

SHIV KUMAR SHARMA A

HARYANA STATE ELECTRICITY BOARD, CHANDIGARH
& ORS.

JULY 27, 1988 B

[E.S. VENKATARAMIAH AND MURARI MOHON DUTT, JJ.]

Civil Services: Confirmation—Archaic rule giving scope to executive authorities to act malafide/arbitrarily—Gives rise to unnecessary litigations—High time for Government and authorities to think over. C

Seniority—Seniority has nothing to do with stoppage of increment—Such minor punishment not to affect seniority—Especially when probation is completed satisfactorily. D

The appellant was appointed an Assistant Engineer on June 10, 1963 in the Punjab State Electricity Board on probation for two years which ended on June 10, 1965. On bifurcation of Punjab Electricity Board, the service of the appellant was allocated to Haryana State Electricity Board. As a result of a disciplinary proceeding held against him in 1968, a minor penalty of stoppage of one increment without any future effect was imposed on the appellant. After expiry of one year, the appellant was, however, given the increment. E

By virtue of an order dated March 30, 1970, the appellant and respondents 2 to 19 were confirmed as Assistant Engineers, class-II on satisfactorily completing the probation period of two years. Though the others were confirmed with effect from April 1, 1969, the appellant was confirmed with effect from December 1, 1969. Consequently, the appellant's name was placed last of all the confirmed officers. The appellant challenged the said order by way of a writ petition before the High Court which dismissed the petition. This appeal by special leave is against the judgment of the High Court. F

Allowing the appeal, G

HELD: 1. The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant's increment for one year was stopped and such stoppage of increment will H

- A have no effect whatsoever on his seniority. Accordingly, the Electricity Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from December 1, 1969 instead of April 1, 1969. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list. [624G-H; 625A]

- 2. There is no explanation why the confirmation of the appellant was deferred till December 1, 1969. The explanation that after some substantive posts had fallen vacant on April 1, 1969, the question of confirmation was taken into consideration is not supported by any material on record inasmuch as there is nothing to show when these posts had fallen vacant. It is difficult to accept that all these posts had fallen vacant on the same day, that is, on April 1, 1969. Though the vacancies had occurred before that day, the Board did not care to take up the question of confirmation for reasons best known to it. While there is some necessity for appointing a person in government service on probation for a particular period, there may not be any need for confirmation of that officer after the completion of the probationary period. The archaic rule of confirmation, still in force, gives a scope to the executive authorities to act arbitrarily or *mala fide* giving rise to unnecessary litigations. It is high time that the Government and other authorities should think over the matter and relieve the government servants of becoming victims of arbitrary actions. [625H; 626B; 625C-D]

S.B. Patwardhan & Others v. State of Maharashtra & Others, [1977] 3 SCR 775, referred to.

- F [Setting aside the High Court judgment and the seniority list, this Court directed that a fresh seniority list be prepared within six months on the basis of this judgment and maintain the appellant's seniority in the post to which he has been promoted in the meantime.] [626D]

- G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 301 of 1984.

From the Judgment and Order dated 1.2.1983 of the Punjab and Haryana High Court in Letters Patent Appeal No. 1410 of 1982.

- H P.D. Sharma for the Appellant.

Parmod Dayal for the Respondents.

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The Judgment of the Court was delivered by

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DUTT, J. This appeal by special leave is directed against the judgment of the Division Bench of the High Court of Punjab & Haryana whereby the High Court dismissed *in limine* the letters patent appeal preferred by the appellant against the judgment of a learned Single Judge of the High Court dismissing the writ petition of the appellant relating to his seniority.

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The appellant was appointed an Assistant Engineer-II with effect from June 10, 1963 in the Punjab State Electricity Board on probation for two years which ended on June 10, 1965. After the bifurcation of the Punjab State Electricity Board, the service of the appellant was allocated to the Haryana State Electricity Board, hereinafter referred to as 'the Board'. As a result of a disciplinary proceeding held against the appellant, on April 15, 1968 a minor penalty for the stoppage of one increment without any future effect was imposed on the appellant by the Board. After the expiry of one year, the appellant was, however, given the increment.

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Although the probationary period of the appellant was completed on June 10, 1965, he was not confirmed within a reasonable time thereafter. There is also no material to show that his period of probation was extended. In the meantime, some substantive posts of Assistant Engineers, Class-II, fell vacant and by an order dated March 30, 1970 of the Secretary to the Board, the appellant and the respondents Nos. 2 to 19 were confirmed as Assistant Engineers, Class-II. It has been specifically stated in the said order that the officers mentioned therein, that is, the appellant and the respondents Nos. 2 to 19, had satisfactorily completed the probationary period of two years. It, however, appears from the said order that respondents Nos. 2 to 19 were confirmed in the posts of Assistant Engineers, Class-II, with effect from April 1, 1969, while the appellant was confirmed in that post with effect from December 1, 1969. Consequently, the appellant's name was placed last of all the confirmed officers. In the seniority list also, the name of the appellant was placed against serial No. 63, that is, below the names of the respondents Nos. 2 to 19, although the seniority list appears to have been prepared on the basis of the respective dates of appointments of the officers. As the appellant was appointed on June 10, 1963, his name should have been placed below the name of Pawan Kumar Aggarwal (Serial No. 45) respondent No. 3

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A appointed on June 7, 1963 and above the name of Sudesh Kumar Tuli (Serial No. 46) respondent No. 2 appointed on June 21, 1963, but his name was placed below that of Ved Prakash Lalit (Serial No. 62), who was appointed on April 7, 1964. In other words, the names of the respondents Nos. 2 and 4 to 19, who are all juniors to the appellant, were placed above the name of the appellant in the seniority list without any reason whatsoever.

C Being aggrieved by the impugned order of the Board dated March 30, 1970 and also the seniority list wherein the appellant's name has been placed below the names of his juniors, namely, respondents Nos. 2 and 4 to 19, the appellant filed a writ petition before a Single Judge of the Punjab & Haryana High Court. As stated already, the learned Single Judge dismissed the writ petition, and the letters patent appeal preferred by the appellant against the order of the learned Single Judge was also dismissed. Hence this appeal. It may be stated here that respondent No. 4, S.P. Midha, is since dead.

D The only point that is involved in this appeal is whether the Board was justified in confirming the appointment of the appellant in the post of Assistant Engineer, Class-II, with effect from December 1, 1969 and placing him below his juniors, namely respondents Nos. 2 and 4 to 19, in the seniority list. As has been noticed already, there is no material to show why the appellant was confirmed in the post with effect from December 1, 1969, when he had completed his probationary period of two years satisfactorily. It is submitted on behalf of the Board that as the minor penalty was imposed on the appellant by way of stoppage of his increment for one year, he was confirmed with effect from December 1, 1969 and placed below the respondents Nos. 2 and 4 to 19 in the seniority list.

F We are unable to accept the above contention. The penalty was imposed on April 15, 1968 and, as a result of which, he was deprived of the monetary benefit of one increment for one year only. The penalty by way of stoppage of one increment for one year was without any future effect. In other words, the appellant's increment for one year was stopped and such stoppage of increment will have no effect whatsoever on his seniority. Accordingly, the Board acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant in the post with effect from December 1, 1969, that is, long after the date of confirmation of the said respondents Nos. 2 to 19. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. It

is apparent that for the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list.

The appellant should have been confirmed on June 10, 1965 on which date he had completed two years of his probationary period. As has been stated already, the probationary period was not extended. The Board has not laid down any guideline for confirmation. There is no rule showing when an officer of the Board will be confirmed. While there is some necessity for appointing a person in government service on probation for a particular period, there may not be any need for confirmation of that officer after the completion of the probationary period. If during the period of probation a government servant is found to be unsuitable, his services may be terminated. On the other hand, if he is found to be suitable, he would be allowed to continue in service. The archaic rule of confirmation, still in force, gives a scope to the executive authorities to act arbitrarily or *mala fide* giving rise to unnecessary litigations. It is high time that the Government and other authorities should think over the matter and relieve the government servants of becoming victims of arbitrary actions. In this connection, we may refer to the decision in the case of *S.B. Patwardhan & Others v. State of Maharashtra & Ors.*, [1977] 3 SCR 775 where Chandrachud, C.J. speaking for the Court observed as follows:

"Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies.

A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. It is on the record of these writ petitions that officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the Government.

In the instant case, although the Board found that the appellant had satisfactorily completed his period of probation, yet he was placed below his juniors in the seniority list without any rhyme or reason. There is no explanation why the confirmation of the appellant was deferred till December 1, 1969. It is, however, submitted on behalf of

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- A the Board that after some substantive posts had fallen vacant on April 1, 1969, the question of confirmation of the appellant and the respondents Nos. 2 to 19 was taken into consideration. This submission is not supported by any material on record inasmuch as there is nothing to show when these posts had fallen vacant. It is difficult to accept that
- B all these posts had fallen vacant on the same day, that is, on April 1, 1969. We have, therefore, no hesitation in holding that the vacancies had occurred before that day, but the Board did not care to take up the question of confirmation for reasons best known to it. That facts stated hereinabove, disclose that the Board had acted arbitrarily at its sweet will and without any justification whatsoever in making the appellant junior to the respondents Nos. 2 and 4 to 19, who are admittedly juniors in service to the appellant.
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For the reasons aforesaid, the judgment of the learned Single Judge and that of the Division Bench of the High Court and the impugned seniority list are set aside. We direct that a fresh seniority

- D list shall be prepared by placing the appellant immediately below Pawan Kumar Aggarwal and above Sudesh Kumar Tuli within six weeks from date and maintain the seniority of the appellant, as directed, in the post to which the appellant has been promoted in the meantime.

- E The appeal is allowed with costs quantified at Rs.5,000

G.N.

Appeal allowed.