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TEJINDER SINGH SANDHU

v.

STATE OF PUNJAB AND ORS.

April 25, 1978

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[Y. V. CHANDRACHUD, C.J., D. A. DESAI AND R. S. PATHAK, JJ.]

C

*Seniority and Promotion, claim to—Whether a junior in Class II service, who by a chancy circumstance joined earlier in the Class I post and completed his probation in that post before his seniors, claim seniority in Class I post for further promotion—Seniority in Class II has to prevail in ranking when several officers are appointed to Class I on an ad hoc basis and also completed their probation and when permanent vacancies occur in that cadre of Class I—Applicability of Govt. Memo No. 9448—Agr. 1(1)65/1583 dt. 13-4-66 and Punjab-Agr. Service Rules, 1947, 10 to 16.*

D

The appellant was junior to Respondents 2 and 3 in the Class II Punjab Agricultural Service. On August 2, 1965 the appellant and Respondent No. 3 were promoted on an *ad hoc* basis as Deputy Directors of Agriculture a post borne on the cadre of Class I service. The appellant took charge of the post on August 4, 1965 being at headquarters, while respondents No. 3 joined on 18-8-65. Respondent No. 2 who was senior to Respondent No. 3 and the appellant could not be promoted earlier as he was on deputation with the Punjab Agricultural University and he was promoted on 22-2-67 i.e. after his return to parent department. The appellant, Respondent No. 2 and Respondent No. 3 therefore completed their probation on 3-8-1967, 21-2-1969 and 1-3-1968 respectively. On 14-10-71, the Government of Punjab published a tentative seniority list in which the appellant was shown as junior to respondents 2 and 3. On that basis respondents 2 and 3 were promoted as Joint Directors of Agriculture w.e.f. 10-7-1973 and 16-7-73 respectively. As his representation for considering his claim for seniority and promotion by virtue of his long continuous service in Class II post and also his earlier completion of probation that the respondents failed, the appellant filed a writ petition in the High Court on 16-8-1973 contending that the promotion of respondents 2 and 3 to the post of Joint Director was illegal being violative of Article 16 of the Constitution and demanding that in recognition of his superior claim arising by virtue of seniority, he should be promoted and confirmed in the post of Joint Director. The High Court dismissed the Writ Petition but granted a certificate of fitness to appeal to this Court.

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Dismissing the appeal, the Court

HELD : 1. The High Court was right in taking the view that respondents 2 and 3 were entitled to be appointed as Joint Directors of Agriculture in preference to the appellant on the basis of their seniority. [720 D]

G

2. Since all of them were appointed to Class I on an *ad hoc* basis and since they had all completed their probation in Class I post, when permanent vacancies occurred in that cadre, their seniority in Class II has to prevail in their ranking in Class I. By that criterion, the appellant must take his place below Respondents 2 and 3. [719 B-C]

H

3. (a) What governs the appellant is not the Government Memorandum dated 13-4-1966, but the rules contained in the Punjab Agricultural Service Class I, Rules, 1947. Rule 16 provides that seniority of members of the service shall be determined according to the date of confirmation in the service. If regard is had to Rules 10 to 16 of the Rules, the appellant must rank lower in seniority than Respondents 2 and 3. [720 B-C]

(b) The circumstance, that the appellant and respondents 2 and 3 took charge of their respective posts in Class I service on divergent dates is purely

fortuitous and cannot affect their seniority. The appellant was junior to respondents 2 and 3 in Class III as well as in Class II service of the PEPSU State. He was also junior to them in class II service of the Punjab Govt., after reorganisation of states. Having been appointed to the higher post on the same date as respondent 3 and on *ad hoc* basis, the appellant cannot be permitted to take advantage of a chancy circumstance that being geographically close to the headquarters, he was able to take charge of the post of promotion on the very day on which he was appointed, an opportunity which a quirk of posting denied to respondent No. 3. In fact in Class I, there were only two vacancies in August 1965 and if respondent No. 2 were available for being posted as Deputy Director, it is he and respondent 3 who would have filled the two vacancies. The appellant being junior to them would not have been appointed as a Deputy Director even on an *ad hoc* basis. [718 H, 719 D-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 713 of 1975.

From the Judgment and Order dated 31-5-74 of the Punjab and Haryana High Court in C. W. No. 2675/73.

*Hardev Singh* and *R. S. Sodhi* for the Appellant.

*O. P. Sharma* for Respondent No. 1.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J.—The appellant, Tejinder Singh Sandhu, and respondents 2 and 3 were serving initially as Class III Officers but were recruited directly as Class II Officers in the erstwhile State of Patiala and the East Punjab States' Union, ('Pepsu'). After the reorganisation of Punjab and Pepsu, they were absorbed in the Punjab Agricultural Service, Class II. In the seniority list of Class II Officers, respondent 2 was shown at serial No. 30, respondent 3 at serial No. 39 and the appellant at serial No. 40. On August 2, 1965, appellant and respondent 3 were promoted on an *ad-hoc* basis as Deputy Directors of Agriculture, a post borne on the cadre of Class I Service. The appellant took charge of that post on August 4, 1965 while respondent 3 took charge fourteen days later on August 18, 1965. The *ad-hoc* promotions were made for a period of three months or until such time as the appointments could be made on a regular basis.

Respondent 2 was working at the material time in the Punjab Agricultural University, Ludhiana. The Government of Punjab having taken a decision in October, 1966 to allow its officers who were working on deputation with the Ludhiana Agricultural University to rejoin the State Service, respondent 2 returned to the parent Department on October 28, 1966. He was promoted as Deputy Director of Agriculture, Class I, on February 22, 1967 on the same basis as the appellant and respondent 3.

The appellant completed his probation on August 3, 1967 while respondents 2 and 3 completed theirs on February 21, 1969 and March 1, 1968, respectively. On October 14, 1971, the Government of Punjab published a tentative seniority list of Class I Officers in which the appellant was shown as junior to respondents 2 and 3. Acting on the basis of the seniority list, the State Government promoted respondent 2 to the post of Joint Director of Agriculture on July 10,

- A 1973 and respondent 3 on July 16, 1973. The appellant had filed a representation on the publication of the seniority list complaining that since he had officiated continuously in the Class I post for a longer period than respondents 2 and 3 and had completed his probation before they had completed theirs, he should have been treated as senior to the other two and was entitled to be promoted as Joint Director in preference to them. It was implicit in the promotion of respondents 2 and 3 to the post of Joint Director that the appellant's representation was rejected by the Government.

- C On August 16, 1973 the appellant filed a Writ Petition in the High Court of Punjab and Haryana contending that the promotion of respondents 2 and 3 to the post of Joint Director was illegal being violative of article 16 of the Constitution and demanding that in recognition of his superior claim arising by virtue of seniority he should be promoted and confirmed in the post of Joint Director. By its judgment dated May 31, 1974, the High Court dismissed the Writ Petition but granted to the appellant a certificate of fitness to appeal to this Court under article 133(1) of the Constitution.

- D The narrow question for decision is whether the appellant is entitled to be regarded as senior to respondents 2 and 3 by virtue of his continuous officiation in the Class I post and because he had completed his probation in that post before respondents 2 and 3 completed theirs. Certain facts bearing on this question are undisputed. Appellant and respondents 2 and 3 originally belonged to Class III Service of the Pepsu State. They were later appointed by direct recruitment as Class II Officers in the Agriculture Department of the State with effect from September 24, 1956, July 13, 1956 and May 1, 1956, respectively. It is, therefore, clear and not disputed that in the cadre of Class II Officers in the Pepsu Agriculture Department, appellant was junior to respondents 2 and 3. After the merger of Pepsu with Punjab they were all absorbed in Class II Service of the Punjab Agriculture Department. Appellant and respondent 3 were later promoted to Class I Service of the Punjab Government on the same date, that is to say, on August 2, 1965. On the date of promotion, appellant happened to be working at Chandigarh itself and was therefore able to take charge of his new post immediately after the date of his appointment viz., August 4, 1965. Respondent 3, on the other hand, was working as an Assistant Horticulturist at Kulu and therefore, he could not take charge of his post until he was relieved of the post which he was holding. He was able to take over as Deputy Director at Hansi on August 18, 1965, which was 14 days after the appellant had taken charge of his post. Respondent 2 was promoted as a Deputy Director in 1966 but, that was for the reason that he was working on deputation with the Ludhiana Agricultural University and until the Government permitted its officers working on deputation with the University to revert to the State Service, respondent 2, though eligible for being appointed as a Deputy Director, could not be so appointed. Thus the circumstance that the appellant and respondents 2 and 3 took charge of their respective posts in Class I Service on divergent dates is purely fortuitous and cannot affect their seniority.

All the three were appointed as Class I Officers on a purely *ad-hoc* basis. The permanent vacancies in that cadre occurred in 1971 and it is in reference to the State of affairs obtaining at that point of time that the question of seniority of the three officers has to be considered. On the date on which permanent vacancies occurred in the Class I cadre, the appellant and respondents 2 and 3 had all completed their probationary period satisfactorily. They were, therefore, eligible and perhaps entitled to be confirmed in Class I posts. But that confirmation had to be made in the order in which they ranked in seniority in their Class II posts. We have no doubt that since all of them were appointed to Class I on an *ad hoc* basis and since they had all completed their probation in Class I posts when permanent vacancies occurred in that cadre, their seniority in Class II has to prevail in their ranking in Class I. By that criterion, there can be no doubt that the appellant must take his place below respondents 2 and 3.

Learned counsel appearing on behalf of the appellant contends that seniority of officers promoted to Class I from the Class II cadre must be determined according to the dates of their continuous officiation in Class I posts and according to the dates on which they completed their probationary period. It is urged that by the application of this dual test, the appellant would rank higher in seniority over respondents 2 and 3. By reason of the circumstances which we have earlier mentioned, there is no substance in this contention. The appellant was junior to respondents 2 and 3 in Class III as well as in Class II Service of the Pepsu State. He was also junior to them in Class II Service of the Punjab Government, after reorganisation of the States. Having been appointed to the higher post on the same date as respondent 3 and on an *ad-hoc* basis, the appellant cannot be permitted to take advantage of a chancy circumstance that being geographically close to the headquarters he was able to take charge of the post of promotion on the very date on which he was appointed, an opportunity which a quirk of posting denied to respondent 3. The latter, being at Kulu, had to be relieved of his post there and the proverbial red-tapism intervened to disable him from taking charge of his Class I post until fourteen days later. In so far as respondent 2 is concerned, he had to await the decision of the Government that those on deputation to the Ludhiana Agricultural University may return to their parent departments. It is not disputed that if in August 1965, respondent 2 was not working on deputation, he would have been promoted along with the appellant and respondent 3 to Class I. In fact it is important that in Class I, there were only two vacancies in August 1965 and if respondent 2 were available for being posted as a Deputy Director, it is he and respondent 3 who would have filled the two vacancies. The appellant being junior to them would not have been appointed as a Deputy Director even on an *ad-hoc* basis.

Learned counsel for the appellant placed heavy reliance on the State Government's instructions regarding fixation of seniority contained in Government Memo No. 9448—Agr. 1(1)65/1583 dated April 13, 1966, in support of his argument that the appellant must rank

- A higher in seniority than respondents 2 and 3. The Memorandum has no application because it refers to 'temporary officers' appointed to the Punjab Agricultural Service, Class I and Class II. In case of temporary officers promoted to Class I and Class II posts, seniority may have to be determined under the particular Government Memorandum with reference to the dates of continuous appointment in the respective cadres. But the appellant and respondents 2 and 3 were working in a permanent capacity when they were promoted to Class I. What governs the seniority of the appellant is not the Memorandum on which he relies but the rules contained in the Punjab Agricultural Service, Class I, Rules, 1947. If regard is had to rules 10 and 16 of the aforesaid Rules, there cannot be any doubt that the appellant must rank lower in seniority than respondents 2 and 3. Rule 16 provides that seniority of members of the Service shall be determined according to the date of confirmation in the Service. The exact dates of confirmation of the officers concerned are not on the record but it is clear that by reason of the circumstances adverted to before, appellant's confirmation has to be postponed to that of respondents 2 and 3.
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- D We are, therefore, of the opinion that the High Court is right in taking the view that respondents 2 and 3 were entitled to be appointed as Joint Directors of Agriculture in preference to the appellant on the basis of their seniority. Accordingly we confirm the judgment of the High Court and dismiss the appeal. The appellant shall pay the costs of respondents 2 and 3 in one set. There will be no order as to costs of respondent 1, the State of Punjab, or of respondents 4 and 5.

S.R.

*Appeal dismissed*