

JASWANT SINGH LAMBA

v.

HARYANA AGRICULTURAL UNIVERSITY & ORS.

Civil Appeal No. 3323 of 2008

MAY 6, 2008

(S.B. SINHA AND MUKUNDAKAM SHARMA, JJ.)

*Constitution of India, 1950:*

*Article 226 – Review petition by a third party filed belatedly – Maintainability of – Judgment in writ petition allowing regularization of services of writ petitioners from date of their ad hoc appointment – Review petition belatedly filed by an employee who was not a party to writ petition – HELD: Not maintainable – Employee concerned was aware of the order of the High Court and consequent revised seniority list – Order in writ petition became final as no appeal was preferred thereagainst – Locus standi – ‘Necessary party’.*

**Respondent nos. 4 and 5 filed a writ petition before the High Court claiming their seniority from 11.11.1982, the date of their *ad hoc* appointment. The writ petition was allowed by order dated 23.11.1992 and accordingly the revised seniority list was published showing respondents 4 and 5 as senior to the appellant who was admittedly appointed on 3.10.1984. Since, the appellant was not a party to the writ petition filed by the two respondents, and his seniority was said to have been affected by the order passed by the High Court, he filed a review petition and on its dismissal, filed the instant appeal.**

**It was contended for the appellant that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that the appellant being not aware of the result of the petition filed by respondent Nos.4 and 5 could not have moved**

A the application for review and in that view of the matter the same should have been entertained.

The question for consideration before the Court was: whether in the peculiar facts and circumstances of the case, the appellant can be said to have any *locus standi* to file the application for review.

Dismissing the appeal, the Court

HELD: 1.1 Respondent Nos.4 and 5 were appointed in 1982. Their services, however, were regularized on a later date. The question which arose for consideration before the High Court in the writ application was as to whether the respondent-University was right in appointing them on ad hoc basis although they were selected by a Select Committee constituted in terms of the rules. The legality of the seniority list dated 18.4.1992 was not in question therein. No relief therein was claimed as against the appellant and he was, thus, not a necessary party. [para 8] [883-B, C]

1.2 It cannot be said that the appellant did not have knowledge of the proceedings. In the seniority list published on 14.5.1993, which was known to the appellant, respondent No.4, was shown at serial number 12, respondent No.5 was shown at serial number 13 and the appellant was shown at serial number 17. The date of joining of the respondent Nos.4 and 5 was shown to be 12.11.1982 and that of the appellant as 3.10.1984. Appellant and others filed a representation on 24.5.1993. Only grievance raised therein was as to whether degree of AMIE, should be considered to be equivalent to the BE degree. Respondent No. 4, in his counter affidavit, categorically stated that the order of the High Court dated 23.11.1992 was brought to the knowledge of everybody including the appellants. It is also not in dispute that respondent No.4 was granted the promotional scale. Thus, only because a seniority list was again published

in the year 2004 and the appellant filed representations thereagainst, the same by itself could not be a ground for unsettling a settled position. [para 9-12] [884-B, G, H, A; 885-C] A

1.3 Even otherwise, the application for review at the instance of the appellant was not maintainable. The order dated 23.11.1992 became final and binding as against the University. The University accepted the said judgment. No appeal was preferred thereagainst. The appellant who claimed himself to be senior to respondent No. 5, though not a party to the writ petition, could have preferred a Letters Patent Appeal before the Division Bench of the High Court, but he chose not to do so for a long time. Appellant could not be permitted to contend in the review application that respondent Nos.4 and 5, in fact, had rightly been appointed on ad hoc basis, as he was not a necessary party in the writ petition filed by the said respondents. Seniority, as is well known, is not a fundamental right. It is merely a civil right. The High Court was right in concluding that the review application was not maintainable. [para 13-17] [885-D, E, F; 886-A-C] B C D E

*J. Jose Dhanapaul v. S. Thomas & Ors. (1996) 3 SCC 587; R. Sulochana Devi v. D.M. Sujatha & Ors. (2005) 9 SCC 335 – held inapplicable.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3323 of 2008. F

From the final Judgment and Order dated 19.7.2005 of the High Court of Punjab & Haryana at Chandigarh in Review Application No. 82 of 2005 in CWP No. 9879 of 1990.

Manu Mridul, Pranav Vyas and Surya Kant for the Appellant. G

Janaranjan Das, Swetaketu Mishra, Rishi Malhotra and Sanjay Jain for the Respondents. H

The Judgment of the Court was delivered by

A **S.B. SINHA, J.** 1. Leave granted.

2. Appellant herein is aggrieved by a judgment and order dated 19.7.2005 passed by the High Court of Punjab and Haryana, dismissing a review petition seeking review of the judgment dated on 23.11.1992.

B

The review of the said judgment was sought for by the appellant, inter alia, on the premise that the decision of the High Court, allowing a writ petition filed by respondent Nos.4 and 5 resulted in loss of his seniority. Respondent Nos.4 and 5 were appointed as Sectional Officers on an ad hoc basis on or about 11.11.1982. Respondent No.4 was appointed on a temporary post on 27.9.1984, whereas the appellant was appointed on 5.10.1984. Respondent No.5 is said to have been appointed on a temporary post by an order dated 7.6.1985. In a seniority list published on 23.12.1987, their seniority was shown from the date of their regular appointment. The said respondents, however, contended that as they were appointed in terms of the recruitment rules against permanent vacancies, they had wrongly been appointed on an ad hoc basis on and from 11.11.1982.

C

D

E

Their representation that they were entitled to be appointed with effect from 11.11.1982 on a regular basis was rejected. They filed a writ petition before the High Court of Punjab and Haryana on 2.6.1990, praying, inter alia, for the following reliefs :

F

“(a) a writ in the nature of certiorari may kindly be issued in favour of the petitioners and against the respondents, quashing the impugned Annexure P/9.

G

(b) a writ in the nature of mandamus may kindly be issued in favour of the petitioners and respondents to grant benefit of ad hoc services towards fixation of the seniority of the petitioners and to refix their seniority after counting their ad hoc service.

H

(c) a writ in the nature of mandamus may kindly be issued in favour of the petitioners and against the

respondents, directing the respondents to fix pay of the petitioners after taking into consideration their ad hoc service towards grant of increments etc. and to release their arrears along with interest @ Rs.180 per annum.”

3. The said writ petition was allowed by the High Court by an order dated 23.11.1992 directing that the said respondents shall be deemed to be in the service of the respondent on a regular basis from the date of their initial appointment, holding :

“After considering the entire matter, the contention of the learned counsel for the respondents deserves to be rejected. Undisputedly, the petitioners were initially appointed after they had been selected by a Committee with effect from November 11, 1982 and they had been continuously working as such without any break till they were appointed on regular basis. Though the services of the petitioner No.1 stood terminated by serving him a notice dated November 11, 1983, yet he has not relieved and was allowed to continue on the post after he gave an undertaking that in case extension is not granted, he will not claim any salary etc. Later on, he was granted extension of another six months by order dated December 2, 1983. Therefore, there is no break in his service even till his regular appointment.”

4. Allegedly, a seniority list was published on 18.4.1992 wherein the appellant was shown as senior to the respondent No.5 being at serial No.16 and respondent No.5 was shown as junior to him being placed at serial No.18. However, another seniority list was published on 20.5.2004 wherein they were shown as senior to the appellant. Appellant filed representations thereagainst, inter alia, on 29.5.2004 and 24.8.2004. The said representations were rejected by an order dated 1.1.2005, stating :

“It is intimated that your representation for fixing of seniority as Junior Engineer above Shri A.K. Agarwal, J.E. has

A        been considered and rejected in the light of the decision  
of the Hon'ble Pb. & Haryana High Court in Civil Writ  
Petition No.9879 of 1990 dated 23.11.1992 on the basis  
of which Sh. A.K. Aggarwal has been treated to be joined  
B        on regular basis from the date of his joining on ad hoc  
basis.

This also disposes of your all representations on the above  
subject.”

The review application was filed thereafter in January 2005.

C        Respondent No.4 was appointed on temporary post  
before appellant and was also shown senior to appellant in  
seniority lists dated 23.12.1987 and 18.4.1992. Thus, the  
appellant could have grievance only against Respondent No.5,  
if any, who was appointed on temporary post later to the  
D        appellant and was also shown junior in the abovementioned list.

5. Mr. Manu Mridul, learned counsel appearing on behalf  
of the appellant, would submit that the High Court committed a  
serious error in passing the impugned judgment insofar as it  
failed to take into consideration that the appellant being not  
E        aware of the result of the petition filed by respondent Nos.4 and  
5 could not have moved the application for review and in that  
view of the matter the same should have been entertained. There  
having been no time prescribed for filing a review application, it  
was permissible in law for the appellant to file the same  
F        immediately after coming to know of the order, which has civil  
consequences.

6. Mr. Malhotra, learned counsel appearing on behalf of  
respondent No.4 and Mr. Das, learned counsel appearing on  
behalf of respondent No.5, on the other hand, took us through  
G        various documents to contend that the appellant had the  
knowledge about the judgment and order dated 23.11.1992.

7. The principal question which arises for consideration  
herein is as to whether in the peculiar facts and circumstances  
H        of this case, the appellant can be said to have any locus standi

to file the application for review of the said judgment dated 23.11.1992.

8. Respondent Nos.4 and 5 were appointed in 1982. Their services, however, were regularized on a later date. The question which arose for consideration before the High Court in the said writ application was as to whether the respondent-University was right in appointing them on an ad hoc basis although they were selected by a Select Committee constituted in terms of the rules.

No relief therein was claimed as against the appellant. The legality of the seniority list dated 18.4.1992 was not in question therein. Appellant was, thus, not a necessary party; no relief having been claimed against him. Respondent-University was directed to consider their regular appointment with effect from 11.11.1982. The seniority list was required to be revised keeping in view the aforementioned directions of the High Court. A fresh seniority list was prepared pursuant to the said order. Publication of the seniority list was merely consequential to the order of the High Court.

9. Even otherwise, the order of the High Court appears to be known to the appellant herein.

By an order dated 13.5.1993, an office order was issued informing all concerned including the Chief Engineer that the respondent No 5 would be treated to have been appointed on a regular basis w.e.f. 11.11.1982. It is difficult to believe that the departments where only 18 Sectional Officers were working including Civil and Electrical Engineering Department, the appellant would not have the knowledge thereof.

In the seniority list published on 14.5.1993, N.S. Yadav, respondent No.4, was shown at serial number 12; A.K. Aggarwal, respondent No.5, was shown at serial number 13 and the appellant was shown at serial number 17. Therein the date of joining etc. had categorically been stated, from a perusal whereof it would be evident that whereas 12.11.1982 was shown

A to be the date of joining of the respondent Nos.4 and 5, so far  
as the appellant is concerned, his date of joining was shown as  
3.10.1984.

10. Appellant and others filed a representation on  
24.5.1993; paragraphs 2 and 3 whereof reads as under :

B "It is further learnt that seniority list of Jr. Engineers is  
being disturbed through various manipulations under the  
promotion quota. The Selection Committee has already  
met and submitted its recommendations. Under the garb  
C of these recommendations, the administration is trying to  
accommodate out of turn Sh. N.S. Yadav, who is an AMIE  
holder and is junior to at least 11 Jr. Engineers. He is  
being considered for the above promotion on the plea  
D that a degree holder is required. Such an out of turn  
promotion is violative, as per statutory provision.

It will not be out of place to mention here that the Haryana  
Govt. does not consider AMIE equivalent to degree (BE)  
holder for design purpose as has been clarified in another  
case of the employee of the university. Moreover for  
E promotion seniority is the only criteria and even for direct  
recruitment a person with AMIE is not eligible. Hence in  
view of the existing rules, for the promotion of Sh. N.S.  
Yadav would amount to violation of rules and open to legal  
litigation."

F 11. The subject matter of the grievances was as to why  
respondent No.4 who was placed at serial No.12 should be  
considered for the promotional scale despite he being junior to  
eleven persons. Evidently, the seniority list was known to them.  
Only grievance raised therein as to whether degree of AMIE,  
G held by him should be considered to be equivalent to the BE  
degree. Respondent No. 4, in his counter affidavit, categorically  
stated that the order of the High Court dated 23.11.1992 was  
brought to the knowledge of everybody including the appellants  
stating :

H

"The said fact of the respondent Nos.4 and 5 having been accorded seniority over and above the petitioner was again brought to the knowledge of the petitioner and other officers when the said respondents were granted promotional scales vide order dated 27.01.1996 issued by the respondent No.1 herein. The said order dated 27.01.1996 issued by the respondent No.1 is also placed on record by the respondent No.5 as **Annexure R-5/13.**"

12. It is also not in dispute that respondent No.4 was granted the promotional scale.

Thus, only because a seniority list was again published in the year 2004 and the appellant filed representations thereagainst, the same by itself could not be a ground for unsettling a settled position.

13. Even otherwise, the application for review at the instance of the appellant was not maintainable. The order dated 23.11.1992 became final and binding as against the University. The University accepted the said judgment. No appeal was preferred thereagainst. Appellant and others who claimed themselves to be seniors to respondent Nos. 4 and 5 could have preferred a Letters Patent Appeal before the Division Bench of the High Court, but they chose not to do so for a long time.

14. Appellant could not be permitted to contend in the review application that respondent Nos.4 and 5, in fact, had rightly been appointed on an ad hoc basis, as he was not a necessary party in the writ petition filed by the said respondents.

15. Mr. Mridul has relied upon a decision of this Court in *J. Jose Dhanapaul v. S. Thomas & Ors.* [(1996) 3 SCC 587]. We fail to understand as to how the said decision is applicable. In that case, without impleading Thomas as a party, his appointment was annulled. It was in that context, the court opined that he was a necessary party.

*R. Sulochana Devi v. D.M. Sujatha & Ors.* [(2005) 9 SCC 335] whereupon again reliance has been placed was a case

- A where inter se seniority was in question. The seniority list was prepared without giving an opportunity of hearing to the affected employees. There was no dispute that the appellant therein was senior to the first respondent and was entitled to hold the post of Principal of the college. The power of RJD to review was in question. Such a question does not arise herein.

16. Appellant was also not a proper party in the writ petition filed by respondent Nos.4 and 5. Seniority, as is well known, is not a fundamental right. It is merely a civil right.

- C 17. For the reasons aforementioned, the High Court, in our opinion, was right in concluding that the review application was not maintainable. The appeal, therefore, is dismissed. There shall be no order as to costs.

R.P.

Appeal dismissed.