

the Court that the Statute erodes the independence of Judiciary and that the debt is made recoverable as a tax or that the pleas of set off/ counter claim cannot be entertained, does not appear to be correct. Regretfully, though respectfully, a dissent has to be recorded.

(31) Prof. Wade in his treatise on 'Administrative Law' has said that—

“Tribunals are subject to a law of Evolution which fosters diversity of species. Each one is devised for the purpose of some particular Statute and is, therefore, so to speak, tailor made”.

(32) So is the present Statute. It has just been promulgated. It is subject to the law of Evolution. It is 'tailor-made' to meet the needs of the Society. It is not *ultra vires* or unconstitutional. It does not erode the independence of Judiciary. It does not shut out the pleas available to a person. Consequently, its provisions can't be struck down.

(33) Accordingly, both the writ petitions are dismissed *in limine*.

J.S.T.

Before R. S. Mongia & V. S. Aggarwal, JJ.

SATISH KUMARI & OTHERS.—*Petitioners.*

versus

STATE OF HARYANA & OTHERS.—*Respondents.*

C.W.P. 5633 of 1996.

September 27, 1996.

Punjab Forest Subordinate Services (Ministerial Section) Rules. 1943—Rl. 9—Seniority of members of service—Absorption of certain employees on specific terms—Determination of inter se seniority.

Held, that absorption in the department is not a statutory right. It was specifically stated by the Chief Principal Conservator of

Forests that on absorption they will be at the bottom of the seniority list *qua* the employees already in the department, meaning thereby that the private respondents if absorbed, would be deemed to have been appointed in the department on the said date. Consequently we are of the view that the absorption has to be on the terms and conditions of absorption. The absorption was on specific terms that they would rank in the seniority at the bottom of the employees already in service. Consequently, we are of the view that the private respondents were only entitled to reckon their seniority from the date of their absorption in the Forest Department and not with effect from the dates they were appointed in the DRDA/DPAP Schemes.

(Paras 9 & 10)

J. V. Yadav, Advocate, *for the petitioner.*

Amol Rattan AAG, Haryana, Surya Kant, Advocate, for 3 to 8, *for the Respondents.*

JUDGMENT

R. S. Mongia, J.

(1) The petitioners are working as Assistant/Clerks in the Forest Department in the State of Haryana. Petitioner Nos. 1 to 7 were appointed in the Forest Department after their names were duly sponsored through the Employment Exchange and after the selection by the competent authority in the Department. They were appointed initially on *ad hoc* basis between the period July 26, 1975 to October 19, 1977 and later on regularised with effect from January 01, 1980. Petitioner Nos. 8 to 45 (excepting petitioner Nos. 35 and 36) were appointed after having been selected by the Subordinate Services Selection Board, Haryana on regular basis between the period October 17, 1980 to November 01, 1986. Petitioner No. 35, Prahlad Chand, was initially appointed on *ad hoc* basis and his services were regularised with effect from September 15, 1982. Petitioner No. 36, Smt. Shashi Bala, was initially appointed on *ad hoc* basis on October 12, 1978 and was regularised with effect from September 15, 1982. Petitioner No. 45 was appointed on *ad hoc* basis on June 04, 1982 and was regularised with effect from November 01, 1986. The service conditions of the petitioners are governed by the rules known as 'Punjab Forest Subordinate Services (Ministerial Section) Rules, 1943' (hereinafter referred to as 'the Rules').

(2) Respondents Nos. 3 to 8 were originally appointed in the District Rural Development Agency/Draught Prone Area Programme (in short DRDA/DPAP). It may be observed here that certain

schemes of Desert Afforestation were launched by the Government of India through D.R.D.A. and the Additional Deputy Commissioner as Incharge of DRDA/DPAP through whom the various schemes were being implemented in various departments of the State of Haryana. The staff appointed by the DRDA was sent to various departments to help in implementing the schemes. Respondent Nos. 3 to 8 were sent to the various departments to carry out certain forestry schemes. Respondent Nos. 3 to 8 joined the Department of Forest under DRDA/DPAD Schemes in the Forestry Sector between March 01, 1978 to November 27, 1981. On the closure of the schemes under DRDA/DPAP, the Government through of absorbing the staff appointed under the Schemes. Office order dated March 16, 1990 (copy of Annexure P.5) issued by the Financial Commissioner and Secretary to Government Haryana, Forest Department, under the subject "Creation of posts for the absorption of the staff appointed under D.P.A.P. Schemes." Paragraphs 1 and 2 of the said letter, which are relevant for the purpose of this case, may be reproduced as under :—

"The Governor of Haryana is pleased to accord sanction for the creation of the following posts with effect from 1st March, 1989 to 28th February, 1990 in the scale mentioned against each post, with usual allowances sanctioned by Government from time to time for the absorption of the staff appointed under DPAP Schemes.

Sr. No.	Designation of the post	Number	Scale.
1.	Forest Guards	3	900—1,400
2.	Clerks	6	950—1,500
3.	Chowkidars	2	750—940
4.	Mali	1	750—940
5.	Tractor-Drivers	4	1,200 - 2,040

Total : 16

- The above mentioned posts are created subject to the condition that these posts be adjusted against future vacancies in the department and the posts now being created be abolished as and when these are adjusted."

(3) On the basis of the aforesaid order, the Chief Principal Conservator of Forests, Haryana issued a letter dated July 12, 1990 (copy at Annexure P.6) to all the Conservators of Forest in the State of Haryana regarding adjustment of employees recruited under DRDA/DPAP schemes in the Forest Department. After mentioning the names of the 16 persons, who were sought to be absorbed on the posts created,—*vide* order dated March 16, 1990, it was mentioned as under :—

“With regard to the absorption of the abovesaid employees, you are hereby directed that these employees be adjusted from the date of their joining the department. Out of these employees, employees working on the *ad hoc* basis shall continue to be as such whereas other regular employees shall continue to be regular employees and seniority of these employees be fixed at the bottom of the seniority list of the department. In case, this condition is not acceptable to any of the employees, he should be repatriated to his parent department. Please do take action regarding adjustment only after taking consent of the employees in this behalf and intimate this office accordingly after taking necessary action”.

(4) The petitioners have attached the consent given by one of the respondents i.e. Ajit Singh, as Annexure P.7, wherein he agreed to absorption in the Forest Department as per the condition regarding determination of the seniority in the Forest department, which has already been reproduced above, Respondent Nos. 3 to 8 were absorbed in the Forest Department, Haryana in December 1990.

(5) After being adjusted in the Forest Department, the respondents started claiming seniority from the dates of their appointments under the DRDA/DPAP schemes. Excepting Shri Ajit Singh, respondent No. 3, the other private respondents filed a writ petition viz. C.W.P. No. 18522 of 1994 in this Court claiming that they should be assigned seniority in the Forest Department with effect from the dates they had joined under DRDA/DPAP schemes. On notice of motion having been issued, the official-respondents filed reply, in which it was *inter-alia*, pleaded that before those petitioners (now private-respondents) were absorbed in the Forest Department, they were not the employees of the State Government and the matter regarding their seniority was under consideration. That writ petition was disposed of on May 1, 1995 with the direction to the State

Government to finalise the seniority list expeditiously, after hearing the petitioners in that case, preferably on or before October 31, 1995. It was also observed that the State Government would be at liberty to hear the present petitioners and other affected persons while finalising the seniority list. Respondent No. 2, the Chief Principal Conservator of Forests issued a letter dated November 13, 1995. (copy at Annexure P. 8) to all the officials, including the petitioners there, who were likely to be affected by assigning respondent Nos. 3 to 8 the date of appointment for purpose of seniority as the one on which they were appointed in the DRDA/DPAP schemes. The affected persons were required to appear personally or through their representatives with all the documents on November 28, 1995 at 1130 A.M. However, later on, the opportunity of personal hearing was withdrawn,—vide letter dated November 27, 1995, but the concerned officials were only asked to submit their representations. The representations were submitted by the petitioners. Vide impugned order dated January 30, 1996 (copy at Annexure P. 12) passed by the Commissioner and Secretary to Government of Haryana, Department of Forest, it was decided that Respondent Nos. 3 to 8 will be assigned the dates of their appointments as Clerks when they were appointed under the DRDA/DPAP schemes between the period March 1, 1978 to November 27, 1981. The exact dates are given in the impugned order. The Chief Principal Conservator of Forests, Haryana, issued an order on April 12, 1996 (copy at Annexure P. 13) implementing the order dated January 30, 1996 (Annexure P.12) and gave to the respondent Nos. 3 to 8 the date of absorption in the Forest Department as Clerks as March 1, 1978 ; March 1, 1978 ; May 16, 1988 ; August 30, 1979 ; September 9, 1980 and November 27, 1981 respectively and accordingly, also changed their dates of confirmation as Clerks and the dates of promotion as Assistants (excepting Lal Singh, respondent). The orders dated January 30, 1996 and April 12, 1996 (Annexure P. 12 and P. 13 respectively) have been challenged in the present writ petition.

(6) Learned counsel for the petitioners argued that respondent Nos. 3 to 8 were never appointed in the Forest Department prior to their date of absorption. They were appointed under the various schemes, as mentioned above, only for the purpose of implementing those schemes and their services were liable to be terminated or were to come to an end on the closure of the schemes or after their implementation. The Additional Deputy Commissioner, who was the Chief Executive Officer of the DRDA/DPAP Schemes was their Appointing Authority, but since the work was to be done through the

Forest Department, they were sent to the said Department. The transfer, disciplinary action and administrative control was with the Chief Executive Officer of the DRDA/DPAP and not with the Forest Department. For instance, learned counsel for the petitioners, pointed out that one Shri Tek Chand, who was working as a Clerk under the aforesaid schemes in the Forest Division, Bhiwani was issued a charge-sheet by the Conservator of Forest in the year 1985. However, when it was pointed out that his Appointing Authority was the Additional Deputy Commissioner as the Chief Executive Officer of the DRDA, Bhiwani, the order charge-sheeting Tek Chand by the Conservator of Forest was cancelled and the matter was sent to the Additional Deputy Commissioner-cum-Chief Executive Officer for taking appropriate action against Tek Chand. The private-respondents were paid their salaries and allowances by the DRDA where they were appointed from a separate budget provided by the Government of India, whose schemes were being carried out. Learned counsel for the petitioners also referred to the appointment letter issued to Ajit Singh, Respondent, which is signed by the Project Director, DPAP Bhiwani, to show that he was not appointed by the authority in the Forest Department. Further, it was argued that it is evident from the order dated March 16, 1990, (copy at Annexure P.5) (relevant portion thereof already reproduced above) that the posts were being created with effect from March 1, 1989 to February 28, 1990 especially for absorbing 16 persons and the posts were to be adjusted against future vacancies in the department and as and when these posts are adjusted, the newly created posts would automatically stand abolished. From this the learned counsel for the petitioners argued that the new posts were created with effect from March 1, 1989 and the question of giving any prior date to the private-respondents did not arise. The private-respondents came to be absorbed by virtue of the order dated March 16, 1990 (Annexure P.5) followed by the letter dated July 12, 1990 (Annexure P.6) issued by the Chief Principal Conservator of Forests, Haryana (relevant portion thereof already reproduced above). It was specifically mentioned that on absorption the seniority of such employees would be fixed at the bottom of the seniority list of the department and consent be also taken therefor. It is the case of the petitioners that all the respondents gave consent to absorption on the aforesaid conditions. However, the private-respondents in their reply have stated that they had opted for absorption "without actually compromising of their seniority to be reckoned from the original date of their appointments." Respondent No. 8 had written that "I must be placed in order of seniority according to the rules, regulations and record."

The options given by the respondents, apart from Mr. Ajit Singh, have not been placed on record. The official respondents have admitted the averments made by the petitioners that all the respondents had given consent to their absorption as was given by Ajit Singh, a copy of which has been attached as Annexure P.7. On these premises, learned counsel argued that the respondents cannot be given the date of appointment as Clerks in the Forest Department prior to their dates of absorption. Learned counsel for the petitioners also pointed out that in the impugned order at Annexure P. 12, a reference to Rule 9 of the Rules has been made, where a part of the Rule has been quoted out of context and wrongly benefit has been given to the respondents to give them deemed appointments as Clerks with effect from the dates they were appointed under those schemes.

(7) Learned counsel for the private-respondents, however, argued that the said respondents were actually the employees of the Forest Department right from the date when they joined and in any case while absorbing them in the Forest Department, there was no bar in the rules in counting their service which was rendered by them in implementing the schemes of the Central Government, which schemes were implemented through the Forest Department.

(8) After hearing the learned counsel for the parties, we are of the view that there is considerable force in the arguments of the learned counsel for the petitioners.

(9) Absorption in the Department is not an absolute or a statutory right. The services of the private-respondents, who were appointed to implement the schemes, could be terminated on the completion of the schemes or having become surplus in the Schemes. They had no right to ask that they must be absorbed in the Forest Department. On completion of schemes since the employees had to become surplus, the Government thought that instead of putting them on road, they may be absorbed by creating some posts in the Department and it was specifically stated in Annexure P. 6 by the Chief Principal Conservator of Forests that on absorption they will be at the bottom of the seniority list qua the employees already in the Department : meaning thereby that the private-respondents, if absorbed, would be deemed to have been appointed in the Department on the said date. Consequently, we are of the view that the absorption has to be on the terms and conditions of absorption. As observed above, the absorption was on specific terms that they would

rank in the seniority at the bottom of the employees already in service. Supposing they had not accepted this absorption, they would have been on the road and could not claim that they must be absorbed. We do not find any merit in the submission of the learned counsel for the respondents that the private-respondents were the employees of the Forest Department. Their appointing authority was different. They were under the administrative and disciplinary control of the Chief Executive Officer of the DRDA/DPAP schemes and were not in the Forest Department. Illustration of Tek Chand has already been quoted above. The private-respondents cannot be said to have come by way of transfer from one Department of the Government to the Department of Forest. Relevant extract of Rule 9 of the Rules dealing with the seniority is in the following terms :—

“9. Seniority of members of the service :

The seniority of the members of the Service shall in each class of appointment shown in Annexure ‘A’, be determined by the dates of their substantive appointment to a permanent vacancy in each class :

Provided that if two or more members are appointed on the same date :—

- (a) members appointed by selection from amongst persons in Service shall be senior to members appointed otherwise and members appointed by transfer from other departments shall be senior to members appointed direct ;
- (b) in the case of members ; who are appointed by selection from amongst persons in the Service or who are appointed by transfer from other departments, seniority shall be determined by pay, preference being given to the members drawing a higher rate of pay ; and if the rates of pay drawn are the same, seniority shall be determined by the length of service, preference being given to the members having the longer service ; and if the length of service is also the same, seniority shall be determined by age, the older member being senior the younger member ; ”

(10) The rule clearly shows that the seniority has to be determined with effect from the date of their substantive appointment to

a permanent vacancy in each class. Clauses (a) & (b), reproduced above, deal with the situation when two or more persons are appointed on the same date. In the impugned order of Respondents No. 1, dated January 30, 1996, reliance has been placed on clause (b), quoted above, as if the private-respondents had been appointed by way of transfer. However, as observed above, clauses (a) and (b) are applicable only in those cases where two or more members are appointed on the same date. Clause (b) of Rule 9 has no application to the case of the private-respondents. Moreover, as observed above, private respondents cannot be said to have been appointed in the Forest Department by way of transfer from another department of the Government. It was a specific case of absorption of the surplus staff of the DRDA/DPAP schemes. Consequently, we are of the view that the private-respondents were only entitled to reckon their seniority from the date of their absorption in the Forest Department and not with effect from the dates they were appointed in the DRDA/DPAP schemes.

(11) For the foregoing reasons, we allow this writ petition and quash the orders dated January 30, 1996 (Annexure P. 12) and dated April 12, 1996 (Annexure P. 13). However, there will be no order as to costs.

S.C.K.