

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 1479 of 2012

Hemant Arora S/o Late Om Prakash Arora, aged about 45 years,
Central Store Sub Division, PWD Division # 2, Raipur (C.G.).

---Petitioner

Versus

1. State Of Chhattisgarh, through Secretary, Public Works Department, DKS Bhavan, Mantralaya, Raipur (C.G.).
2. Engineer in Chief, Public Workds Department, Sirpur Bhavan, Mantralaya, Raipur (C.G.).

---Respondents

For petitioner	:	Shri Raja Sharma, Advocate.
For State	:	Shri Syed Majid Ali, Dy.G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/07/2018

1. The grievance of the petitioner in the instant Writ Petition is that of non-granting of seniority to the petitioner for the period he has rendered services as an adhoc appointee.
2. The facts of the case in brief is that, the father of the petitioner had died in harness and the petitioner was considered for grant of compassionate appointment and accordingly the petitioner was granted the appointment as a Sub-Engineer on adhoc basis on compassionate ground on 30/11/1985. The petitioner joined his services as per the order of appointment on 05/12/1985.
3. Lateron, the services of the petitioner stood confirmed vide order dated 18/03/1987.

4. The respondents however while fixing seniority of the petitioner in the gradation list has granted the fixation of his seniority with effect from 18/03/1987 instead of 05/12/1985 i.e. the date of joining.

5. The counsel for the petitioner submits that, since the petitioner was appointed in accordance with the scheme and rules applicable for compassionate appointment in the department and he has been subjected to selection under the scheme, the petitioner for all practical purposes has to be treated as a direct appointee. He further submits that, the petitioner would be entitled for being treated to be in service with effect from the date of joining and therefore the seniority also has to be reckoned from the date of his joining i.e. from 05/12/1985 and not from the date of confirmation of service i.e. 18/03/1987. He further submits that, the services of the petitioner has been uninterrupted from the date of initial appointment till the date of confirmation and for this ground also, the petitioner cannot loose his seniority from the date of joining till the date of confirmation and thus prayed for issuance of appropriate direction to the respondents in this regard.

6. The State counsel however opposing the petition submits that, it is a case where the petitioner cannot be said to be a direct appointee rather he is an employee who has been granted the appointment on a compassionate basis and whose initial services were on adhoc basis and was subsequently confirmed in 1987 and therefore for all practical purposes, the seniority of the petitioner has to be reckon from 1987 onwards and not from the earlier date of appointment and thus prayed for rejection of the Writ Petition.

7. Having heard the contentions put forth on either side and on perusal of record, undisputedly the petitioner was granted an order of appointment on 30/11/1985 based upon which the petitioner gave his joining on 05/12/1985. The initial order of appointment was as an adhoc appointee and subsequently confirmed on 18/03/1987.

8. It would be relevant at this juncture to refer to Rule 12-4(b) of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961. For ready it has been reproduced herein under:-

“(b) If a person is appointed on adhoc basis by substantially following the procedure laid down by the Recruitment Rules and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service shall be counted for seniority.”

9. A plain reading of the aforesaid provision itself would show that, a person who have been appointed on adhoc basis by following the procedure laid down by the department and if he continues in the post uninterruptedly till he has been regularized, the past service rendered by those person would be counted for the purpose of calculating seniority which in other words means that his seniority would be from the date of joining and it cannot be from the date of confirmation of service in the department.

10. If we compare the rule provision as is reproduced in the preceding paragraph to the facts of the present case it would clearly reflect that, the case of the petitioner squarely falls within the provision of Rule 12-4(b) of the Rules of 1961 quoted above.

11. The petitioner's service initially was as an adhoc appointee, he was lateron confirmed on 18/03/1987, the intervening period was uninterrupted and therefore the petitioner would be duly entitled for seniority from the date of joining i.e. from 05/12/1985 onwards.

12. The Writ Petition thus deserve to be and is accordingly allowed.

13. The respondents are directed to ensure that the seniority of the petitioner is considered from the date he had joined his duties i.e. from 05/12/1985 and not from the date of confirmation i.e. 18/03/1987.

14. As a consequence, the impugned order of rejection of the representation of the petitioner is not sustainable on merits and the same deserves to be and is accordingly quashed.

15. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit