop, Amritsar, was sought to be transferred to the Indian Railways under the Union of India as

till then it was under the Punjab Government. Accordingly options were sought from the incumbents working in the Railway Workshop, Amritsar, as to whether they wished to remain with the Punjab Government or opt to go to the Central Government. Shri Bali opted to go to the Central Government in the Railway Department, but this option was not accepted,—*vide* decision, dated 2nd January, 1956. On 1st June, 1956, the Railway Workshop, Amritsar, was transferred to the Indian Railways under the Union of India and by order, dated 19th June, 1956, Shri Bali was treated on deputation in the Railway Workshop, Amritsar. Before the workshop was taken over by the Union of India, Shri Bali represented that he was entitled to the benefit of contributory provident fund and asked for sanction to allow him to contribute to the said fund with effect from the date of his appointment, viz., 27th August, 1954. He was informed that since his lien was as a temporary engineer in the Irrigation Department, he could not be allowed to contribute. Moreover, when the Railway Workshop was transferred to the Union of India, it was again conveyed to him while rejecting his option that the transfer of the workshop to the Ministry of Railways, will have no effect on his career as a temporary engineer. Therefore, before he was treated to be on deputation, at two stages he was told that his lien was as a temporary engineer. Shri Bali never challenged those orders, nor the order that he was on deputation. Therefore, it cannot be disputed that he continued to have lien as a temporary engineer in the Irrigation Department and was accordingly on deputation with the Railway Workshop.

(3) On 5th January, 1957, the Punjab Government asked the Railway Authorities for relieving Shri Bali, which request was accepted and on 18th July, 1957, Shri Bali was posted as an officiating Executive Engineer. Later on, by order, dated 20th January, 1961, he was appointed to Class II Service of Punjab Engineers on regular basis with effect from 1st October, 1959. On 25th July, 1961, Shri Bali made a representation claiming seniority over all other engineers who were drawing lesser pay than him on 27th August, 1954 on which date he took over as Assistant Works Manager in the higher pay scale of Rs. 275—925. The Punjab Government was inclined to take *ex parte* favourable decision in his favour and sought the permission of the Government of India. The Government of India wrote back that the case of Shri Bali be considered after hearing all other engineers over whom he wishes to claim

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seniority. When the matter was heard in the light of the directions of the Government of India, the Punjab Government rejected the representation of Shri Bali and thereafter he filed Civil writ petition in this Court which was finally disposed of on 27th November, 1980 by a learned Single Judge of this Court. It was held that neither because Shri Bali was drawing higher pay on deputation nor under proviso II to Rule 9 of the Rules he was entitled to claim seniority over all other Assistant Engineers, who were senior to him and who in fact had been promoted as officiating Executive Engineers prior to Shri Bali and were placed in Class II Service prior to Shri Bali. Accordingly, the writ petition was dismissed. This is letters patent appeal of Shri Bali.

(4) After hearing the learned counsel for the parties, we are of the view that no ground has been made out for interference with the well considered judgment of the learned Single Judge.

(5) Adverting to the first question of law, no provision, rule or precedent has been quoted before us that merely because a person on deputation draws higher pay, would entitle him to claim seniority on that basis when he reverts back to his parent department. While Shri Bali, worked on deputation as Assistant Works Manager, his lien was retained as Assistant Engineer and all through he was given the due place in seniority list below all those over whom he now claims seniority. Many a time, the posts on which persons are sent on deputation, carry a higher pay, but on reversion to the parent office, the incumbent again starts getting the pay scale of the parent department. Therefore, we do not find any merit in the first question of law.

(6) Adverting to the second question of law, since benefit is claimed under proviso II to rule 9 of the Rules, the said rule deserves to be reproduced.

“9. Seniority of members of the Service shall be determined in accordance with the order of their appointment to the Service.

Provided that:—

- (i) If two or more members are appointed on the same date, the order of seniority among them will be according to age subject to the proviso that if before promotion they were

- members of the same service their seniority will be the same as in the Service from which they were promoted;
- (ii) in the case of members, who on first appointment are permitted to draw higher pay in the scale than the initial stage, their seniority will be reckoned as next below all members already serving on that pay at the time of their appointment;
 - (iii) if the order of appointment of any member is cancelled and such member is subsequently appointed to the Service the date of appointment to the service for the purpose of this rule shall be the date of such subsequent appointment ;
 - (iv) if any officer appointed to the Service fails to qualify himself for substantive permanent appointment within the prescribed period of probation, Government may determine whether the date of his appointment for the purpose of this rule shall be postponed by a period not exceeding the period by which such officer's substantive permanent appointment is delayed beyond the prescribed period of probation."

(7) The scope of proviso (ii) was considered by a Division Bench of this Court in *Shri V. P. Duggal, Superintending Engineer and another v. The State of Punjab and others* (1). It was held that seniority will have to be reckoned on the basis of pay, which a member is permitted to draw on the first appointment. A reading of the plain language of the second proviso clearly goes to show that if on appointment to Class II Service, an incumbent is permitted to draw higher pay in the scale than the initial stage in the seniority list he will rank next below all members already drawing that pay at that time. It is not disputed that all the respondents who are senior to Shri Bali as Assistant Engineers, were promoted as officiating Executive Engineers prior to him and were brought in Class II Service prior to him, and were not drawing pay less than what Shri Bali was permitted to draw on his first appointment to Class II Service. What is urged on behalf of Shri Bali, is that his initial pay on appointment to Class II Service has been wrongly fixed at Rs. 435 instead of Rs. 525 which he was drawing while on deputation as Assistant

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Works Manager. Proviso II does not govern how the pay is to be fixed. It merely talks of the result if on first appointment an incumbent is permitted to draw higher pay, then as a consequence thereto, he can claim seniority over members of the service already serving in case their pay at that time was less than him. Shri J. L. Gupta, appearing for the respondents had invited our attention to the rule which governs the matter regarding fixation of pay. Since no claim was made either in the writ petition or before the learned Single Judge or before us in that behalf by Shri Bali, we decline to go into this matter. Therefore, even under proviso II to rule 9 of the Rules. Shri Bali cannot claim seniority over the respondents because on his first appointment, he was not promoted to draw higher pay in the scale then the initial pay as compared to the respondents, because admittedly they were drawing, if not more, the same pay as Shri Bali was permitted to draw. Therefore, under proviso II to rule 9 of the Rules, he was rightly placed below the respondents.

(8) Last of all it was contended that Shri J. D. Sahi, who was also in the Railway Workshop, Amritsar, was allowed to draw the same pay in the time scale which he was drawing as Assistant Works Manager when he was absorbed in Irrigation Department and, therefore, even Shri Bali should have been allowed to draw the same pay in the time scale of Assistant Works Manager. The example of Shri Sahi cannot be availed of for decision of the present case because second proviso to rule 9 of the Rules permits the State Government to allow drawing of higher pay in suitable cases when initial appointment is made in Class II Service. In the present case the Government did not think it fit to allow higher pay to Shri Bali on initial appointment in Class II Service because that would have brought down many seniors below him. It has not been shown that in the case of Shri Sahi the result of allowing higher pay to him affected his seniors. Hence the case of Shri Sahi is clearly distinguishable and in no way infringes Article 14 of the constitution of India.

(9) For the reasons recorded above, this appeal is dismissed, with no orders as to costs.

S. S. Sandhawalia, C.J.—I agree.

N. K. S.