

G. R. LUTHRA

v.

LT. GOVERNOR OF DELHI & ORS.

August 22, 1979

[S. MURTAZA FAZAL ALI AND D. A. DESAI, JJ.]

Delhi Higher Judicial Service Rules, 1970—Petitioner throughout senior to respondent—Both were allotted to different States on division of State—Respondent got proforma promotion in State Cadre—Petitioner given the benefit of "next below rule" and promoted later in his State Cadre—Respondent if could claim seniority over petitioner.

In the competitive examination for recruitment to Punjab State Judicial Service, conducted in 1950 by the undivided State of Punjab, the petitioner and respondent no. 3 were placed at s. nos. 4 and 13 in the merit list. On August 7, 1950 the petitioner was appointed as a Sub-Judge against a permanent post while the respondent was appointed as Sub-Judge against a temporary post on November 23, 1950.

Till the formation of the State of Delhi, judicial officers of Punjab were posted as judicial officers in Delhi. Both the petitioner and the respondent were posted as Sub-Judges in Delhi. Consequent upon the division of the State of Punjab into Punjab and Haryana the petitioner was allotted to Haryana while the respondent was retained in Punjab. But even thereafter they continued as Senior Sub-Judges in Delhi. The Chief Justice of Punjab and Haryana High Court and the Chief Justice of the newly formed Delhi High Court decided that in the judicial service to be constituted for Delhi the petitioner would rank senior to the respondent (the petitioner being placed at the fourth place and the respondent at sixth place in the list of seniority). In May, 1967 the petitioner was appointed as Assistant Sessions Judge, Delhi; the respondent was appointed as Assistant Sessions Judge, Delhi in February, 1968. In the meantime the respondent was given a proforma promotion in the State of Punjab with effect from June 24, 1967 and giving the benefit of "next below rule" the petitioner was promoted as Additional District and Sessions Judge with effect from July 28, 1967. The petitioner was confirmed as District and Sessions Judge in his parent cadre on October 2, 1970, while the respondent was appointed as Additional District and Sessions Judge at Delhi on June 5, 1968 and continued in that post till May, 1971.

When the Delhi Higher Judicial Service was formed in 1970 the petitioner was placed at s. no. 7 and the respondent at s. no. 8 in the list of judicial officers.

The respondent's representation claiming seniority over the petitioner was accepted by the Delhi High Court on the ground that in view of Rule 6(3) of the Delhi Higher Judicial Service Rules 1970 as interpreted by this Court in *G. R. Luthra v. Lt. Governor, Delhi* (AIR 1974 SC 1908) the respondent was senior to the petitioner.

In a petition under Art. 32 of the Constitution the petitioner impugned the order of the Lt. Governor passed on the recommendation of the High Court treating him to be junior to respondent no. 3.

A Allowing the petition,

HELD : 1. The petitioner was senior to the respondent and was rightly placed above the respondent in the initial constitution of the Delhi Higher Judicial Service in May 1971 and the order of the Lt. Governor was, therefore, erroneous. [322 D-E]

B 2. Rule 6(3) of the Rules provides that the seniority of candidates appointed at the initial constitution shall be in accordance with the length of service rendered by them in the cadres to which they belonged at the time of their initial recruitment to the service provided that the *inter se* seniority as already fixed in such cadres shall not be altered. The petitioner was throughout treated as senior to the respondent and even in the initial recruitment to the Delhi Higher Judicial Service he was shown as senior to the respondent. Since the *inter se* seniority had been fixed initially the petitioner was senior to the respondent and this position cannot be altered. [320 B-C]

C 3. Although the respondent was promoted to a higher post before the petitioner was promoted in the respective parent State cadres, since the appointment of the petitioner was made subject to the next below rule, his seniority over the respondent was fully protected. If the respondent was to be given seniority over the petitioner the question of giving benefit of the next below rule to the petitioner would not have arisen. Therefore, merely because the respondent got a proforma promotion and was temporarily promoted six months before the petitioner would not make him senior to the petitioner. [317 E-G]

D 4. Even r. 6(1) (a) envisages that for initial recruitment to the service appointments were to be made from District Judges and Additional District Judges *functioning as such* in the Union Territory of Delhi on deputation from other States. On the date of formation of the service the respondent was not functioning either as District Judge or as Additional District Judge but was on deputation with the Income Tax Appellate Tribunal. [322 A-B]

E 5. The case of *G. R. Luthra v. Lt. Governor Delhi*, was clearly distinguishable in that the respondent was not a party to that case and his case did not fall for consideration by the Court. It was laid down in that case that length of service rendered by a candidate during the period when he was rendering service either as District Judge or Additional District Judge against a permanent or a temporary post was the criterion for the determination of seniority under the Rules. [320 G]

F In the instant case although the petitioner and respondent were drawn from different sources and from different States at the time of the initial formation of the cadre the former was shown above the respondent and, therefore, the respondent could not claim seniority over the petitioner. [321 E]

G *G. R. Luthra, Additional District Judge, Delhi v. Lt. Governor, Delhi & Ors.*, AIR 1974 SC 1908 distinguished.

H ORIGINAL JURISDICTION : Writ Petition No. 402 of 1977.

Under Article 32 of the Constitution.

(Dr.) L. M. Singhvi, Raj Punjvani and G. S. Chatterjee for the Petitioner.

Soli J. Sorabjee, Addl. Sol. Genl. *E. C. Agarwala* and *R. N. Sachthey* for Respondent No. 2 (Delhi High Court). **A**

A. K. Sen, *U. R. Lalit*, *P. H. Parekh*, *C. B. Singh*, *M. Mudgal* and *B. L. Verma* for Respondent No. 3.

The Judgment of the Court was delivered by

FAZAL ALI, J.—This writ petition has had a chequered career and involves a competition regarding seniority between the petitioner G. R. Luthra and Respondent No. 3 D. R. Khanna who were simultaneously recruited as members of the Punjab Judicial Service. The case appears to have travelled through various stages both in the High Court and in this Court on different aspects. After hearing counsel for the parties in the view that we propose to take in this petition and also because respondent No. 3 has filed an affidavit that he would not press this Court for giving any decision regarding his seniority over the petitioner if the submission of respondent No. 3 regarding his appointment under the Delhi Higher Judicial Service is decided against him, it is not necessary for us to give any finding on the scope and ambit of Rule 6(3) of the Rules. **B**

In view of these facts the controversy in this case has been very much narrowed down and the point for decision falls within a very narrow compass. In order however to understand the question involved, it may be necessary to give a short history and a brief resume of the manner in which the petitioner and respondent No. 3 were appointed and their vertical mobility in the hierarchy through which they had moved up. **C**

To begin with, both the petitioner and respondent No. 3 competed for entrance to the State Judicial Service of the undivided Punjab. The petitioner Luthra was appointed as far back as 7th August, 1950 having obtained 4th position in the competitive examination and was appointed as Sub-Judge against a permanent post. Respondent No. 3 had also taken the same competitive examination but obtained a lower position (13th) and was appointed as Sub-Judge against a temporary post. Thus, from inception three important facts are established : **D**

1. That the petitioner had obtained a higher position in the competitive examination held for entrance to the State Judicial Service whereas respondent No. 3 had obtained a lower position. This is important because under the Rules and the conventions the seniority of new recruits is normally governed by the place which they occupy in the competitive examination. **E**

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- A** 2. The petitioner Luthra was appointed on the 7th August, 1950 whereas respondent No. 3 D. R. Khanna was appointed on the 23rd November, 1950 i.e. about 3½ months later. Thus, even regarding the time of appointment, the petitioner entered the service prior to respondent No. 3 both having been appointed to the same service and having been recruited through the same competitive examination.
- B**
- C** 3. That while the petitioner Luthra was appointed against a permanent vacancy respondent No. 3 was appointed in the State Judicial Service only against a temporary post. This was also an important factor which has to be taken into consideration in order to determine the *inter se* seniority of the petitioner and respondent No. 3.

D Both the petitioner and respondent No. 3 were thus appointed as members of the Punjab Judicial Service in the undivided Punjab. So far as Delhi was concerned before the birth of the Haryana State it used to be a Judicial District of Punjab. Unfortunately, the services of the respondent No. 3 remained terminated due to medical unfitness between 13th March, 1952 to 23rd May, 1956. But this gap is of no consequences because subsequently his medical unfitness was set aside in appeal and respondent No. 3 was reinstated with effect from the date of his appointment, namely, 23rd November, 1950.

E On the 9th March, 1963 the petitioner Luthra was posted at Delhi as Sub-Judge. On 1st November, 1966 by virtue of re-organisation of Punjab, Punjab and Haryana became two separate States and some areas were transferred to Himachal Pradesh. As a result of the aforesaid reorganisation the services of the petitioner Luthra were allocated to the State of Haryana and that of respondent No. 3 Khanna to Punjab, but both the officers continued to be posted at Delhi and were Senior Sub-Judges. On the same date, namely, 1st November, 1966 Delhi High Court was created and came into existence. Shortly thereafter, on 5th November, 1966 in a meeting of the Chief Justices of the Punjab and Haryana and Delhi High Courts a list of Judicial Officers to be absorbed in the Judicial Service to be constituted at Delhi was finalised and in the list of the Lower Judicial Service which appears at page 393 of the Paper Book the petitioner Luthra was placed at S. No. 4 whereas respondent No. 3 D. R. Khanna was placed at S. No. 6. Thus, the two High Courts clearly decided that in the new Service the petitioner was to rank senior to respondent No. 3. This decision was a logical corollary of the history of the services of the petitioner and respondent No. 3, discussed above. The proceedings of the meeting are contained

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at pages 392-395 of the Paper Book in which the Courts decided to allocate one District and Sessions Judge for Delhi and 8 Additional District and Sessions Judges in the Higher Judicial Service and 39 Sub-Judges in the Lower Judicial Service. Both the petitioner and respondent No. 3 at that time fell in the third category. Thus, even though the petitioner and respondent No. 3 had for a short while been allocated to two different States, namely, one was allotted to Punjab and the other to Haryana, but with the coming into existence of the Delhi High Court both of them again joined the same service and their rank and seniority was throughout maintained.

On 9th May, 1967 the petitioner Luthra was appointed as Assistant Sessions Judge, Delhi, Respondent No. 3 was appointed as Assistant Sessions Judge on 21st February, 1968, but it appears that by a letter dated 22nd March, 1971 written by the Registrar of the Punjab and Haryana High Court addressed to the Accountant General, Punjab, Simla respondent No. 3 was given proforma promotion with effect from 24th June, 1967. The proforma promotion is related to vacancies in his parent State and has nothing to do with vacancies or seniority where both were at the relevant time serving. This letter is annexed as Annexure 2 appearing at pages 288-89 of the Paper Book. The petitioner Luthra was however given benefit of the next below rule as Additional District and Sessions Judge with effect from 28th July, 1967. This unfortunate episode seems to be the sheet anchor of the argument of respondent No. 3 in claiming seniority over the petitioner. It is true that by virtue of the letter referred to above respondent No. 3 was appointed as Additional District and Sessions Judge prior to the petitioner but since this appointment was made subject to the next below rule it is manifest that the seniority of the petitioner over respondent No. 3 was fully protected otherwise if in fact the respondent No. 3 was to be given seniority over the petitioner, the question of giving benefit of the next below rule to the petitioner would not have arisen. The letter referred to above was passed by the order of the Chief Justice and the Judges of the High Court. In these circumstances, therefore, merely because respondent No. 3 got a proforma promotion and was temporarily appointed as Additional District and Sessions Judge six months before the petitioner that will not make him senior to the petitioner. This fact is borne out by another circumstance. The petitioner was also appointed as Additional District and Sessions Judge on 25th November, 1967 and while both the petitioner and respondent No. 3 were holding the same post at Delhi. The petitioner was confirmed as District and Sessions Judge in his parent State of Haryana on 2nd October, 1970.

A On the other hand, respondent No. 3 was appointed as Addl. District & Sessions Judge Delhi on 5-6-1968 and continued as Addl. District and Sessions Judge till 17-5-71. Respondent No. 3, however, was confirmed as Sub Judge on 5-6-1968 but was confirmed as District and Sessions Judge Delhi several years after.

B On 27-8-1970 Delhi Higher Judicial Service and Delhi Judicial Service Rules were framed by the Lt. Governor in consultation with the Delhi High Court. On 22-3-1971 Shri Khanna respondent No. 3 was appointed as Member, Income Tax Tribunal at Jaipur. About two months thereafter i.e. on 17-5-1971 there was a regular notification initiating the constitution of the Delhi Higher Judicial Service with effect from 17-5-1971 by which in the Higher Service the petitioner was put at S. No. 7 and respondent No. 3 at S. No. 8. This notification may be extracted thus :—

D “In pursuance of the provisions of rule 6 of the Delhi Higher Judicial Service Rules 1970 the Administrator of Delhi is pleased to appoint substantively in consultation with the High Court, the following persons from the States noted against each, to the Delhi Higher Judicial Service at its initial constitution with effect from 17-5-71 and in order of seniority indicated :

Sl. No.	Name of the Officer	Post held at Present	State to which belongs
F 1.	Shri Rajinder Nath Aggarwal	Registrar, Delhi High Court, New Delhi.	Himachal Pradesh.
2.	Shri Fauja Singh Gill	Addl. District & Sessions Judge, Delhi.	Punjab
3.	Shri Mohinder Singh Joshi	Member (Punjab), Official Language (Legislative) Commission, Ministry of Law, Government of India.	Punjab
G 4.	Shri Kashmir Singh Sidhu	Addl. District & Sessions Judge, Delhi.	Punjab
5.	Shri Om Nath Vohra	Do.	Do.
6.	Shri Jagminder Das Jain	Do.	Do.
H 7.	Shri Gulshan Rai Luthra	Do.	Haryana
8.	Shri Dev Raj Khanna	Do.	Punjab

Thus, this notification would show that whatever may have been the position prior to the coming into force of the new Service, the petitioner was treated to be senior to respondent No. 3. As we have already stated that both the petitioner and respondent No. 3 were practically recruited through the same source and were members of the same Service though for a short period the petitioner was allotted to Haryana and respondent No. 3 to Punjab but that would not introduce any break in the service of either of them or bring about a change in their seniority. Unfortunately, however, it appears that the confusion was worse confounded by a decision taken by the Delhi High Court on a representation filed by respondent No. 3. It appears that after the final list under the Delhi Higher Judicial Service was notified and approved respondent No. 3 filed a representation on the 21st January, 1972 claiming seniority over the petitioner. This representation appears to have been accepted by the High Court on 10th June, 1976 which runs thus :

"I am desired to say that Shri D. R. Khanna a member of the Delhi Higher Judicial Service, at present on deputation as Judicial Member, Income Tax Appellate Tribunal made a representation dated the 25th January, 1972 (copy enclosed) requesting that for the reasons stated therein he may be placed above Shri G. R. Luthra in the Gradation List of the officers of the Delhi Higher Judicial Service. The comments of Shri Luthra on the aforesaid representation of Shri Khanna were obtained. Subsequently, both the officers filed counters, copy of each one of which is enclosed. Both Shri Khanna and Shri Luthra were heard by a Committee of two Hon'ble Judges who submitted a report which was considered on the Administrative Side by the Full Court in its meeting held on 20th May, 1976 and it was decided that in view of Rule 6(3) of the Delhi Higher Judicial Service Rules, 1970, as interpreted by the Supreme Court in A.I.R. 1974 S.C. 1908. Shri Khanna is senior to Shri Luthra. I am directed to request that orders of the Administrator may be obtained in this behalf and necessary amendment in Delhi Administration's Notification No. 1(740)/76-Judl. dated the 15th May, 1971 be made".

Thus, the basis of the order of the High Court was the interpretation of Rule 6(3) of the Delhi Higher Judicial Service Rules, 1970. Section 6(3) runs thus :—

"6(3). The seniority of the candidates appointed at the initial constitution shall be in accordance with the length of

A service rendered by them in the cadres to which they belong at the time of their initial recruitment to the service provided that the inter-se seniority as already fixed in such cadres shall not be altered".

B A perusal of this rule would manifestly show that the petitioner was treated as senior to respondent No. 3 throughout his whole career and even in the initial recruitment by which the Delhi Higher Judicial Service came into existence, the petitioner was shown senior to respondent No. 3, and, therefore, on a plain reading of rule 6(3) there was no merit in the representation of respondent No. 3 and according to the second part of the rule since inter-se seniority had already been fixed initially, the petitioner would be deemed to be senior to the respondent No. 3 and this seniority could not be altered. With due respect to the Hon'ble Judges we feel that the construction placed by the High Court on rule 6(3) was not correct. The High Court appears to have relied on a decision of this Court in *G. R. Luthra, Additional District Judge, Delhi v. Lt. Governor, Delhi & Ors.*⁽¹⁾ which is clearly distinguishable from the facts and circumstances of the present case and in which the history of the services of the two officers had not been placed or argued nor was respondent No. 3 a party to that petition and, therefore, his case never came up for consideration before this Court. Therefore, this Court had no occasion to consider the various aspects of the question which *ex-hypothesi*, did not arise. The facts and circumstances under which the petitioner's seniority was maintained by giving a proforma promotion to respondent No. 3 and protecting the seniority of the petitioner by concept of next below rule was also not brought to the notice of the Court.

F In fact, in the case of *G. R. Luthra v. Lt. Governor, Delhi & Ors.* (supra) this Court clearly laid down that the criterion for the determination of seniority under the Delhi Rules was the length of service rendered by the candidates during the period when they were rendering service either as District Judge or as Additional District and Sessions Judge against permanent or temporary posts. From the notification dated 19th May, 1971 which has been extracted above it would be seen that Mr. Sidhu, Mr. Vohra and Mr. Jain over whom the petitioner Luthra was claiming seniority were shown at S. No. 4, 5 and 6, that is to say above the petitioner Luthra. This Court therefore obviously held that length of service of these officers being more than the petitioner

(1) A.I.R. 1974 S.C. 1908.

Luthra, the claim of the petitioner Luthra was wholly untenable. In this connection, this Court observed as follows :—

“Rule 6(4) of the Delhi Rules shows that the respondents and the appellant were absorbed in the Delhi Higher Judicial Service from the States of Punjab and Haryana. The length of service rendered by them as Additional District and Sessions Judges is the criterion to fix the seniority. The word ‘cadre’ includes both permanent and temporary posts. To confine cadre to permanent posts under the Delhi Rules would be to render the Rules totally unworkable and impracticable because at the time of initial recruitment the persons came on deputation from States mostly in their temporary capacity as Additional District and Sessions Judges.

For these reasons we are of opinion that the respondents Sidhu, Vohra and Jain had been rightly treated as senior to the appellant on the ground that the length of service rendered by the respondents in the cadre of District and Additional District and Sessions Judges to which they belonged at the time of initial recruitment is longer than that of the appellant”.

In the instant case also the petitioner and respondent No. 3 have been drawn from different sources and different States before they were absorbed in the Delhi Higher Judicial Service and it would appear from the notification mentioned above that while the petitioner Luthra was shown at S. No. 7, respondent No. 3 was placed at S. No. 8. Therefore, on a parity of reasoning adopted by this Court in the case cited above the case of respondent No. 3 claiming seniority over the petitioner Luthra cannot be accepted. Thus, the High Court in recommending that respondent No. 3 should be treated as senior to the petitioner Luthra acted against the express decision of this Court cited above and that the order of the High Court, therefore, was legally erroneous and if given effect it would have been violative of Article 16 of the Constitution.

Moreover, Rule 6(1) of the Delhi Judicial Service Rules runs thus :—

“6(1). For initial recruitment to the service, the Administrator shall, in consultation with the High Court, appoint persons to the service substantively from amongst the following :—

- (a) District Judges and Additional District Judges functioning as such in the Union Territory of Delhi on deputation from other States”.

A Clause (a) makes it absolutely clear that persons to the Higher Service would be recruited only from those District and Additional District Judges who were actually functioning in the Union Territory of Delhi on deputation from other States. It is common ground that on this crucial date respondent No. 3 was not functioning either as District Judge or as Additional District Judge but was on deputation with the Income Tax Tribunal. In view however of the affidavit given by the respondent No. 3 we refrain from giving any finding as to whether or not respondent No. 3 was validly appointed because respondent No. 3 had conceded in his affidavit that he would not press his claim of seniority over the petitioner and, therefore, we need not take into consideration the provisions of rule 6(1) (a) of the Rules.

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Thus, on an overall consideration of the various aspects of the matter discussed above, we are satisfied that the petitioner Luthra was senior to respondent No. 3 and was rightly placed above respondent No. 3 in the initial constitution of the Delhi Higher Judicial Service by virtue of the notification dated 19th May, 1971, and is, therefore, entitled to such right as he may have and shall be deemed to be senior to respondent No. 3. The order of the Lt. Governor (Respondent No. 1) based on the recommendation of the High Court treating the petitioner to be junior to respondent No. 3 is legally erroneous and is quashed as by making respondent No. 3 senior to the petitioner the right of the petitioner under Article 16 is clearly violated.

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The petition is accordingly allowed, but in the circumstances of the case there will be no order as to costs.

P.B.R.

Petition allowed.