

Raghuvir Lal Sehgal v. The Haryana State Electricity Board  
(Tuli, J.)

his legal representative was not substituted in time. When the appeals came up for hearing both of them were dismissed as having abated. The Judicial Committee of the Privy Council upheld the judgment of the High Court and observed that the right to sue did not survive against the other defendant alone as the appeals could not proceed in the absence of a representative of the deceased defendant. It was one cause of action in which the respective rights and liabilities of the different partners had to be determined and the same could not be done in the absence of one of them. Since I am holding that the second partnership was quite distinct from the first one, the question of abatement of the entire suit does not arise. The suit can proceed with regard to the partnership as originally constituted between the plaintiff and defendant respondent 1.

(9) In the result, the appeal is allowed, judgment and decree of the Court below set aside and the case remanded to the trial Court for decision in accordance with law in the light of the observations made above. There will be no order as to costs.

K. G. K.

CIVIL MISCELLANEOUS.

Before Bal Raj Tuli, J.

RAGHUVIR LAL SEHGAL,—Petitioner.

versus

THE HARYANA STATE ELECTRICITY BOARD, ETC.,—Respondents.

C. W. No. 109 of 1970

August, 21, 1970.

*Punjab Service of Engineers (Electricity Branch) Conditions of Service Rules (1939)—Rules 7—Punjab State Electricity Board Service of Engineers (Civil)—Regulation (1965)—Regulations 1(3) and 15—Appointments of Assistant Engineers under 1939 Rules—Conditions of appointment stipulating the appointment to be governed by the Rules and Regulations framed by the Punjab State Electricity Board in due course—Regulations framed long after the appointment—Seniority of such appointed Engineers—Whether to be fixed under the Rules or the Regulations.*

*Held*, that when Assistant Engineers are appointed under Punjab Service of Engineers (Electricity Branch) Conditions of Service Rules, 1939, and one of the conditions of the appointment stipulates that they would be governed by these Rules and by the Regulations framed by the Punjab State Electricity Board in this behalf in due course, the seniority of the appointed Engineers will be fixed by the 1939 Rules and not by the Regulations framed long after the appointment. The language of the proviso to Regulation 1(3) of Punjab State Electricity Board Service of Engineers (Civil) Regulations, 1965, makes it quite clear that such appointed Engineers will continue to be governed by Rule 7 of the 1939 Rules with regard to seniority and Regulation 15 of the Regulations pertaining to the subject will not apply to them as it will be to their disadvantage. The conditions of appointment only make the Regulations applicable to them prospectively and not retrospectively from the date of their appointment.

(Para 9)

*Petition under Articles 226 and 227 of the Constitution of India praying that a Writ of Mandamus or Certiorari or any other Writ, direction or order be issued quashing the order, dated 23rd December, 1969, passed by respondent No. 1 by which the petitioner's representation for refixation of his seniority was rejected and directing him to refix the petitioner's seniority in accordance with law.*

ANAND SWAROOP, SENIOR ADVOCATE WITH U. S. SAHNI, ADVOCATE, for the petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL, HARYANA, WITH ASHOK BHAN ADVOCATE, for respondent No. 1.

B. S. JAWANDA, ADVOCATE, for respondent No. 2, (KIRPAL SINGH, ADVOCATE, WITH HIM).

J. L. GUPTA, ADVOCATE, for respondents Nos. 2 & 4.

#### JUDGMENT

B. R. TULLI, J.—This judgment will dispose of C.Ws. Nos. 109 of 1970, *Raghuvir Lal Sehgal v. The Haryana State Electricity Board and others*; and 1269 of 1970, *Joginder Sain Chotani and another v. The Haryana State Electricity Board and another*, as common questions of law and fact arise in both these petitions.

(2) The facts are common and I state them with regard to C.W. 109 of 1970. The Punjab State Electricity Board invited applications for the posts of Assistant Engineers Class II in the pay-scale of Rs. 250—25—550/25—750, with a starting salary of Rs. 350, by an advertisement, which appeared in the "Tribune", dated December 1, 1963.

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The number of posts were 15 (Electrical), 6 (Mechanical) and 6 (Civil). The qualifications required for Assistant Engineers (Mechanical) and Assistant Engineers (Civil) were the same, that is, the candidates should possess B.Sc. degree (Honours), or First Division or higher Second Division from any Indian or foreign University and they must have obtained at least one year's practical training after the passing of the aforesaid examination in some reputed engineering works or in some design office. A representation was made to the Electricity Board by its employees, who had passed Parts 'A' and 'B' of Associate Membership Examination of the Institution of Engineers (India) in Civil Engineering, that they should also be made eligible for appointment as Assistant Engineers Class II (Civil). Thereupon an amendment in the advertisement was published wherein it was stated that for the post of Assistant Engineer Class II (Civil) the alternative qualifications required were—

“The candidates who have passed Section 'A' and 'B' of Associate Membership Examination of Engineers (India) in Civil Engineering are also eligible for appointment as Assistant Engineer Class II (Civil) provided they possess practical field experience of three years, before the passing of such examination. In the case of employees of the Board training/experience in field will be imparted as may be decided by the Board.”

(3) In response to the amended advertisement, some employees of the Punjab State Electricity Board, including respondents 3 and 4, applied for the said post. The petitioner had already sent his application. The candidates were interviewed by the Selection Committee of the Board and seven out of them were selected, whose names are as under:—

Shri J. S. Chottani (respondent 3).

Shri P. C. Sharma.

Shri H. R. Mukheja (respondent 4).

Shri R. L. Sehgal (petitioner).

Shri Roshan Lal Vij.

Shri Hari Sharan Palsoi.

Shri Satish Mohan Aggarwal.

Out of these seven, only the first four joined service. The petitioner was issued the offer of appointment on May 7, 1964, and after he accepted that offer he was posted as officiating Assistant Engineer Class II (Civil) in the scale of Rs. 250—25—550/25—750, with a starting salary of Rs. 300 per mensem, by an order dated July 3, 1964. This appointment was made against a newly created post and the petitioner was directed to join immediately, but in any case not later than July 13, 1964. A copy of the offer of appointment is annexure 'A' and the copy of the order dated July 3, 1964, is annexure 'B' to C.W. 109 of 1970. By order dated October 24, 1964, respondents 3 and 4 were sent for two months' training on the civil works in progress. In this order, their present posting is mentioned as officiating S.D.O. (Non-gazetted) (Civil) in their own scale of pay plus Rs. 30 P.M. as special pay and the proposed posting is mentioned as "officiating S.D.O' (Non-gazetted) in his own scale of Circle Draftsmen (Rs. 200/355) attached with S.D.O. Civil Works Sub-Division." These proposed postings were for purposes of training. After completing the training, respondent 3 was appointed as officiating Assistant Engineer Class II (Civil) in the scale of Rs. 250/750 with effect from January 2, 1965, while respondent 4 was appointed as officiating Assistant Engineers Class II (Civil) in the scale of Rs. 250/750 with effect from January 15, 1965. Another colleague of theirs, Shri Parkash Chand Sharma, was appointed as officiating Assistant Engineer Class II (Civil) in the scale of Rs. 250/750 with effect from January 6, 1965, as is clear from the copy of the office order dated April 7, 1965, which is annexure 'D' to C.W. 109 of 1970. Against the name of every one of these officers, it is mentioned "against the post already occupied by him". In annexure 'D', a note has been given to the following effect:—

"The above officers promoted as A.E. Class II (Civil) will be entitled to the same seniority as already assigned in the merit list."

In the Administration Report for the year 1964-65, the seniority of the petitioner and respondents 3 and 4, along with Shri P. C. Sharma, was shown in the same order in which the Selection Committee selected them. Against the fixation of that seniority the petitioner submitted a representation, which was rejected by order dated December 28, 1966.

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(4) The Punjab State Electricity Board was dissolved with effect from May 1, 1967, as a consequence of the reorganisation of the erstwhile State of Punjab and new State Electricity Boards were constituted for the States of Haryana and Punjab. The petitioner and respondents 3 and 4 were allocated to the Haryana State, while Shri P. C. Sharma and Shri C. S. Randhawa, along with others were allocated to the Punjab State Electricity Board. Shri Randhawa made a representation to the Secretary of the new State Electricity Board against his being placed junior to Shri P. C. Sharma, although he had been appointed earlier than Shri Sharma. This representation was accepted by the Board and Shri Randhawa was made senior to Shri P. C. Sharma. Shri P. C. Sharma challenged that order by filing a writ petition (C.W. No. 1749 of 1968) in this Court, which was accepted by me on May 12, 1969, on the ground that Shri P. C. Sharma had not been given a hearing against the representation of Shri Randhawa. I directed the Punjab State Electricity Board to redecide the matter of seniority of the parties to that petition after hearing them. The petitioner got himself impleaded in that writ petition on the ground that the interpretation of the same rules was involved in his case in order to determine his seniority. The petitioner also made a representation to the Haryana State Electricity Board on March 4, 1968, which was not decided till December 24, 1969. The petitioner was informed by the Secretary of the Haryana State Electricity Board by Memo, dated December 24, 1969, that "his representation for refixation of the seniority position already assigned to him had been considered but it had not been feasible of acceptance." The petitioner then filed the present writ petition in this Court on January 15, 1970. To counter-act that petition respondents 3 and 4 filed C.W. 1269 of 1970 against the Haryana State Electricity Board and the petitioner, Shri R. L. Sehgal, complaining that they should have been appointed by the Board earlier than Shri Sehgal on the basis of the merit list, and that they should be treated as having been appointed as Assistant Engineers Class II with effect from the date of appointment of Shri Sehgal, that is, July 13, 1964.

(5) On behalf of the respondents in C.W. No. 109 of 1970, a preliminary objection has been raised that the writ petition of Shri Sehgal is belated and should be dismissed as such. In support of this objection, it is submitted that his representation against the fixation of his seniority had been rejected on December 28, 1966, against which he

did not take any action in any Court. The reply on behalf of the petitioner is that the composite Punjab State Electricity Board was dissolved with effect from May 1, 1967, and new Boards were constituted for the States of Punjab and Haryana. He, therefore, could not file any proceedings in a Court of law against the composite Punjab State Electricity Board and before having recourse to a Court of law, he thought it fit to make a representation to the Haryana State Electricity Board on March 4, 1968, to enable it to consider the matter before taking it to a Court of law. That representation was rejected in December, 1969, and soon thereafter he filed the petition in this Court. The explanation is plausible and I do not consider it a fit case to be dismissed on the ground of delay.

(6) The main point to be considered in this case is as to which rules apply to the parties and what is the meaning of the date of appointment. It is the admitted case of the parties that prior to the enforcement of the Punjab State Electricity Board Service of Engineers (Civil) Regulations, 1965 (hereinafter called the Regulations), which came into force with effect from October 1, 1965, the rules applicable were the Punjab Service of Engineers (Electricity Branch) (Conditions of Service) Rules 1939 (hereinafter called the 1939 Rules). The petitioner as well as respondents 3 and 4 had been appointed as officiating Assistant Engineers under the 1939 Rules long before the Regulations come into force. The seniority of the petitioner and respondents 3 and 4 had, therefore, to be decided in accordance with 1939 Rules. The relevant rule is rule 7, which reads as under:—

“7. (1) Except as provided in Rule 7-A—The seniority of members of the service shall be determined as follows:—

(a) Members appointed to a higher scale of pay shall be senior to those appointed to a lower scale.

(b) In the case of members appointed to posts on the same scale of pay seniority shall be determined, in the first instance, by the date on which they joined their posts in that scale of pay, provided:—

(i) that if two or more members are appointed to posts on the same date, the older member shall be considered

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senior to the other, unless the younger member has been first confirmed in the Service, in which case the younger member shall be considered senior to the older, and

(ii) that in the case of those who held Gazetted posts in the Hydro-Electric Branch before the service was constituted seniority in a scale of pay shall be determined by the date on which they joined similar or higher appointments in the Hydro-Electric Branch, provided that service has been continuous from that date.

(2) Promotions to posts on a higher scale of pay will not be made on consideration of seniority alone but by selection."

(7) The clause applicable is clause (b) of sub-rule (1) of rule 7 under which the seniority had to be determined according to the date on which each member joined his post in the same scale of pay. Admittedly, the petitioner joined his post as officiating Assistant Engineer Class II in the scale of Rs. 250/750 on July 13th 1970, whereas respondents 3 and 4 joined that post in that scale of pay with effect from January 2, 1965, and January 15, 1965, respectively. All three of them were direct recruits as Assistant Engineers and, therefore, their order of seniority had to be fixed according to the date of their joining the post instead of fixing their seniority in accordance with rule 7 of the 1939 Rules, the Punjab State Electricity Board fixed the seniority of these officers under Regulation 15 of the Regulations, on the basis of the order of merit determined for them by the Selection Committee. This action of the Board has been justified by the respondents on the ground that condition 14 in the offer of appointment issued to the petitioner, made the Regulations applicable to him and the seniority determined in accordance therewith was in order. Condition 14 reads as under:—

"In all other matters not expressly provided for in this offer of appointment, you will be governed for the present by the rules as contained in Punjab Service of Engineers (Electricity Branch) (Recruitment and Conditions of Services) Rules, 1939, as may be amended from time to time

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by the State Electricity Board and by the Regulations framed by the Punjab State Electricity Board in this behalf in due course.”

(8) It is submitted on the basis of this condition that the Regulations, when brought into force, became applicable to the petitioner and his seniority had to be fixed in accordance with the Regulations. I regret my inability to agree to this submission. In this condition of service it was definitely stated that the petitioner was governed by the 1939 Rules when he was appointed and he would be governed by those Rules as amended from time to time and by the Regulations that might be framed by the Punjab State Electricity Board in future. That did not mean that the Regulations would be made applicable to him retrospectively from the date of his appointment. These Regulations came into force on October 1, 1965, and Regulation 1(3) stated that those Regulations “shall apply to every member of the Service.” There is, however, a proviso to this sub-regulation, which is quite important and gives the clue to the mind of the framers of the Regulations as to whether they were meant to be retrospective or only prospective in operation. The proviso reads as under:—

“Provided that where any of these regulations varies to the disadvantage of any such member the conditions of service applicable to him, immediately before the date of commencement of these regulations, the rules applicable to such member immediately before that date in respect to his conditions of service, to the extent to which any of these regulations is to his disadvantage, shall continue to apply to him.”

(9) It is quite clear from the language of this proviso that the petitioner continued to be governed by rule 7 of the 1939 Rules with regard to seniority and Regulation 15 pertaining to that subject did not apply to him as it was to his disadvantage. Condition 14 in the letter containing the offer of appointment to the petitioner only makes the Regulations applicable to him prospectively if they otherwise apply to him. In the instant case Regulation 1(3) itself made Regulation 15 inapplicable to him as it was to his disadvantage and the petitioner thus continued to be governed by rule 7 of the 1939 Rules in respect of his seniority. I, therefore, hold that the petitioner



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continued to be governed in the matter of seniority by rule 7 of the 1939 Rules and Regulation 15 did not apply to his case. Respondents 3 and 4, therefore, could not be given precedence over him in the matter of seniority on the basis of Regulation 15 of the Regulations. His seniority had to be determined in accordance with rule 7 of the 1939 Rules.

(10) In the light of my decision that rule 7 of the 1939 Rules applied, it has to be determined whether under that rule respondents 3 and 4 could get precedence over the petitioner. There was no rule in 1939 Rules that the Selection Committee was to draw up a merit list and the appointments were to be made strictly in the order in which the names were placed in that merit list. It was, therefore, open to the Electricity Board to make the appointments from that list in any order it liked. From the facts of the case, I am also led to believe that the Electricity Board never considered the list of selected candidates drawn up by the Selection Committee as the merit list. If it had done so, the appointments would have been made in the order in which the names were mentioned by the Selection Committee. It has to be remembered that the interview of the candidates was held on April 9, 1964, and the list of selected candidates must have been sent to the Board before May 7, 1964, on which date the offer of appointment was sent to the petitioner. The petitioner actually joined his post on July 13, 1964, in pursuance of the posting order dated July 3, 1964. During this period the training of two months prescribed for respondents 3 and 4 could have been imparted to them if the appointment had to be made in accordance with that list. On the contrary, while the petitioner was given the offer of appointment on May 7, 1964 respondents 3 and 4 were not issued any such offer. They were already in the service of the Electricity Board and continued in their posts till they were sent for training on October 29, 1964, which they completed in due course and it was after the completion of that training that they were appointed as officiating Assistant Engineers with effect from January 2, 1965, and January 15, 1965, respectively. It has not been explained why respondents 3 and 4 could not be sent for training immediately after the receipt of the so-called merit list from the Selection Committee. This fact conclusively proves that the list supplied by the Selection Committee was never considered as merit list nor was it considered necessary to make the appointments in the order mentioned in that list. The

dealing Assistant in the office, who scribbled the note on the representation of the petitioner in 1966, gave his opinion only in the light of the Regulations without considering the proviso to Regulation 1939 Rules and termed the list of selected candidates supplied by the Selection Committee as the merit list, a mention of which is made in Regulation 15. It is then stated on behalf of respondents 3 and 4 that their posting orders as officiating Assistant Engineers issued on April 7, 1965, bore a note that they would be entitled to the same seniority as already assigned to them in the merit list, it has not been explained on the basis of which rule was this note made on the said order, when the Regulations were not in force and 1939 Rules applied. Possibly the Regulations had been drafted by that time and the note was put on the basis of the draft Regulation 15. This note was not justified according to rule 7 of the 1939 Rules which admittedly applied to the parties before October 1, 1965, on which date the Regulations came into force. This note, being unauthorised as it cannot be supported on any statutory rule, did not confer any right on respondents 3 and 4 to claim seniority above the petitioner.

(11) For the reasons given above, I hold that the seniority of the petitioner and respondents 3 and 4 had to be fixed in accordance with rule 7 of the 1939 Rules and not in accordance with Regulation 15 of the Regulations. According to that rule, the seniority has to be determined from the date on which the petitioner and respondents 3 and 4 joined their posts in the same scale of pay of officiating Assistant Engineers Class II and on that basis there is no doubt that the petitioner has to be given seniority above respondents 3 and 4.

(12) In the written statement filed on behalf of the Haryana State Electricity Board, it has been stated—

“The Selection Committee allotting marks had taken into account the fact that Sarvshri J. S. Chotani and H. R. Mukheja were already working against the posts of Assistant Engineers Class II and their experience in this behalf was taken into account by the members of the Selection Committee.”

(13) In the light of the office orders dated October 24, 1964, and April 7, 1965, copies of which are annexures ‘C’ and ‘D’ to the writ petition, this assertion in the written statement that respondents 3

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and 4 had been previously working against the posts of Assistant Engineers Class II appears to be a mis-statement probably made under some misapprehension. Respondents 3 and 4 were holding the posts of officiating S.D.O. (Non-gazetted) (Civil) in their own scale of pay of Circle Draftsman in the pay scale of Rs. 200/355, plus Rs. 30 as special pay" when they were sent for training and during the training period their designation was "Officiating S.D.O. (Non-gazetted) in their own pay scale of Circle Draftsman (Rs. 200/355) and they were attached with different Sub-Divisions. After training they were promoted to the rank of officiating Assistant Engineers Class II (Civil) in the scale of Rs. 250/750 from their post of officiating S.D.O. (Non-gazetted) (Civil), which they were holding during the training period. If respondents 3 and 4 had been holding the post of Assistant Engineer before their selection by the Selection Committee, there was no need for them to apply for that post in response to the advertisement as direct recruits nor was there any need for the Electricity Board to give them further training. In the light of these facts, it is not possible for me to accept this averment in the written statement.

(14) In C.W. 1269 of 1970, the petitioners are Shri Joginder Sain Chotani and Shri H. R. Mukheja, who are respondents 3 and 4 to C.W. 109 of 1970, and the relief claimed by them is that they should be declared to have been appointed as officiating Assistant Engineers (Civil) with effect from July 13, 1964, on which date Shri Sehgal had been appointed. The basis for this claim is that in the merit list they had been placed higher than Shri Sehgal and their appointments should have been made in that order. I have already said above that in July, 1964, the parties were governed by 1939 Rules wherein there was no provision of making a merit list or making appointments in accordance with the order in which the names of the selected candidates were mentioned in that list, nor did the Electricity Board then consider the list of selected candidates sent by the Selection Committee to be the merit list. In fact, the merit list finds place only in Regulation 15 and not in the 1939 Rules. Shri Chotani and Shri Mukheja cannot, therefore, claim that they should have been appointed by the Punjab State Electricity Board prior to Shri Sehgal. I am further of the opinion that the relief claimed by the petitioners in C.W. 1269 of 1970 cannot be allowed as the appointments were made

by the composite Punjab State Electricity Board, which was dissolved with effect from May 1, 1967, and the present Haryana State Electricity Board is not a successor of that Board. The Board having ceased to exist, it is not possible now to quash its orders in its absence.

(15) It is to be regretted that the officers of the Haryana State Electricity Board, while deciding the representation of Shri Sehgal, did not care to read my judgment in P.C. Sharma's case (C.W. 1749 of 1968), who had been selected along with the petitioner and the respondents 3 and 4 by the Selection Committee. In that case, I had clearly held that 1939 Rules and not the Regulations applied to the determination of seniority and according to those Rules the seniority would count from the date of appointment and the date of appointment meant the date on which a particular officer assumed charge of his post in pursuance of the appointment made. I had quashed the order fixing the seniority of various officers and directed the Punjab State Electricity Board to re-decide the matter of their seniority after hearing them. For this reason, I consider that the Haryana State Electricity Board should pay the costs of the petitioner in C.W. 109 of 1970.

(16) For the reasons given above, I allow the writ petition of Shri Sehgal (C.W. No. 109 of 1970) with costs to be paid by the Haryana State Electricity Board and direct that the seniority of the petitioner should be fixed in accordance with rule 7 of the 1939 Rules above respondents 3 and 4. Counsel's fee Rs. 300, C.W. 1269 of 1970 is dismissed but without any order as to costs.

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K.S.K.

LETTERS PATENT APPEAL.

Before R. S. Narula and C. G. Suri, JJ.

LAKHPAT RAI SHARMA,—Appellant.

versus

ATMA SINGH,—Respondent.

Letters Patent Appeal No. 1 of 1967

August 26, 1970.

*Code of Civil Procedure (V of 1908)—Section 44-A—Limitation Act (IX of 1908)—Article 182(5)—Execution proceedings of a foreign decree in Indian*