M.P. CHANDORIA

*v.*

STATE OF M.P. AND ORS.

MARCH 29, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Service Law :*

*Madhya Pradesh Civil Services (General Condition of Service) Rules, 1961/Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960 :*

*Rules 8, 12/Rules 3, 3A—Seniority and confirmation of direct recruit—Candidate joined service on 15.2.1967—He was put on probation and he passed prescribed test on 27.6.1972—Appointment confirmed on regular basis on 13.3.1973—Claim for confirmation and seniority w.e.f. date of joining duty—Held, mere passage of time of one year does not entitle a probationer to be a member of Service on successful completion of probation, appointing authority should confirm the employee on a post available or grant him a quasi-permanent status and confirm him as soon as post is available—No illegality committed by authorities in giving seniority from date of passing the test.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7046 of 1996.

From the Judgment and Order dated 17.12.92 of the Madhya Pradesh State Administrative Tribunal, in O.A. No. 521 of 1988.

Amlan Ghosh for the Appellant.

S.K. Agnihotri, Sakesh Kumar, Mrs. Mridula Aggarwal for the Respondents.

The following Order of the Court was delivered :

Leave granted.

We have heard the learned counsel on both sides.

A The appellant was appointed as a direct recruit to the M.P. State Civil Service (Deputy Collector) on January 7, 1967 and joined the service on February 15, 1967. He was put on probation w.e.f. the said date. He had passed the prescribed test on June 27, 1972. The Government had confirmed his appointment on regular basis on March 13, 1973. The B appellant has sought his confirmation w.e.f. his date of joining the duty, viz., February 15, 1967 and claimed seniority from that date. The Tribunal has not granted the relief in O.A. No. 521 of 1988 by order dated December 17, 1992. Thus this appeal by special leave.

C The learned counsel for the appellant has contended that since he has been appointed w.e.f. the date of joining of duty, his seniority should be reckoned from the date of his starting discharging duty of the post, viz., February 15, 1967. As he has not been discharged from service due to his failure to pass the test, though he passed his test at a later date, he must be deemed to have been confirmed w.e.f. the date of his joining the duty. D Therefore, the seniority is required to be conferred from that date. We find no force in the contention. Indisputably, the appellant is governed by the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961 (for short, the 'Rules'). Clause 2 (g) defines 'service' to mean a service of group of posts in connection with the affairs of the state other than the Indian Administrative Service and the Indian Police Service, organised as E such by the Government. Rule 4 classifies the post with which we are not concerned. Rule 8 prescribes probation. Rule 8(1) envisages that a person appointed to a service or post by direct recruitment shall ordinarily be placed on probation for such period as may be prescribed. The appointing authority may, for sufficient reasons, extend the period of probation by a F further period not exceeding one year. The probationer has to undergo such training and pass such departmental examination during the period of his probation as may be prescribed. Sub-rules (4) and (5) are not relevant and are omitted. Sub-rule (6) of Rule 8 is relevant for the purpose of the case which envisages that on successful completion of probation and passing the prescribed departmental examination, if any, the probationer G shall, if there is a permanent post available, be confirmed in the service or post to which he has been appointed. Otherwise a certificate shall be issued in his favour by the appointing authority to the effect that the probationer would have been confirmed but for the non-availability of the permanent post. As soon as a permanent post becomes available, he will be confirmed. H Under Sub-rule (7), a probationer, who has neither been confirmed nor a

certificate issued in his favour under sub-rule (6), nor is discharged from service under sub-rule (4), he shall be deemed to have been appointed as a temporary Government servant w.e.f. the date of expiry of probation and his conditions of service shall be governed by the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960. A

Under Rule 12, the seniority of the Members of the service of a district branch or group of posts of that service, shall be determined in accordance with the principles laid down therein. Sub-clause (i) of Clause (a) envisages that the seniority of a directly recruited Government servant appointed on probation shall count during his probation from the date of his appointment; the proviso is not relevant. Sub-clause (ii) envisages that the same order of *inter se* seniority of direct recruits maintained by confirmation of the normal period of probation. If, however, the period of probation of any direct recruit is extended, the appointing authority should determine the date from which the candidate should be assigned seniority. Until the probation period is completed and he is confirmed in the post, he does not become a member of the service on successful completion of the probation and passing of the prescribed tests of conditions precedent to declaration of the completion of the probation period. So, mere passage of time of one year does not entitle a probationer to be a member of the service. He remains to be on temporary service. On completion of probation period, the appointing authority should confirm him in a pending post available or grant him a quasi-permanent status. As soon as the post is available, he should be confirmed. In view of the admitted position that he did not pass the test, the appointing authority considered that his seniority would be counted w.e.f. the date of his passing the test. Rule 12 (a) (ii) clearly empowers the appointing authority to assign, in these circumstances, the seniority in lower level then the one assigned by the Public Service Commission. We do not find any illegality committed by the authorities in giving seniority from the date of his passing the test. B C D E F

The appeal is accordingly dismissed. No costs.

R.P. Appeal dismissed.