



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. 79 of 2020.

Date of decision: 05.03.2024.

State of H.P. and othersAppellants.

Versus

Reena VermaRespondent.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
The Hon'ble Mr. Justice Sushil Kukreja, Judge.

*Whether approved for reporting?*¹ Yes

For the Appellants : Mr. Ramakant Sharma,
Mr. Navlesh Verma and Ms.
Sharmila Patial, Additional
Advocate Generals.

For the Respondent : Mr. P.P. Chauhan, Advocate.

Tarlok Singh Chauhan, Judge (Oral)

The writ petition filed by the respondent (writ petitioner) has been allowed by the learned writ Court with a direction to the appellants to consider the respondent as an appointee of 08.05.2003 for all intents and purposes and for grant of all consequential benefits and, aggrieved by the same, the State has filed the instant appeal.

2. The bare minimal facts, as are necessary, for the adjudication of the appeal are that the respondent was appointed as a Clerk on compassionate ground in pursuance of order dated

¹Whether the reporters of the local papers may be allowed to see the Judgment?Yes

08.05.2003. After undergoing medical examination on 15.05.2003, she joined her duties on 17.05.2003. Interestingly, after the issuance of her appointment order dated 08.05.2003 but before the respondent could join on 17.05.2003, the State Government issued a notification dated 15.05.2003, whereby the appointments made in the State on or after the date of publication of the notification in the Rajpatra Himachal Pradesh i.e. 15.05.2003 were excluded from the applicability of the Central Civil Services (Pension) Rules, 1972, (in short, "CCS (Pension) Rules 1972"), with intention of the Government to notify Contributory Pension Scheme for such government servants whose appointments have been made on or after 15.05.2003.

3. The grievance of the petitioner before the learned writ Court was that the respondents were thrusting upon her to become a member under the Contributory Pension Scheme by considering her as an appointee subsequent to the appointed date i.e. 15.05.2003 by considering her date of appointment i.e. 17.05.2003 as a date of her appointment as against her order of appointment dated 08.05.2003.

4. The learned writ Court after taking note of these admitted facts came to the conclusion that the petitioner, as a matter of fact, was appointed on 08.05.2003 and was thus governed by

CCS (Pension) Rules, 1972 and not by the Himachal Pradesh Civil Services Contributory Pension Rules, 2006.

5. It is vehemently argued by Shri Navlesh Verma, learned Additional Advocate General that the learned writ Court has gone astray by considering the date of appointment of the respondent to be 08.05.2003, whereas, it was the date of her joining i.e. 17.05.2003, which alone could be considered as a date of appointment because the appointment letter itself makes it abundantly clear that the respondent would be entitled to the pay scale as well as other allowances, as admissible, from time to time, only from the date of her joining the post.

6. There is no denial of the fact that the respondent after completing various formalities including undergoing her medical examination eventually joined on 17.05.2003.

7. Therefore, the question now poised before this Court once again is whether the appointment of the respondent would be governed by the appointment letter dated 08.05.2003 or will have to be counted from the actual date of joining i.e. 17.05.2003.

8. It is more than settled that the date of appointment is normally a starting point of competition of length of service. The principle of leaning in favour of initial date of appointment is fully justifiable on the basis of rule of fairness and the anxiety to avoid any injustice. The principle laid down is that in the absence of any

statutory provision or rule made thereunder or under the proviso appended to Article 309 of the Constitution of India, once an incumbent is appointed to the post, according to rules, his/her seniority has to be counted from the date of appointment.

9. Reference in this regard can conveniently be made to one of the recent judgments rendered by Hon'ble three Judge Bench of the Hon'ble Supreme Court in ***T. Valsan (D) Thr. Lrs. and others vs. K. Kanagaraj and others AIR 2023 SC 2860***, wherein after taking note of various judgments rendered by the Hon'ble Supreme Court, it was held as under:

“22. A three Judges Bench of this Court in Chandravathi P.K. & Ors. v. C.K. Saji and Ors. AIR 2004 SC 2717, referred to a number of earlier judgments on the issue, including [D. Stephen Joseph AIR 1997 SC 2602](#), [Satpal Antil v. Union of India AIR 1995 SC 1858](#), [Anil Kumar Gupta and others etc. v. Municipal Corporation of Delhi and others etc. AIR 2000 SC 659](#), [A.K. Raghumani Singh v. Gopal Chandra Nath AIR 2000 SC 1580](#) and [Pramod K. Pankaj v. State of Bihar AIR 2004 SC 746](#) and quoted with approval of the last of these judgments. The principle laid down is that in the absence of any statutory provision or rule made thereunder or under the proviso appended to [Article 309](#) of the Constitution of India, once an incumbent is appointed to the post according to rules, their seniority has to be counted from the date of appointment.”

10. No rules or statutory provisions had been brought to the notice of the learned writ Court regarding the determination of

seniority. Therefore, the seniority of the respondent would ordinarily have been determined on or from the date of her appointment i.e. 08.05.2003.

11. The learned Additional Advocate General would argue that even as per the appointment order i.e. Office Order dated 08.05.2003, the respondent has been held entitled to the pay scale and other allowances only from the date of her joining the post and not from the date of Office Order which clearly indicates that her seniority was required to be determined on the date of her actually joining the post and not earlier to that.

12. However, we find no merit in such contention for the simple reason that a Constitution Bench of the Hon'ble Supreme Court in ***Dr. Amarjit Singh Ahluwalia vs. The State of Punjab and others (1975) 3 SCC 503*** has clearly held that date of order of appointment is not synonymous with the date of appointment. It was further observed that an order of appointment may be of three kinds as:

- (i) it may appoint a person with effect from the date he assumes charge of the post, or
- (ii) it may appointment him with immediate effect, or
- (iii) it may appoint him simpliciter without saying as to when the appointment shall take effect.

13. It was further observed that where the order of appointment is of first kind, the appointment would be effective only

when the person appointed assumes charge of the post and that would be the date of his appointment, as it would be then that he is appointed. But, in a case of second kind, the appointment would be effective immediately irrespective of as to when the person appointed assumes charge of the post and the date of appointment in such a case would be same as the date of order of appointment. However, in the said judgment, nature and effect of third kind of appointment has not been elaborated.

14. In such circumstances, we essentially would have to fall back on the appointment order itself so as to gather the intention of the Appointing Authority. The relevant portion of the Office Order dated 08.05.2003 reads as under:

“On the approval of the F.C-cum-Secretary (Revenue) to the Government of Himachal Pradesh, Shimla-2 vide his office letter No. Rev. A(B) 2-1/2003 (Reena) dated 23 rd April, 2003, the undersigned hereby appoint Km. Reena Verma D/o Late Sh. Gian Chand Verma R/o Village Sumni Tehsil Kumarsain District Shimla as Clerk on compassionate grounds in the pay scale of Rs.3120-100-3220-110-3660-120-4200-140-4400-150-5000-160-5160/-(with initial start Rs.3220/-) Plus other allowances as admissible from time to time from the date of her joining the post and she is posted at District Headquarter on the following terms and conditions.”

15. Evidently, it would be noticed that the aforesaid order is neither of the first kind nor of the second kind but appears to be of third kind when considered in light of the judgment in **Dr. Amarjit**

Singh Ahluwalia's case (supra). It would further be noticed that no date to give effect to the appointment has been indicated specifically, but only the date from which the salary and allowances would be admissible had been mentioned. In the place of posting, it had been mentioned District Headquarter which indicates that the appointment has been considered to be complete on the date of issuance of the Office Order dated 08.05.2003 itself, but was made subject to fulfilling of certain terms and conditions mentioned in the Office Order including fitness certificate.

16. It is further evident from the Office Order that the decision to appointment was approved by the Government in April 2003 which was further communicated to the Deputy Commissioner vide letter dated 23.04.2003 and in sequel to the said approval, the Deputy Commissioner had issued the appointment letter dated 08.05.2003 clearly stipulating and declaring therein that the respondent had been appointed as a Clerk on compassionate grounds without giving any other date with respect to commencement of date of appointment but a definite station i.e. place of her posting was set out i.e. District Headquarter.

17. Thus, this clearly proves in no uncertain terms that the appointment order of the respondent was issued with the intention of the Appointing Authority to appoint the respondent with immediate effect. The only rider was that the appointee would be entitled to

pay and allowances from the date of joining of the post. If the appellants wanted the seniority of the respondent to be counted from a subsequent date like the date of joining, then nothing prevented them from mentioning similar condition as was fixed regarding the pay and allowances with respect to seniority also, that the same would be reckoned from the date of joining of the post.

18. In the given facts and circumstances, we have not been persuaded enough to take a view other than the one taken by the learned writ Court. Consequently, we find no merit in this appeal and the same is accordingly dismissed, leaving the parties to bear their own costs. All pending applications shall also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

March 05, 2024.
(krt)