

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Date of Decision : December 6, 2017

I.

Regular Second Appeals No.633 of 1997 (O&M)

Punjab State Electricity Board and another

... Appellants

Versus

Sant Ram

... Respondent

II.

Regular Second Appeals No.426 of 1997 (O&M)

Punjab State Electricity Board and another

... Appellants

Versus

Krishan Lal

... Respondent

III.

Regular Second Appeals No.299 of 1997 (O&M)

Punjab State Electricity Board and others

... Appellants

Versus

Surinder Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Roshan Lal Sharma, Advocate,
for the appellants.

Mr. Karamjit Singh Chahal, Advocate,
for the respondents in RSA No.299 and 633 of 1997.

Ms. Kashika Kaur, Advocate, for
Mr. Gaurav Chopra, Advocate,
for the respondent in RSA No.426 of 1997.

RAJ SHEKHAR ATTRI, J.

By this judgment, I shall dispose of the above captioned three regular second appeals as common question of law and facts arise in all of them.

The brief facts of the case are that all the plaintiffs-respondents were appointed as Lower Division Clerks (LDC) on *ad hoc* basis initially for a period of three months. However, their services without any break continued. In RSA No.633 of 1997, Sant Ram plaintiff-respondent was appointed as LDC vide appointment letter memo No.17281 dated 30.7.1976 (Ex.D1) and he joined his duties on 6.8.1976 while Surinder Kumar plaintiff-respondent in RSA No.299 of 1997 was appointed as LDC vide appointment letter memo No.858 dated 3.8.1976 (Ex.D3) and he joined as such on 10.8.1976. Both of them were regularized with effect from 1.4.1978. Krishan Lal plaintiff-respondent in RSA No.426 of 1997 was appointed vide memo No.10162/EA-3421 dated 20.4.1977 (Ex.P6/A) and joined his duties as LDC on 27.4.1977 and his services were regularized with effect from 26.12.1980. They were given seniority from the date when they were regularized in service. All of them are claiming seniority on the following ground :-

- (a) that their services were continuous;
- (b) that earlier also, two persons namely Smt. Inderjit Kaur and Makhan Lal who joined as LDC like the plaintiffs and were

regularized with effect from 1.4.1978, were given seniority from the date of their joining into service.

All these facts have been admitted by the defendants-appellants. However, they disputed the seniority from the date of joining solely on the ground that the plaintiffs-respondents were appointed initially on *ad hoc* basis and *ad hoc* services cannot be considered for promotion. The defendants-appellants also raised the question of limitation in filing the suit. .

From the pleadings of the parties, following issues (in RSA No.633 of 1997) were framed : -

1. Whether the plaintiff is entitled to have the seniority fixed w.e.f. 6.8.1976 instead of 1.4.1978? OPP.
2. Whether the plaintiff is entitled to the declaration prayed for ? OPP
3. Relief.

From the pleadings of the parties, following issues (in RSA No.426 of 1997) were framed : -

1. Whether the plaintiff is entitled to have the seniority with effect from 27.4.1977? OPP.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether the suit is not within limitation? OPD
4. Relief.

From the pleadings of the parties, following issues (in RSA No.299 of 1997) were framed : -

1. Whether plaintiff is entitled to seniority and other benefits as

alleged? OPP

2. Whether plaintiff is entitled to declaration? OPP

3. Whether suit is not maintainable? OPD

4. Whether plaintiff has no cause of action? OPD

5. Whether suit is not within limitation? OPD

6. Whether suit is bad for non-joinder of necessary parties?

OPD

7. Whether plaintiff is estopped by his own act and conduct from filing the present suit? OPD

8. Relief.

In all the cases, the parties were given adequate opportunity to adduce evidence and on appreciation of evidence, each suit filed by the above said plaintiffs was decreed and they were given seniority from date of joining. The respective appeals filed by the present appellants were dismissed by the learned first appellate court. Hence, the defendants-appellants are in this regular second appeal.

I have heard the learned counsel for the parties and have gone through the record.

Learned counsel for the appellants has submitted that *ad hoc* services cannot be considered for seniority and in support of his contentions he placed reliance on the precedents as reported in Central Council for Research in Homeopathy v. Bipin Chandra Lakhera and others; 2011 (3) RSJ 330; State of Punjab and another v. Ashwani Kumar and others; 2009 (1) RSJ 452; Saroj Gupta v. The Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others; 2008 (2) RSJ 533 and Sarabjit

others 2015(4) RSJ 30 .

On the other hand, learned counsel for the respondents submitted that the plaintiffs-respondents were appointed on substantive posts, their appointments were in accordance with the procedure and departmental rules; their services are continuous; that two other similarly placed persons namely Smt. Inderjit Kaur and Makhan Lal have already been granted seniority from the date of their joining service and the plaintiffs-respondents are also seeking seniority on the same basis.

This Court has given its thoughtful consideration to the rival contentions and carefully gone through the record.

The following facts are not in dispute : -

(a) the plaintiffs-respondents in all the appeals were appointed on *ad hoc* basis. However, their services are continuous.

(b) plaintiff Sant Ram in RSA No.633 of 1997 and plaintiff Surinder Kumar in RSA No.299 of 1997 were regularized with effect from 1.4.1978 whereas services of Krishan Lal plaintiff in RSA No.426 of 1997 were regularized with effect from 26.12.1980;

(c) two other employees filed civil suits i.e. Makhan Lal filed Civil Suit No.1 of 20.1.1991 which was decreed on 20.10.1992 whereas Inderjit Kaur filed civil suit No.635 of 1991 which was also decreed on 20.10.1992. Both Makhan Lal and Inderjit Kaur were initially appointed as LDC on *ad hoc* basis and their services were regularized with effect from 1.4.1978. However, they were granted seniority from the date

of their joining the services by merging their period of *ad hoc* services.

It is not the case of the defendants-appellants that the joining of the plaintiffs *dehors* the procedure nor it is their case that the plaintiffs were not appointed against substantive posts. In a similar situation, Hon'ble Constitution Bench of Supreme Court in **Rudra Kumar Sain v. Union of India**; 2000 AIR (SC) 2808 has discussed similar proposition of law in paragraphs 15 to 21 as under : -

“15. So far as the terminology used in Singla's case, namely 'ad hoc', 'fortuitous' and 'stop-gap', the same is quite familiar in the Service Jurisprudence. Mr. Rao, appearing for the High Court of Delhi, however, contended before us that the said terminology should be given the same meaning, as was given in ***Parshotam Lal Dhingra v. Union of India, 1958 S.C.R. Page 828***. In Dhingra's case, the Court was examining whether removal of an employee can be held to be penal and whether Article 311(2) of the Constitution can at all be attracted and the Court also observed that certain amount of confusion arises because of the indiscriminate use of the words "provisional", "officiating" and "on probation". We do not think that the concept or meaning given to those terminology in Dhingra's case will have any application to the case in hand, where the Court is trying to work out an equitable remedy in a manner which will not disentitle an appointee, the benefit of his fairly long period of service for the purpose of seniority, even though he possesses the requisite qualification and even though his appointment has been made after due consultation and/or approval of the High Court.

16. The three terms 'ad hoc', 'stop-gap' and 'fortuitous' are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to

look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression "fortuitous" in Stroud's Judicial Dictionary is "accident or fortuitous casualty". This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to "fortuitous". In Black's Law dictionary, the expression "fortuitous" means "occurring by chance", "a fortuitous event may be highly unfortunate". It, thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression "ad hoc" in Black's Law Dictionary, means "something which is formed for a particular purpose." The expression "stop-gap" as per Oxford Dictionary, means "a temporary way of dealing with a problem or satisfying a need".

17. In Oxford Dictionary, the word 'ad hoc' means for a particular purpose; specially. In the same Dictionary, the word 'fortuitous' means happening by accident or chance rather than design.

18. In P. Ramanatha Aiyer's Law Lexicon (2nd Edition) the word 'ad hoc' is described as "for particular purpose, Made, established, acting or concerned with a particular and or purpose'. The meaning of word 'fortuitous event' is given as 'an event which happens by a cause which we cannot resist; one which is unforeseen and caused by superior force, which it is impossible to resist; a term synonymous with 'Act of God'.

19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the

provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of *inter-se* seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as 'ad hoc' or 'stop-gap'. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as 'fortuitous' in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a 'stop-gap' arrangement and appointment in the post as 'ad hoc' appointment. It is not possible to lay down by straight-jacket formula nor give an exhaustive list of circumstances and situations in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of *inter-se* seniority of officers in the cadre.

20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly

long period, then such appointment cannot be held to be "stop-gap or fortuitous or purely ad hoc". In this view of the matter, the reasoning and basis on which, the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be 'fortuitous/ad hoc/stop-gap' are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.

21. In view of our conclusions, as aforesaid, we quash the seniority list both provisional and final, so far as, it relates to the appointees either by direct recruitment or by promotion in the Delhi Higher Judicial Service, prior to the amendment of the Recruitment Rules in the year 1987, and their *inter-se* seniority must be redetermined on the basis of continuous length of service in the Cadre, as indicated in Singla's case and explained by us in this judgment. Since the future of these officers to a great extent depends upon seniority and many of these officers may be on the verge of superannuation, the High Court would do well in finalising the seniority within a period of six weeks from the date of receipt of this judgment."

The judgments relied upon by the learned counsel for the appellants are distinguishable on facts and ratio decidendi culled out therein does not apply to the facts of the present case.

Now coming to the point of limitation, learned counsel for the appellants has submitted that the suit is filed beyond the period of limitation. I have considered this submission but it carries no weight. Similar proposition of law has already been discussed by this Court in **Punjab State Electricity Board v. Lal Chand (RSA No.324 of 1997 decided on 14.2.2012)**. In that case, the plaintiff joined service on 7.10.1976

and was regularized on 3.10.1978. However, the suit was filed by him on 8.2.1993. This Court held that where a person is aggrieved from a recurring cause of action, the suit cannot be said to be barred by limitation though the relief can be restricted. Punjab State Electricity Board filed Special Leave to Appeal which was dismissed on 15.7.2013. Similar proposition of law is involved in these cases. Therefore, it shall be treated as recurring cause of action and the suits as filed by the plaintiffs-respondents are within the period of limitation.

On an independent appraisal of evidence, this Court is of the considered opinion that the findings of the courts below are based on proper appreciation of evidence and do not call for any interference and the same are hereby affirmed. As a result, all the three appeals are devoid of merit and the same are hereby dismissed with costs. The judgments and decrees of the courts below stand affirmed.

December 6, 2017	(RAJ SHEKHAR ATTRI)
Paritosh Kumar	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No