

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA-31-1999 (O&M)

Reserved on : 15.04.2024
Pronounced on : 23.04.2024

Jasbir ChandAppellant

Versus

The Punjab State and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Deepak Agnihotri, Advocate for the appellant.

Mr. Teevar Sharma, AAG, Punjab.

NAMIT KUMAR, J.

1. The appellant/plaintiff has filed the present regular second appeal against judgment and decree dated 01.09.1998 passed by learned Additional District Judge, Jalandhar, whereby the judgment and decree dated 23.05.1995 passed by learned Sub Judge Ist Class, Jalandhar, decreeing the suit for declaration filed by the appellant/plaintiff claiming seniority as Patwari by counting his continuous length of service w.e.f. 13.08.1979 qua the defendants No.2 to 7 in the tentative seniority list, has been set aside. Parties to the lis are hereinafter shall be referred to by their original position in the suit.

2. Briefly stated the facts of the case are that the appellant/plaintiff filed a suit for declaration and mandatory injunction alleging therein that he after qualifying Patwar examination was selected as Naib Patwari by the Collector, Jalandhar vide his order dated 25.07.1979 and his services were put at the disposal of the Sub

Divisional Officer (C) Phillaur. He joined the services on 13.08.1979 and promoted as Patwari on 05.11.1979 and took over as a Patwari at Circle Bundala-1 on 06.11.1979. The grade of pay as Naib Patwari was subsequently revised and enhanced to that of a Patwari. The plaintiff was paid pay of a Patwari w.e.f. his date of joining i.e. 13.08.1979, in the regular grade of a Patwari i.e. Rs.400-650, which was prevalent at that time. The plaintiff continued in service but due to some mistake wrong entries have been recorded in the service book. On the recommendation of the Employment Exchange, he was appointed as Patwari by the Collector, Jalandhar vide letter dated 05.11.1979 for a period of 03 months, on temporary basis but for the reasons best known, the office of the Collector, Jalandhar, recorded a wrong entry in the service book showing him as appointed on adhoc basis from 06.11.1979 and thereafter, the appellant/plaintiff was shown as terminated on 12.02.1980, although no charge was taken and he continued to hold the post and work and in the service book, the break period from 13.02.1980 to 17.02.1980 was wrongly shown. Tentative seniority list was prepared by the defendants firstly, on 01.05.1986 and then on 31.10.1989 circulated under memo No.310/4 dated 12.01.1990. Objections were notified and were filed by the appellant/plaintiff to the said seniority lists as defendant No.2 was wrongly placed above the seniority number of the plaintiff. The name of the plaintiff was placed at Sr. No.284, in the seniority list dated 01.05.1986 and at Sr. No.197 in the seniority list dated 31.10.1989 and since the said seniority list was not finalized, hence the suit.

3. Notice of the suit was issued to the defendants. Since

defendants No.2 to 7 did not appear despite service, therefore, they were proceeded against exparte. Defendant No.1 filed written statement through Government Pleader taking preliminary objections i.e. suit is not maintainable, the same is time barred, the plaintiff has no cause of action and the suit is premature. On merits, it was submitted that the plaintiff was appointed as Naib Patwari vide order dated 25.07.1979 and was selected and appointed as Patwari on the recommendation of the Employment Exchange, vide order dated 05.11.1979, purely on temporary/adhoc basis. The plaintiff joined his duty on 06.11.1979, as Patwari Circle, Bandala. Regular grade of Rs.400-660 was given to him w.e.f. 06.11.1979, on the recommendations of the S.S.S. Board vide memo dated 25.01.1980 and fresh appointment orders dated 13.02.1980 were issued and therefore, the plaintiff is entitled for seniority w.e.f. 18.02.1980 and the relevant entries in the service book were made according to rules and as per the terms and conditions of order dated 05.11.1979. The plaintiff filed replication by reiterating the averments made in the plaint. From the pleadings of the parties, the following issues were framed :-

1. *Whether the plaintiff is entitled to declaration as prayed for ? OPP.*
2. *Whether the plaintiff is entitled to mandatory injunction as prayed for ? OPP.*
3. *Whether the suit is not maintainable in the present form ? OPD.*
4. *Whether the suit is time barred ? OPD.*
5. *Whether the suit of the plaintiff is pre-mature? OPD.*
6. *Whether the notice U/s 80 CPG is not legal and valid ? OPD.*
7. *Relief.*

4. The learned trial Court decreed the suit vide judgment and decree dated 23.05.1995 by recording the following findings on issue No.1 and 2 :-

“10. Perusal of appointment order Ex. D2 shows that the plaintiff was appointed on temporary basis for three months or till the arrival of S.S.S. Board candidates. It is clear from the service book of the plaintiff Ex. D2 that basic pay of the plaintiff was fixed at Rs. 400/- instead of Rs. 90/- w.e.f. the date of joining of the plaintiff i.e. 13/8/1979. This was in pursuance of the instructions of the department of Finance., Punjab, Ex. P5. The plaintiff was, therefore hooding the post of Patwari at a basic pay of Rs. 400/- with retrospective effect from the date of his joining. The allegations of the defendant that the services of the plaintiff were terminated on 13/2/1980, is not based on sound footings. The Plaintiff was appointed vide orders of the Collector, Ex. D1 only the Collector was competent to terminate the services of the plaintiff if he so desired on. The defendants have not produced any document: showing the termination of the services of the plaintiff, except more entry in the service book at page 5 of Ex. D2. There is no other document to support this contention of the defendants. On the other hand, the plaintiff has brought on record copies of entries in Roznamohas Ex. P18 and Ex. P20 showing that the plaintiff continued to work on the dates 13th to 18th of February, 1980.

11. I am of the considered opinion that the plaintiff joined on 13/8/1979, as Naib Patwari and was deemed to have joined as Patwari, on the said date, in view of the amalgamation of the posts of Naib Patwari, into the post of Patwari. In view of the notification Ex. P5. There was no real break in his service at any point of time, in the month of February 1980 and the entry dated 12/2/1980 showing termination of the plaintiff, is not based on any order or instructions etc. The same is, therefore, meaningless and not binding on the plaintiff. Rule 15 of the Rules deals with the seniority of the plaintiff, which has to be determined by the length of continuous service, on a post in that cadre. The relevant para has been reproduced as under:-

"Seniority- The seniority interse of members of the service in each cadre shall be maintained district

wise and shall be determined by the length of continuous service on a post in that cadre.”

12. The plaintiff is entitled to be placed in the seniority list, as if there was no break in service recorded by the defendants. These issues are, therefore, decided in favour of the plaintiff.”

With regard to issue No.5, the following finding was recorded :-

“17. The onus to prove this issue placed on the defendants. No arguments have been advanced on this issue. This issue is, therefore, decided against the defendants.”

The suit of the plaintiff was decreed by granting the following relief :-

“18. In the light of my findings, on the above said issues, the suit of the plaintiff is decreed with costs for declaration that the plaintiff is entitled to the seniority in the cadre as Patwari, under Rule 15 of the Patwar Service (Class III) Service Rules, 1966 (amended upto date) counting continuous length of service of the plaintiff w.e.f. 13/8/1979, adjustable, qua the defendants No. 2 to 7, in the tentative Seniority list circulated under memo No. 310/4, dated 12/1/1990, correcting the same accordingly and for mandatory injunction directing the defendant No. 1, to draw the regular seniority list, under Rule 15 of the Patwar Service Rules 1966, counting the continuous length of service, adjusting the plaintiff having continuous service with effect from 13/8/1979, in the seniority list, within a period of three months. Decree sheet be drawn accordingly and the file be consigned.

5. The judgment and decree dated 23.05.1995 passed by learned Sub Judge Ist Class, Jalandhar was challenged by the defendant-State of Punjab by filing an appeal before the learned Additional District Judge, Jalndhar which has been allowed vide judgment and decree dated 01.09.1998, by reversing the finding recorded by the trial Court. The same reads as under :-

“10. The only point for determination in this case is as to whether the period when the respondent/plaintiff remained

as temporary naib patwari is to be counted towards seniority. It is apparent that Jasbir Chand respondent/plaintiff was appointed as Naib Patwari purely on temporary basis vide order Ex.P. 17 of the Collector in the scale of Rs. 90-3-120-4-140. Still further, such, vide letter Ex. D-1 he was appointed as Patwari on purely temporary basis for a period of three months on till arrival of the subordinate Service Selection Board candidates vide order Ex. D-2. There is break in service as per the entries made in the service book Ex-D-2 from 13/2/80 to 17/2/80. He was ordered to be appointed from 16/2/80 to 31.3.1981 is thus apparent from the service book that there is break shown in the service book, in the service of the respondent/plaintiff from 13/2/80 to 17/2/80. The termination of the service is mentioned in the service book Ex.D-2. It is also mentioned therein that the respondent/Plaintiff was appointed on regular basis by the Collector vide order dated 18/2/80. Thereafter seniority of the Plaintiff/respondent was also shown. When there had been shown break in the service of the respondent/plaintiff, my feeling is that he is not entitled to seniority of the period prior to the termination of his service on 12/2/80. No doubt, it is alleged that he had been working during this period and that he had made entries in the register, but from this fact, also, it cannot be held that he remained in service during this period. The record, where these entries were made remained in his possession and if he has made certain entries therein, this shows his conduct which can be better imagined that described.

11. The contention of the learned counsel for the respondent/plaintiff is also without any merit that vide instructions of the department Ex. P.5, the respondent/plaintiff held the post of patwari at basic pay of Rs. 400/- with retrospective effect from the date of his joining. The provisions of Punjab Civil Service (Revised Scales) Rules 1979 are not attracted so far the case of the respondent/plaintiff is concerned. When he was appointed for limited period of three months and later on he was selected by the Subordinate Service Selection Board, he cannot be said to be entitled to the basis pay of Rs. 400/- per month with retrospective effect from the date of his joining. As already held that there had been break in service of the respondent/plaintiff and such period of service prior to the termination of his services is not to be

considered and in such circumstances, the respondent/plaintiff is not entitled to the basic pay of Rs. 400/- per month as argued by his learned counsel.

12. Besides this, if the respondent/plaintiff was appointed by the Collector, and his services were terminated by the Sub Divisional Officer (Civil) Phillaur, it cannot be said that there was any illegality in it. The Sub Divisional Officer (Civil) is also Collector and merely on account of non mentioning as such in the order does not invalidate the alleged termination of the respondent/Plaintiff. The learned Sub Judge did not correctly hold that there was no break in the service of the respondent/Plaintiff.

13. So far the seniority of the respondent/plaintiff is concerned, as already stated above, he was appointed for a limited period of 3 months and thereafter on selection by the Subordinate Service Selection Board, he was appointed on regular basis. The period of adhoc service rendered by him cannot be counted towards seniority. It has already been held earlier that there has been break in service of the respondent/plaintiff and any such period of service rendered by him prior to the termination of service cannot be taken into consideration towards seniority. When the respondent/Plaintiff was appointed for limited period of 3 months and later on he was selected by the Subordinate Services Selection Board, service rendered by him on adhoc basis cannot be counted towards seniority. Reliance in this respect can be placed on a case reported as Piara Lal Vs. State of Haryana 1998 (1) R.S.J. 500.

14. Likewise, under the Punjab Revenue Patwar (Class III) Service Rules, 1966, seniority interse of the members of the service in each cadre, shall be maintained district wise and also shall be determined by length of continuous service of a post in that cadre. This rule further corroborates that seniority is to be considered from the length of service. Ex. D-3 is the letter of the candidates who were appointed as Patwaris on the basis of letter received from the Secretary, Subordinate Service Selection Board, Chandigarh. In fact, this is the list on the basis of which seniority of the respondent/plaintiff was fixed.

15. In other words, it is the case of the respondent/plaintiff that the tentative seniority list was prepared firstly on 1/5/86 and then on 31.10.89. When the seniority list was

not yet finalised, my feeling is that he has no right to challenge the said seniority list. I am fortified in this respect from the cases reported as Haresh Kumar 872/C and others Vs. State of Haryana and others, 1998 LAB IC 1774 and "K.B. Lal Singh Vs. State of Haryana through the Commissioner and Secretary, to Govt. Public works Department (B&R) and others 1994 (2) R.S.J. 185".

16. *No other point was urged before me by the learned counsel for the parties at the time of arguments.*

17. *In the result, the impugned judgement and decree of the trial court are set aside and the appeal filed by the appellant is accepted with no order as to costs. Decree sheet be prepared. File be consigned to record room."*

6. Learned counsel for the appellant submits that the well reasoned finding recorded by learned trial Court has wrongly been reversed by learned lower Appellate Court. He further submits that the appellant is entitled for seniority w.e.f. 13.08.1979, when he initially joined the service as Naib Patwari and continue to get the regular pay scale and increments and there was no break in the service. In support of his arguments, learned counsel for the appellant has placed reliance upon the judgment passed by Hon'ble Supreme Court in ***Syed Khalid Rizvi Vs. Union of India : 1993 (2) S.C.T. 236*** and judgments passed by this Court in ***Mohinder Singh Vs. Haryana State Small Industries & Export Corporation Ltd. : 1994 (1) S.C.T. 362*** and ***Dr. Gurbax Singh Vs. State of Punjab : 1994 (3) S.C.T. 233***. He also submits that respondent Nos.2 to 7 have proceeded against ex-parte before the trial Court.

7. On the other hand, learned State counsel submits that learned lower Appellate Court has rightly reversed the findings recorded by the learned trial Court as the appellant is not entitled to count the adhoc/temporary service rendered by him w.e.f. 13.08.1979 to

18.02.1980. In support of his contention, learned State counsel has placed reliance upon the judgment passed by Hon'ble Supreme Court in ***Malook Singh and others Vs. State of Punjab and others : 2021 (4) S.C.T. 305.***

8. I have heard learned counsel for the parties and perused the relevant record with their able assistance.

9. The only question arises in the present appeal is as to whether the appellant/plaintiff is entitled to count the adhoc/temporary service rendered by him w.e.f. 13.08.1979 to 18.02.1980.

10. Perusal of Ex.P-17 dated 09.08.1979 would show that the appellant/plaintiff, who was Patwar pass candidate, was selected as Naib Patwari on temporary/adhoc basis with the conditions that his services will be liable to be terminated at any moment without any notice. Further Ex.D-1 states that *“the following candidates recommended by the Employment Exchange are hereby appointed as Patwaries purely on temporary basis for three months or till the arrival of S.S.S. Board candidates. It is made clear to them that their services will be liable to be terminated at any time and without any notice”*.

There is a break in service from 13.02.1980 to 17.02.1980 as per the entries made in the service book Ex.D-2. The termination of service is also mentioned in the service book Ex.D-3. It is also mentioned that the appellant/plaintiff was appointed on regular basis by the Collector vide order dated 18.02.1980. Therefore, the earlier adhoc/temporary service rendered by the petitioner cannot be counted for the purpose of seniority. A right to seek change in the tentative seniority list did not accrue to the plaintiff/appellant, as the same was not finalized.

11. The Hon'ble Supreme Court in *Malook Singh's case (supra)* has held that the services rendered by an employee on adhoc basis prior to their regularization cannot be counted for the purpose of seniority. Para 20 of the said judgment reads as under :-

“20. The law on the issue of whether the period of ad hoc service can be counted for the purpose of determining seniority has been settled by this Court in multiple cases. In Direct Recruits (supra), a Constitution Bench of this Court has observed:

“13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly

till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary.....

.....

47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account considering the seniority.”

(emphasis supplied)

*The decision in Direct Recruits (supra) stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on Direct Recruits (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in Direct Recruits (supra) was subsequently followed by this Court in **Keshav Chandra Joshi v. Union of India, 1992 Supp (1) 272**. Recently a two judge Bench of this Court in **Rashi Mani Mishra v. State of Uttar Pradesh, 2021 SCC Online SCC 509**, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, “substantive appointment” does not include ad hoc appointment and thus seniority which has to be counted from “substantive appointment” would not include ad hoc service. This Court also clarified that the judgement in Direct Recruits (supra)*

cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations:

“36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, visà-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where

appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the “substantive appointments”. Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules.”

The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority.”

12. The judgments cited by learned counsel for the appellant are not applicable to the facts of the present case as in ***Shed Khalid Rizvi's case (supra)*** the dispute was with regard to the preparation of

select list for further promotion; in *Mohinder Singh’s case (supra)* the dispute was not with regard to the seniority and related to adjustment of surplus staff and in *Dr. Gurbax Singh’s case (supra)* the question was as to whether officiating service on a promotional post is to be counted towards experience or not.

13. In view of above, no question of law muchless substantial question of law arises for consideration in the present appeal. No other point has been urged.

14. Dismissed.

15. Pending applications, if any, shall stand disposed of accordingly.

23.04.2024

Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No