

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.21 of 2014 (O&M)
Date of Decision: 09.08.2016

Nav Rattan Garg

... Appellant

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE GURMIT RAM

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| 1. Whether speaking/reasoned? | Yes / No |
| 2. Whether reportable? | Yes / No |
| 3. Whether Reporters of local papers may be allowed to see the judgment? | Yes / No |
| 4. To be referred to the Reporters or not? | Yes / No |
| 5. Whether the judgment should be reported in the Digest? | Yes / No |

Present: Mr. KL Arora, Advocate for the appellant
Ms. Palika Monga, DAG Haryana

SURYA KANT, J. (Oral)

(1) This Letters Patent Appeal assails the order dated 25.09.2013 whereby the learned Single Judge has dismissed the appellant's writ petition claiming the benefit of *ad hoc* service towards seniority.

(2) Though the appellant's claim has been primarily rejected on merits, yet when this appeal came up for hearing before a Coordinate Bench on 14.03.2016, the following order was passed:-

"Prima facie we are of the opinion that the appellant is raising the issue of seniority after his retirement at a highly belated stage which cannot be condoned, particularly, noticing the fact that he had agitated about the grant of selection grade by getting his ad hoc service counted for the said purpose. If he was already aware of the issue of law, nothing precluded him from claiming his seniority.

Learned counsel for the appellant prays for some time."

(3) With deference thereto, the appellant has filed an affidavit along with documents (P15 to P17) which have been separately take on record.

(4) We have heard learned counsel for the parties on the question of delay as well as on merits, at a considerable length and gone through the record.

(5) We are of the considered view that the order of learned Single Judge warrants no interference and the claim of the appellant for grant of benefit of *ad hoc* service towards seniority is liable to be rejected for various reasons assigned hereinafter.

(6) The appellant joined the Irrigation Department, Haryana as Sub-Divisional Engineer on *ad hoc* basis on 21.01.1980. The post was admittedly within the purview of the Haryana Public Service Commission (in short, 'the Commission') and the *ad hoc* selection was made by a Departmental Committee only and not by the Commission. The posts were meanwhile advertised by the Commission. The appellant applied and having been selected, he was appointed on regular basis as per his merit. The appellant has retired from service on attaining the age of superannuation on 31.03.2012 when he was holding the promotional post of Executive Engineer.

(7) While in service the appellant filed a Civil Suit No.302 of 95-96 claiming senior scale w.e.f. 23.01.1992 which was admissible on completion of 12 years of service. The precise claim in the Civil Suit was that his *ad hoc* service deserves to be reckoned with for the purpose of granting senior scale. The Civil Suit was decreed on 09.02.1998 (P1) and the successive appeal and Regular Second Appeal filed by State of Haryana were dismissed. The benefit of senior scale, after counting the *ad hoc* service towards requisite length of service was thus granted to the appellant.

(8) The instant writ petition claiming the benefit of that very *ad hoc* service towards 'seniority' was filed by appellant much after his retirement somewhere in September, 2013.

(9) Learned Single Judge, after relying upon a catena of decisions where the benefit of such like *ad hoc* service towards seniority was declined, has concluded that the administrative order passed by competent authority in not granting the aforesaid benefit does not suffer from any legal infirmity.

(10) As observed at the outset, we are of the view that the order passed by learned Single Judge deserves to be upheld firstly on merits *inasmuch* as the appellant has not been able to cite any provision under the Rules or instructions entitling him the benefit of *ad hoc* service towards 'seniority'. He entered the cadre on regular basis through the selection made by Commission and as per the Rules, the seniority of direct recruits was to be determined as per their *inter-se*-merit in the selection. The benefit of *ad hoc* service towards seniority necessarily means that the appellant would march over some of those candidates who were higher in merit in the selection and who continued to remain senior to him throughout.

(11) It was not a case where the "*ad hoc* service itself" was made regular under a Government policy where the *ad hoc* service was followed by regularization.

(12) As regards the issue of delay raised by this Court on 14.03.2016 the writ petition undoubtedly suffers from unexplained and inordinate delay. The explanation given by appellant that the final seniority list was circulated on 13.05.2008 is far from convincing. The Government order dated 13.05.2008 (P15) clearly recites that earlier the seniority list of SDOs recruited from 1971 to 31.12.2007 was released vide order dated 25.07.2001

and again on 10.01.2008. There is not even a whisper in the writ petition or in the additional affidavit that the appellant was placed in the seniority list of 2001 with benefit of his *ad hoc* service towards seniority. On the other hand, his own case is that such a benefit has never been granted to him. If that is so, the appellant ought to have challenged the very first seniority list in which the *ad hoc* service was completely erased. Secondly, there is nothing on record to suggest that the appellant ever raised the claim of *ad hoc* service towards seniority in the past. Such a stale claim was raked up by him only after getting the benefits under the Civil Court decree dated 09.02.1998 which attained finality in the year 2001. The first legal notice appears to have been served by the appellant on 18.05.2012 i.e. after his retirement from service on 31.03.2012. The claim for re-determination of seniority thus suffers from inordinate delay and laches. It requires no special emphasis that belated claims cannot unsettle the settled seniority.

(13) Thirdly, the claim of appellant is barred under Order 2 Rule 2 CPC as such a claim could be raised by him in his above-cited Civil Suit. The appellant having chosen to claim the benefit of *ad hoc* service towards 'qualifying service' for the purpose of grant of senior scale only, it is too late for him to claim such benefit towards seniority also.

(14) In the light of the above discussions, there is no merit in this appeal which is accordingly dismissed.

(Surya Kant)
Judge

09.08.2016
vishal shonkar

(Gurmit Ram)
Judge