

PETITIONER:
HARI OM VERMA

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 09/08/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIAK (J)

CITATION:
JT 1996 (7) 672 1996 SCALE (6)371

ACT:

HEADNOTE:

JUDGMENT:
THE 9TH DAY OF AUGUST, 1996
Present :

Hon'ble Mr. Justice K. Ramaswamy
Hon'ble Mr. Justice G.B.Pattanaik

Ashok Grover, Sr. Adv. and Pramod Dayal, Adv. with him for
the appellant
Manoj Swarup, Adv. for the Respondent
J.S.Maanipur and S.K.Sabbarwal, Adv. for the Respondent
Nos. 5 and 6

O R D E R

The following Order of the Court was delivered :
Hari Om Verma
V.

State of Punjab & Ors.

O R D E R

Leave granted.

We have heard learned counsel on both sides.

The admitted position is that the respondent Nos. 5 and 6, Gurnam Singh and Parminder Singh, were appointed on September 19, 1975 and September 25, 1975 respectively as Assistants on regular basis and ever since they have been continuously officiating as Assistants. The appellant while working as a Senior Stenographer had come to the administrative side as Assistant w.e.f. April 29, 1977 and joined the duty on the said date. In the matter of fixation of inter se seniority, since he has been drawing higher pay than the respondent Nos. 5 and 6 he claims that he is senior to them. The High Court in the impugned judgment dated 9.12.1993 in W.P. Nos. 3938 and 9791 of 1993 has upheld the claim of the respondents.

Thus, these appeals.

Shri Ashok Grover, learned counsel for the appellant, contended that Rule 3(1) and Rule 3(2) are to be used read together; if they are so read, a stenographer drawing higher scale of pay than the respondent should be treated as senior to them. Though prima facie the argument is plausible, on a

Careful reading of the said Rules his contention does not appear to be tenable. Rule 3 reads as under :

"3(1) In offices where the scale of pay of Stenographers is identical to that of Assistants, the Stenographers shall, before becoming eligible for promotion to a higher post on the clerical side, have to (i) qualify in the departmental test prescribed for the post of Assistant, and (ii) work as Assistant for a period of two years on some existing vacancy or by sharing the work of an Assistant"

Provided that :-

a) no Stenographer shall be allowed to take the test unless he has put in one year's service as Stenographer

b) nothing in this sub-rule shall be deemed to require the Stenographers, who stand exempted from passing the test by virtue of the instructions already by the Government from time to time to pass the Assistant's test prescribed in this sub-rule.

c) no Stenographer will be put to work as an Assistant for the required period of two years, unless he has qualified in the test.

Explanation 1. The period during which a Stenographer has, before the date of issue of these rules, performed the duties of an Assistant whether in addition to his own duties or otherwise will be taken into consideration in computing the period of his training as Assistant.

Explanation 2. Where there is no available vacancy of the post of Assistant for imparting training to the Stenographer he shall be given at least one third of the work of some Assistant in addition to his own duties. The Assistant who is thus relieved of some of his work will in turn help the Stenographer in his routine duties.

(2) The seniority of the Stenographers who successfully, complete the period of two years training specified in sub-rule (1) vis-a-vis Assistants, shall be determined by the dates of their continuous appointment against the post of Stenographers or Assistant, as the case may be and if the dates of their higher pay shall be senior to the other and if the rates of pay drawn by them be also the same, the older shall be senior to the

younger."

A reading thereof clearly indicates that a stenographer who becomes eligible for promotion to a higher post on clerical side has to fulfill the qualifications prescribed in Rule 3(1) (i) and (ii). On fulfillment of such qualifications, the inter se seniority is regulated by sub-rule (2) of Rule 3. Thereunder, the inter se seniority of the assistants and stenographers who successfully complete the period prescribed in sub-rule (1) of Rule 3, shall be determined by the date of their continuous appointment as against the post of stenographer or assistant, as the case may be, and if the dates of their appointment be the same, the one drawing higher pay shall be senior to the other and if the rates of pay drawn by them be also the same, the older shall be senior to the younger. It would thus be seen that the continuous officiation in the post of assistant is the determining factor to fix the inter se seniority. In case, the assistant and the senior stenographer happen to officiate continuously in that post from the same date, necessarily the person who is having higher scale of pay either as Stenographer or Assistant, shall be treated to be senior to the person who is drawing lower scale of pay. If the persons drawing the same scale of pay happened to be appointed on the same date, the one drawing higher pay shall be senior to the other and if the rates of pay drawn by them be also the same, the older shall be senior to the younger. It would thus be seen that the continuous officiation in the post of assistant is the determining factor to fix the inter se seniority. In case, the assistant and the senior stenographer happen to officiate continuously in that post from the same date, necessarily the person who is having higher scale of pay either as Stenographer or Assistant, shall be treated to be senior to the person who is drawing lower scale of pay. If the persons drawing the same scale of pay, the older person shall be treated as senior to the younger person. In view of the fact that the respondents had come to be appointed in the year 1975 and the appellant had come to the service on the administrative clerical side in 1977, though he drawing higher scale of pay as senior stenographer, he cannot scale over the respondents in seniority.

The appeals are accordingly dismissed. No. costs.