

PETITIONER:  
KULDIP CHAND

Vs.

RESPONDENT:  
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT 24/08/1995

BENCH:  
RAMASWAMY, K.  
BENCH:  
RAMASWAMY, K.  
HANSARIA B.L. (J)

CITATION:  
1996 AIR 706                      1995 SCC (5) 680  
1995 SCALE (5) 239

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

On 1st January, 1991 when the post of Accountant became vacant, Ashok Kumar, 4th respondent had staked his claim for consideration of his case for promotion contending that he was appointed on November 29, 1976 as octroi moharrar in the pay scale of Rs. 110-250/- and that he was posted as a clerk on March 1, 1984. By the proceedings of the competent authority, the post of octroi moharrar and clerks were redesignated as clerks in year 1982. Consequently he was working as a clerk from November 29, 1976. The post of clerk as a feeder post for consideration to the vacancy of accountant. He being senior to the appellant, is better situated to be considered for the post of accountant. His claim was negatived. Consequently, when he approached the High Court of Himachal Pradesh in W.P. No. 267/91 by order dated November 22, 1991, the High Court accepted the claim and allowed the writ petition directing the Union of India to consider his case for promotion as an accountant vis-a-vis the claim of Kuldip Chand, which found favour with the authorities. The case of the appellant is that he was appointed as sanitary supervisor on August 29, 1973 in the pay scale of Rs. 100-160/-. He was promoted as a clerk on February 5, 1979 and was posted as a store keeper in the pay scale of Rs. 510-800/-. Ever since he has been drawing the same scale and is thus senior to the 4th respondent.

The question, therefore, for our consideration is: who is the senior in the post for clerk? Admittedly, post of clerk is a feeder post for promotion as an accountant. It is not in dispute that the posts of octroi moharrar and the clerk were fused and redesignated as clerks. In that view, it must be deemed the Ashok Kumar has been working as a clerk since inception, viz., November 29, 1976. The appellant admittedly was appointed as a clerk on Pension Rules, 1950 (for short, 'the Rules' ) would stand attracted

to the respondents and, therefore, the respondents are not entitled to any pension in excess of the pension calculable on the last substantive pay drawn by them.

The High Court, relying upon s.39(19) of the Act, which is *pari materia* with the provisions of the Bihar Agricultural University Act, held that the Government's liability to pay pension still subsists. Therefore, the Government is liable to pay the compensation/proportionate pension to the respondents. Accordingly allowed the writ petition.

Mr. B.B. Singh, learned counsel for the State, contended that since the respondents had resigned and were re-employed by the University, by operation of the instructions issued in letter dated 11.5.1990, they must be deemed to have been re-employed. Therefore, they are not entitled to pension higher than what they would have got, had they remained as Government servants by operation of Rule 161(b) of the Rules. Though he contended that the Government does not bear the proportionate pension, we do not on December 23, 1982 but no vacancy had arisen thereafter and, therefore, the mere rejection of the claim for seniority does not disentitle him to claim his seniority over the appellant for consideration by the respondent-Union.

When the aforesaid facts are taken into consideration, it would be obvious that the preparation of seniority list *per se* was illegal. Therefore, the mere fact that he did not challenge the seniority list, which was illegally prepared, till he was aggrieved for non-consideration of the claim to the post of accountant, his legitimate right to be considered cannot be denied. Under these circumstances, the delay is of no consequence for considering the claims of Ashok Kumar for the post of accountant.

The appeal is dismissed. No costs.